



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: René M. Vargas M., Officer-in-Charge

MASSAMBA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Esther Shamash, UNDP

Introduction

1. The Applicant is a former driver with the United Nations Office for the Coordination of Humanitarian Affairs (“UNOCHA”) in the Democratic Republic of the Congo. He held a fixed term appointment at the G-2 level.

Factual and procedural background

2. On 5 July 2022, the Applicant was informed of the Organization’s decision to sanction him for misconduct with separation from service.

3. The Applicant sought management evaluation at several points in October and December 2023. The most recent decision he received on his requests for management evaluation was on 29 December 2023.

4. On 31 January 2024, the Applicant filed an application before the United Nations Dispute Tribunal sitting in Nairobi to challenge the decision to separate him from service.

5. The Respondent filed his reply on 27 February 2024. The Respondent submits that the application is time-barred and is therefore not receivable before the Tribunal.

6. By Order No. 32 (NBI/2024), issued on 5 March 2024, the Applicant was directed to file a response to the Respondent’s position on receivability.

7. In his response filed on 29 March 2024, the Applicant concedes that his application is time-barred but requests the Tribunal to declare his application admissible.

Consideration

8. The Respondent contends that staff rule 11.4(b) provides that staff members who are not required to request a management evaluation, pursuant to staff rule 11.2(b), must file their applications with the Tribunal within 90 calendar days from the date on which they received notification of the contested administrative decision. Since the Applicant was notified of the contested decision on 5 July 2022,

it follows that the Applicant's deadline to appeal the decision was 4 October 2022. His application is over a year late. The application is, therefore, time-barred and should be dismissed.

9. The Applicant concedes that his application is time-barred but requests the Tribunal to declare his application admissible. He states:

I respectfully request the Tribunal to declare my application admissible in order to allow a full analysis of my case. Following the termination of my contract, I was unable to appeal against the decision of July 5, 2022 due to my personal health problems and the lack of legal assistance. The administration was aware of my state of health. At the time of the separation decision, I had just been hospitalized and was in a state of convalescence. The separation decision came as a shock to me and caused a relapse in my health. As a result, I fell ill again and was unable to defend myself or seek legal assistance.

10. Article 8.1(d)(ii) prescribes that an application shall be receivable if, in cases where management evaluation of the contested decision is not required, it is filed within 90 calendar days of the applicant's receipt of the administrative decision. Staff rule 11.4(b) sets the same deadline.

11. Further, the United Nations Appeals Tribunal ("UNAT") has consistently and strictly enforced the time limits for filing applications and appeals simply because strict adherence to filing deadlines ensures the timely hearing of cases and rendering of judgments (*Mezoui* 2010-UNAT-043; *Kissila* 2014-UNAT-470).

12. The evidence before the Tribunal and not contested by the Applicant is that the sanction letter was issued on 1 July 2022 and the Applicant received it on 5 July 2022. Pursuant to staff rule 11.2(b), disciplinary decisions are not subject to management evaluation. This means that the Applicant should have filed his application no later than Tuesday, 4 October 2022 to comply with the 90-calendar day deadline. He filed his application on 31 January 2024, which was more than a year after the statutory deadline.

13. The Applicant attempts to excuse his failure to meet the deadline on his “personal health problems”. To support this claim, he only submits paperwork showing that he was hospitalized for four days in April 2022 and excused from work until the end of that month. Of course, this was at least two months before the disciplinary decision.

14. The Applicant submits no evidence of ill health for the year and a half after the decision, and nothing to indicate that any illness prevented him from filing a timely application, or at least a request for extension of time in which to file. As such, the Applicant has failed to demonstrate exceptional circumstances to justify waiver of the deadline to file his application. See art. 8.3 of the Statute of the Dispute Tribunal.

15. In view of the above, the Tribunal declines to grant the Applicant’s request to declare his application admissible, but rather finds that the application is not receivable *ratione temporis*.

Conclusion

16. In view of the foregoing, the Tribunal DECIDES that the application is dismissed.

(Signed)

Judge Sean Wallace

Dated this 25th day of June 2024

Entered in the Register on this 25th day of June 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi