



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/031/T
Judgment No.: UNDT/2025/011
Date: 18 March 2025
Original: English

Before: Judge Solomon Areda Waktolla

Registry: New York

Registrar: Isaac Endeley

ROESKE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Monika Ona Bileris

Counsel for Respondent:

Rebecca Britnell, UNHCR

Elizabeth Brown, UNHCR

Introduction

1. The Applicant is a staff member of the United Nations Refugee Agency (“UNHCR”). On 15 March 2024, she filed an application contesting “[t]he 25 September 2023 decision to not reimburse the 2022 [United States] income taxes ([Internal Revenue Service, “IRS”] and California State) and pay for the estimated tax payment for 2023 taxes (IRS and California State)”.

Facts and procedure

2. The Applicant indicated in the application that she had submitted a request for management evaluation on 23 November 2023 and that the management evaluation response “was due on 8 January 2024 (45 days)”, but that on 4 January 2024, she received a notification informing her that the response was “delayed due to the holiday period”. By 15 March 2024 when she filed the present application, she had still not received the substantive management evaluation response.

3. Although the Applicant was working remotely from her home in the United States at the relevant time, her designated duty station was Nairobi. Therefore, the application was initially filed with the Nairobi Registry and the deadline for the Respondent’s reply was set on 18 April 2024.

4. On 27 March 2024, the United Nations Income Tax Unit issued a Statement of 2023 Tax Settlement indicating that the Applicant’s 2023 tax payment had been sent to the United States Internal Revenue Service.

5. On 11 April 2024, the Deputy High Commissioner of UNHCR issued the management evaluation response, instructing the UNHCR Legal Affairs Service to seek a suspension of the proceedings before the Tribunal in order for the parties to enter into settlement negotiations.

6. On 17 April 2024, the parties filed a joint motion requesting a suspension of the proceedings in the case until 15 May 2024 as they had agreed to enter into informal negotiations in an attempt to resolve the dispute. The parties also requested

that the deadline for the filing of the Respondent's reply should be extended to 24 May 2024 if the negotiations failed.

7. By Order No. 045 (NBI/2024) dated 18 April 2024, the Tribunal granted the parties' motion.

8. On 13 May 2024, the Applicant filed a "Change of Counsel" form notifying the Tribunal that she had retained new Counsel as of 10 May 2024.

9. As no agreement could be reached between the parties by 15 May 2024, the Applicant notified the Tribunal on 17 May 2024 that she wished her case to proceed before the Tribunal.

10. On 17 May 2024, the Applicant filed a motion to amend her application and a separate motion for change of venue.

11. On 21 May 2024, both motions were served on the Respondent with instructions to file his responses by 28 May 2024.

12. On 23 May 2024, the United Nations Income Tax Unit approved the settlement of the Applicant's 2022 tax liability.

13. On 24 May 2024, the Respondent filed his reply in accordance with Order No. 045 (NBI/2024) and pursuant to art. 10.1 of the Dispute Tribunal's Rules of Procedure.

14. By Order No. 069 (NBI/2024) dated 14 June 2024, the Tribunal granted the Applicant's motion to transfer the present case from the Nairobi seat to the New York seat of the Tribunal and instructed her to file the proposed amendments to the application by 28 June 2024. The Tribunal also instructed the Respondent to file a response to the proposed amended application by 12 July 2024, if he so wished.

15. On 28 June 2024, the Applicant filed her amended application.

16. On 12 July 2024, the Respondent filed his reply to the amended application, objecting to the proposed amendments.

17. On 16 July 2024, the Applicant filed a motion for leave to file a rejoinder to the Respondent's reply of 24 May 2024.

18. On 9 September 2024, the Applicant filed a motion for anonymity, and a separate motion for the redaction of Order No. 069 (NBI/2024).

19. By email through the Registry dated 9 September 2024, the Duty Judge in New York informed the parties that the pending motions would be decided by the Judge of the Tribunal to whom the case would eventually be assigned. The Duty Judge also instructed the Respondent to file his response to the Applicant's motions of 9 September 2024 by 19 September 2024.

20. On 18 September 2024, the Respondent filed his responses to both motions.

21. The case was assigned to the undersigned Judge on 23 December 2024.

22. On 3 March 2025, the Tribunal conducted a case management discussion with the participation of Counsel for the Applicant and Counsel for the Respondent in accordance with Order No. 020 (NY/2025) of 11 February 2025.

