



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/002

Judgment No.: UNDT/2024/013

Date: 7 March 2024

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

BAHEL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Sahil Gupta

Counsel for Respondent:

Halil Göksan, AS/ALD/OHR, UN Secretariat

Introduction

1. On 15 January 2024, the Applicant filed an application “seeking adjudication of the request for review dated 10.01.2007, which was transferred from the Joint Disciplinary Committee” (“JDC”) to the United Nations Dispute Tribunal following the closure of the JDC and the establishment of the Dispute Tribunal in July 2009.
2. On the Tribunal’s instructions, the Registry notified the Applicant by email dated 15 January 2024 that his application could not be processed due to filing deficiencies and requested him to resubmit it in the proper format.
3. On 25 January 2024 and 16 February 2024, the Registry sent email reminders to the Applicant and offered him technical assistance with the filing, if needed.
4. On 19 February 2024, the Applicant properly refiled his application, which was served on the Respondent on the same day.
5. On 1 March 2024, the Respondent filed a motion stating that the application is “manifestly not receivable” and requesting the Tribunal to suspend the deadline for the filing of his reply and to determine the receivability of the application as a preliminary matter.

Facts

6. The Applicant is a former staff member with the Procurement Division in the Secretariat. On 21 December 2006, he was “summarily dismissed for serious misconduct”.
7. On 10 January 2007, the Applicant addressed a memorandum to the Secretary-General requesting a review of his summary dismissal.
8. On 4 April 2007, the Chief of the Administrative Law Unit informed the Applicant that his request for review was pending before the JDC.

9. On 1 April 2008, a United States court sentenced the Applicant to 97 months in prison following his criminal conviction, on 7 June 2007, for acts related to his employment with the Procurement Division.

10. As of 1 July 2009, the General Assembly abolished the JDC and all cases pending before the JDC were transferred to the newly established Dispute Tribunal.

11. On 10 September 2019, the Applicant wrote to the Director of the Administrative Law Division (“ALD”) in the Office of Human Resources (“OHR”) inquiring about the outcome of his January 2007 claim before the JDC.

12. On 28 October 2019, the Applicant was informed that the Organization considers his JDC claim closed in view of his failure to pursue the claim for over 12 years.

13. On 12 May 2023, upon the Applicant’s further inquiries, ALD reiterated that the Organization considers the Applicant’s 2007 JDC claim closed.

14. On 15 January 2024, the Applicant filed the present application.

Applicant’s submissions

15. The Applicant’s principal contentions may be summarized as follows:

a. “There has been no adjudication of [his] case before the internal justice system of the [United Nations]”. After the JDC was abolished in 2009, all pending cases were transferred to the Dispute Tribunal for adjudication. Since the Applicant’s case was not decided by the JDC and remained pending until the JDC was abolished, it must also have been transferred to the Dispute Tribunal.

b. To date, there has been no hearing of the Applicant’s case and there has been “no conclusive finding or Judgement by the JDC, the Secretary-General or the [Dispute Tribunal] on the Request for Review dated 10.01.2007”.

Respondent's submissions

16. The Respondent's main submissions may be summarized as follows:
- a. If the application is understood as contesting the Secretary-General's decision to consider the Applicant's JDC claim closed, the application is not receivable *ratione temporis* "because it was filed over three years after the Applicant received that decision". Article 8.4 of the Dispute Tribunal's Statute restricts the power of the Tribunal to pass judgment on an application filed more than three years after an applicant's receipt of a contested decision.
 - b. If the application is understood as contesting the alleged failure of the Dispute Tribunal to exercise its jurisdiction, the application is not receivable *ratione materiae* because the "alleged failure of the Dispute Tribunal to exercise its jurisdiction is not an administrative decision taken by the Secretary-General".

Considerations

17. The receivability of an application is a condition *sine qua non* for the Dispute Tribunal to exercise its power of judicial review (see, for instance, *Pellet* 2010-UNAT-073). According to the jurisprudence of the Appeals Tribunal, the Dispute Tribunal is required to satisfy itself that an application is receivable under art. 8 of its Statute. The issue of receivability may be adjudicated even without serving the application on the Respondent for a reply, and even if the parties did not raise it. A determination on receivability must be made without regard to the merits of the case (see, for instance, the Appeals Tribunal in *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335; *Cooke* 2013-UNAT-380; *Lee* 2014-UNAT-481; *Tanifum* UNDT/2020/179).

18. The Appeals Tribunal has also held that the Dispute Tribunal "is competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute" when determining the receivability of an application. Further, "this competence can be exercised even if the parties or the administrative authorities do not

raise the issue, because it constitutes a matter of law and the Statute prevents the [Dispute Tribunal] from receiving a case which is actually not receivable” (see *Christensen*, paras. 20-21).

19. In his refiled application, the Applicant requests the Tribunal “to consider and adjudicate upon the Request for Review dated 10.01.2007” which, the Applicant alleges, “has remained pending” before the Dispute Tribunal since July 2009 when the case was transferred to it following the closure of the JDC.

20. The Tribunal has considered the fact that on 10 January 2007, the Applicant did request a review of the contested decision and that on 4 April 2007, he was advised by the then Counsel for the Respondent that his request for review was pending before the JDC.

21. However, the Tribunal observes that the Applicant has not provided any evidence—such as a case number or any official communication—to support his assertion that his request for review has been pending before the Dispute Tribunal since July 2009. The Dispute Tribunal has no record of any case filed by the Applicant ever having been transferred to it from JDC when the new system of internal justice at the United Nations took force in July 2009. Taking into consideration the Applicant’s subsequent failure to pursue the claim for over 12 years, and the absence of any record of a case transferred to it, the Tribunal does not consider itself seized of the application filed in 2007, before the JDC. Therefore, the Tribunal finds that the application is not receivable.

22. Finally, since the Tribunal has found that the application is not receivable, there is no need for the Respondent to file a reply on the merits.

Conclusion

23. The application is dismissed as not receivable.
24. The Respondent's motion to suspend the deadline for filing his reply is granted.

(Signed)

Judge Joelle Adda

Dated this 7th day of March 2024

Entered in the Register on this 7th day of March 2024

(Signed)

Isaac Endeley, Registrar, New York