



Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

AMANI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Halil Goksan, AS/ALD/OHR/UN Secretariat

Introduction

1. On 6 March 2023, the Applicant, a former staff member with the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”), filed an application regarding the post-separation entitlements paid to him.
2. On 16 March 2023, the Respondent filed a motion submitting that the application was not receivable and requested that the Dispute Tribunal determine the receivability of the application as a preliminary matter.
3. By Order No. 085 (NY/2023) dated 13 September 2023, the Tribunal ordered, *inter alia*, the Applicant to file a response to the Respondent’s motion dated 16 March 2023.
4. The Applicant duly filed his submission on 16 October 2023.
5. By Order No. 108 (NY/2023) dated 19 October 2023, the Tribunal granted the Respondent’s motion to determine the receivability of the application as a preliminary matter and ordered the parties to file their closing submissions on receivability.
6. On 3 November 2023, the Respondent duly filed his closing submission.
7. On 17 November 2023, the Applicant sent an email to the Dispute Tribunal’s Registry stating that “after a careful review of the past submissions pertaining to the Case, [t]he Applicant will [not] file a response to the [Respondent’s] closing submissions as directed by the Tribunal through order no 108 (NY/2023), dated 19th October 2023”.

Considerations

Receivability as a preliminary matter

8. In his application, the Applicant specifies five contested decisions concerning:

- a. His entitlement to the Single Parent Allowance (“Decision 1”);
- b. “Extra Deduction of entitlements on Home Leave Travel” (“Decision 2”);
- c. “Low level of Annual Leave Cash Commutation” (“Decision 3”);
- d. The discontinuance of entitlements during the Applicant’s placement on Administrative Leave Without Pay from 28 October 2019 to 23 April 2020: (i) medical plan benefits (Decision 4.1); (ii) Pension Fund benefits (Decision 4.2); and (iii) Education Grant Claim (Decision 4.3); and
- e. “Non-consideration [of the] COVID-19 Crisis Impact on the delayed separation process” (“Decision 5”).

9. The Appeals Tribunal has held that the Dispute Tribunal may consider the receivability of an application as a preliminary matter before reviewing the merits of the case (see, for instance, *Pellet* 2010-UNAT-073). Based on the 16 March 2023 motion of the Respondent on non-receivability, and for the fair and expeditious disposal of the case and to do justice to the parties in accordance with art. 19 of its Rules of Procedure, the Tribunal has decided to do so.

The submissions on receivability of the parties

10. The Respondent’s contentions may be summarised as follows:
 - a. The application is not receivable because it fails to identify a reviewable administrative decision.
 - b. With regard to Decisions 3, 4.1 and 4.2 the application is not receivable *ratione materiae* because the Applicant’s management evaluation request was time-barred. The Applicant failed to meet the 60 calendar-day deadline to submit a request for management evaluation of Decisions 3, 4.1, and 4.2.
 - c. With regard to Decisions 1 and 4.3, the application is not receivable *ratione materiae* because the Applicant failed to request management evaluation of

those decisions. An application is only receivable if the Applicant first sought management evaluation.

d. With regard to Decision 5, the application is not receivable *ratione materiae* and *ratione temporis* because the Applicant fails to clearly identify a reviewable administrative decision, and assuming *arguendo* that a decision existed, the application is time-barred. Should the Dispute Tribunal find that the Applicant in fact identified an administrative decision, the application is not receivable *ratione temporis* as to Decision 5. The Applicant failed to meet the 90 calendar-day deadline to submit his application contesting Decision 5. The Applicant appears to allege that his appointment could have been extended for an additional period of time in view of his reading of the Administrative Guidelines for Offices on the Novel Coronavirus (COVID-19) Outbreak dated 10 March 2020 (“Guidelines”) and despite the decision to separate him based on misconduct. The Applicant was separated from service, effective 23 April 2020. In view of the 90 calendar-day deadline, the Applicant should have filed his application on or before 22 July 2020. The application dated 6 March 2023 is filed more than 2.5 years after the alleged contested decision and is, therefore, not receivable *ratione temporis*.

e. Lastly, Decision 2 has been resolved and the merits of that decision are not contested by the Applicant.

11. The Applicant’s brief contentions on the issue of receivability may be summarized as follows:

a. The Applicant got separated from service in April 2020. While this administration decision was under judicial review, the separation process was outrageously delayed and was concluded in June 2021 by the release of the Applicant’s final pay. Several of the Applicant’s entitlements were not included, or not properly computed in the Applicant’s final pay package.

b. With regard to Decision 1 and Decision 4.3 this issue was under consideration before the human resources teams of both MINUSMA and the United Nations Regional Service Centre Entebbe. During the telephone conference initiated by MINUSMA’s human resources team and held on 9 September 2021,

the Applicant was requested to provide further details on his employment history for further assessment. This was done by email on 23 September 2021. After the submission the human resources teams remained silent on this issue.

c. With regard to Decision 5 the human resources team requested the Applicant to submit further proof of his presence in the Mission area. This was also done in the same email dated 23 September 2021. After the submission the human resources teams remained silent on this issue.

Discussion

12. As noted above, the Applicant is contesting five separate decisions in relation to the post-separation entitlements paid to him. The Tribunal will examine the receivability of each decision in turn below.