Considerations

Receivability and mootness

23. In his reply on the merits dated 24 May 2024, the Respondent submits that the application "should be rejected in its entirety as irreceivable *ratione temporis*". According to the Respondent, the contested decision as it relates to the Applicant's tax liability was initially communicated to the Applicant by the United Nations Income Tax Unit on 22 May 2023 and confirmed by the UNHCR Administration on 8 June 2023. Those communications "constituted an unequivocal and final decision" and the subsequent email exchange on 25 September 2023 was "a mere reiteration and confirmation of this earlier decision, without any new circumstances that would oblige the Administration to take a new decision". Thus, the Applicant had 60 days from 22 May 2023—that is, until 22 July 2023—to file a request for management evaluation. However, it was only on 23 November 2023 that the Applicant filed the request for management evaluation. The Respondent therefore

submits that the Tribunal has no jurisdiction to hear and pass judgment on the application in accordance with arts. 8.1(c) and 8.3 of the Tribunal's Statute.

24. The Respondent also asserts that those parts of the application relating to the Applicant's 2022 and 2023 tax liability are moot because despite the failure of the informal settlement discussions, "the Administration decided in any event to instruct the [United Nations Income Tax Unit] to reimburse the Applicant's 2022 tax liability". Further, on 27 March 2024, a few days after the Applicant filed the present application, the Income Tax Unit issued a Statement of 2023 Tax Settlement indicating that the payment had been sent to the United States Internal Revenue Service.

25. At the CMD of 3 March 2025, Counsel for the Applicant agreed that most of the initial claims made in the application dated 15 March 2024 have been resolved in the sense that the Applicant's tax liability for 2022 and 2023 has been settled thus rendering part of the application moot. However, Counsel for the Applicant noted that the damages and compensation the Applicant is claiming, including penalties for the late payment of the taxes, as well as the costs for treating the Applicant's medical condition resulting from the contested decision, have not yet been settled.

26. Counsel for the Applicant also maintained that the application is receivable because the contested decision was made on 25 September 2023, and the Applicant filed a timely management evaluation request on 23 November 2023.

27. The Tribunal notes that pursuant to staff rule 11.2(a), staff members wishing to formally contest an administrative decision alleged to be in non-compliance with their contract of employment or terms of appointment are required, as a first step, to submit a request for management evaluation. Moreover, under staff rule 11.2(c), a request for management evaluation shall not be receivable "unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested".

28. Further, under art. 8.1(c) of the Dispute Tribunal's Statute, an application shall be receivable if an applicant has previously submitted the contested

administrative decision for management evaluation, where required. However, pursuant to art. 8.3 of its Statute, the Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

29. The Tribunal recalls that the Appeals Tribunal has consistently stated that the Dispute Tribunal is required to satisfy itself that an application is receivable under art. 8 of its Statute (see, for instance, *O'Neill* 2011-UNAT-182, as affirmed in *Christensen* 2013-UNAT-335, and *Barud* 2020-UNAT-998). The Appeals Tribunal has also 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). 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*; *Cooke* 2013-UNAT-380; *Lee* 2014-UNAT-481).

30. Furthermore, it is well-settled case law that “the Dispute Tribunal may only review decisions that have been the subject of a timely request for management evaluation” (see *Khan* 2022-UNAT-1284, para. 52).

31. The Applicant states in the application that on 22 May 2023, she received a communication from the United Nations Income Tax Unit informing her that since her home-based assignment was authorized at her own request, “it should be at no cost to UNHCR” and therefore, the related taxes “should be borne by the staff [member]”. She further states in the application that “[t]he 22 May 2023 response from [the Income Tax Unit] had clearly stated that the UNHCR would not pay her taxes”. The Applicant then proceeded to seek the intervention of the UNHCR Global Council to have the administrative decision overturned.

32. The Tribunal also notes that in the “remedies” section of the application, the Applicant requests the award of damages and “seeks appropriate compensation including full reimbursement of medical fees, medications, transportation, and reinstatement of the sick leave days for the period 22 May to 14 August 2023”. It is clear from this statement that the Applicant was formally notified of the contested decision on 22 May 2023, as this is when she claims the decision started having “health related consequences” on her. The Applicant cannot have it both ways. She

cannot claim, on the one hand, that she is entitled to compensation for damages suffered after learning of the contested decision on 22 May 2023 and then maintain, on the other hand, that she was only notified of the contested decision on 25 September 2023. In any event, the record shows clearly that the Applicant was notified of the decision on 22 May 2023.