Decision 1 - The Applicant's entitlement to the Single Parent Allowance

13. With regard to Decision 1, the Tribunal finds that the application is not receivable *ratione materiae* because the Applicant failed to request management evaluation of this decision. In accordance with staff rule 11.2(a), an application is only receivable if the Applicant first sought management evaluation. On 16 March 2023, after the present application was filed, the Organization notified the Applicant of the administrative decision to deny his Single Parent Allowance claim. The Applicant, however, has not requested management evaluation of this administrative decision. As a result, the Dispute Tribunal cannot conduct a judicial review of Decision 1.

Decision 2 - "Extra Deduction of entitlements on Home Leave Travel"

14. The Tribunal notes that the Applicant himself states in his application that Decision 2 "was expeditiously solved." As such, Decision 2 has been resolved as the Applicant admitted. There remains no matter for the Tribunal to adjudicate with respect to Decision 2.

Decision 3 "Low level of Annual Leave Cash Commutation"

15. With respect to Decision 3, the Tribunal finds that the application is not receivable *ratione materiae* because the Applicant's management evaluation request was time-barred. The record shows that the Applicant failed to meet the 60 calendar-day deadline to submit a request for management evaluation of Decision 3.

16. The Organization provided the Applicant with a statement of his final separation pay in June 2021. That statement notified the Applicant of the Organization's administrative decision with respect to Decision 3. The Applicant, however, only submitted his request for management evaluation on 25 October 2022, almost 1.5 years after he was notified of the relevant contested decision. The application is therefore not receivable *ratione materiae* as to Decision 3.

Decision 4 - The discontinuance of entitlements during the Applicant's placement on Administrative Leave Without Pay from 28 October 2019 to 23 April 2020: i) medical plan benefits (Decision 4.1); ii) Pension Fund benefits (Decision 4.2); and iii) Education Grant Claim (Decision 4.3)

17. With respect to Decisions 4.1 and 4.2 the Tribunal finds that the application is not receivable *ratione materiae* because the Applicant's management evaluation request was time-barred. The record shows that the Applicant failed to meet the 60 calendar-day deadline to submit a request for management evaluation of Decisions 4.1, and 4.2. The Organization provided the Applicant with a statement of his final separation pay in June 2021. That statement notified the Applicant of the Organization's administrative decision with respect to Decisions 4.1, and 4.2. The Applicant, however, only submitted his request for management evaluation on 25 October 2022, almost 1.5 years after he was notified of the relevant contested decision. The application is therefore not receivable *ratione materiae* as to those administrative decisions.

18. With respect to Decision 4.3, the Tribunal finds that the application is not receivable *ratione materiae* because the Applicant failed to request management evaluation of the decision. An application regarding such a decision is only receivable if the Applicant first sought management evaluation in accordance with staff rule 11.2(a). On 15 March 2023, after the present Application was filed, the

Organization notified the Applicant of the administrative decisions to deny his education grant claim. The Applicant, however, has not requested management evaluation of this administrative decision. As a result, the Dispute Tribunal cannot conduct a judicial review of Decision 4.3.

Decision 5 - “Non-consideration [of the] COVID-19 Crisis Impact on the delayed separation process”

19. The Applicant identifies Decision 5 as “non-consideration [of the] COVID-19 Crisis Impact on the delayed separation process” and merely refers to paragraphs 65 and 69 of the Guidelines by stating that the Guidelines “[have] not been applied in [his] case”. At the request of the Tribunal, the Applicant further explained Decision 5 in his submission dated 16 October 2023 as follows:

[...] The Applicant already specified in the initial application that the Contested Decision is the Final Payslip [...] This is motivated by the fact the amount claimed or due in relation with this claim [...] is not reflected or may have been omitted. Most of the other lines of the payslip, [do] not seem to contain these provisions as they remain within, or even below, the limits of the [Applicant’s] final pay amount expected.

In General, Administrative Tribunals have held that payslips are and can contain administrative decisions [footnote omitted] that can be legally challenged. They fall into the category of Implied Administrative Decision.

By releasing and largely [broadcasting] the “Administrative Guidelines for Offices on the Novel Coronavirus (COVID-19) pandemic”[...] the latter released 6 days before the [Applicant’s] separation date, the Secretary-General adequately amended the Terms of the Staff Employment to include the rules and guidelines to be applied for staff to be separated. [...]

20. Under the consistent jurisprudence of the Appeals Tribunal, the Applicant must “identify an administrative decision capable of being reviewed” (*Haydar* 2018-UNAT-821).

21. With respect to Decision 5, the Tribunal finds that the application is not receivable *ratione materiae* because the Applicant has failed to clearly identify a reviewable administrative decision. Despite the Applicant’s 16 October 2023 attempt to explain the exact decision he is contesting, the specifics of Decision 5

remain unclear to the Tribunal. The Respondent is correct to note here that a statutory burden is placed upon an applicant to establish that a decision was in non-compliance with the terms of his or her appointment or contract of employment. Such a burden cannot be met where the applicant fails to identify an administrative decision capable of being reviewed. The Applicant failed to do so, and this alone is sufficient to render the application not receivable *ratione materiae* as to Decision 5.

Conclusion

22. In light of the above, the application is not receivable.

(Signed)

Judge Joelle Adda

Dated this 13th day of February 2024

Entered in the Register on this 13th day of February 2024

(Signed)

Isaac Endeley, Registrar, New York