33. Having established that the Applicant was duly notified of the contested decision on 22 May 2023, the Tribunal finds that the request for management evaluation should have been filed by 22 July 2023, at the latest. Since the Applicant only filed the request for management evaluation on 23 November 2023, the Tribunal further finds that the application is not receivable.

34. For the sake of completeness, on the issue of mootness, it is recalled that the Appeals Tribunal has consistently held that where an applicant has already received the relief requested, an application is moot and should be dismissed (*Rehman* 2017-UNAT-795, para. 21, and see also, for instance, the Appeals Tribunal in *Toson* 2021-UNAT-1161, para. 27; *Guetgemann* 2022-UNAT-1201, para. 22; *Mboob* 2022-UNAT-1215, para. 33).

35. As Counsel for the Applicant has admitted that the Administration has already substantially settled the Applicant's tax liability claims for 2022 and 2023, the Tribunal also considers those aspects of the application as moot.

36. Although the Tribunal has already determined that the application is not receivable, it will nonetheless also address the other pending motions filed by the parties.

Applicant's motion to file an amended application

37. On 17 May 2024, the Applicant filed a motion to amend her application of 15 March 2024. Among the reasons advanced for seeking to amend it, the Applicant states that "her previous attorneys filed it without showing her the final product and without taking her concerns into consideration". She also states that as she "now has new counsel", she "wishes to correct this error".

38. By response dated 28 May 2024, the Respondent opposes the motion. He notes that at the time of filing the application, the Applicant was represented by Counsel and that “she cannot now, having changed legal counsel, seek to improve her case based on a second opinion”.

39. The Tribunal has examined the initial application and observes that the Applicant’s claim that her previous Counsel filed it without showing her the final product is not supported by the evidence. The application filed on 15 March 2024 bears the Applicant’s signature and those of her two previous Counsel along with the following certification: “I certify that to the best of my knowledge the information provided in this application form is true, accurate and complete and all copies submitted to the Dispute Tribunal are true copies of the original documents”.

40. The Tribunal also notes that the Respondent had already filed his reply on the merits on 24 May 2024—four days before filing his response to this motion. As noted above, the Tribunal has already determined that the application is not receivable and that, in any event, the main claims it contains are now moot since the Administration has settled the Applicant’s tax liability for 2022 and 2023. Thus, allowing the amendment of the application at this stage would lead to continuous and unnecessary litigation.

41. For these reasons, the motion is denied.

Applicant’s motion for leave to file a rejoinder

42. The Applicant filed a motion dated 16 July 2024 seeking leave to file a rejoinder to the Respondent’s reply of 24 May 2024 “in order to address arguments and inaccuracies contained therein, and in order to provide the Tribunal and the parties involved with a full and complete understanding of the case”.

43. The Respondent did not respond to this motion in writing, but Counsel for the Respondent expressed her opposition to the motion at the CMD of 3 March 2025.

44. As the Tribunal has already determined that the application is not receivable and that the Applicant's main claims are now moot, there is no need for a rejoinder. Accordingly, this motion is denied.

Applicant's motion for anonymity

45. On 9 September 2024, the Applicant filed a motion for anonymity. She submits that her "case relies on sensitive medical evidence" to support her claim for moral harm, "and involves details about her taxes and personal finances". Therefore, "[d]issemination of her identity could do further harm to her emotional and mental health, career, and reputation".

46. In his response dated 18 September 2024, the Respondent states that he "does not oppose" the Applicant's request for anonymity.

47. Since the Tribunal has already determined that the present application is not receivable, there is no need to consider the case on the merits or to examine substantive aspects of the Applicant's claims and contentions in any detail. The Tribunal is also mindful of art. 11.6 of its Statute, which mandates that "[t]he judgments of the Dispute Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal". In balancing these competing interests, the Tribunal has been careful to craft the present judgment in such a way that the "sensitive medical evidence" that the Applicant is concerned about, or the "details about her taxes and personal finances" are not revealed to the public.

48. Therefore, the Applicant's motion for anonymity is denied.

Applicant's motion for redaction of order

49. Also on 9 September 2024, the Applicant filed a motion for redaction of Order No. 069 (NBI/2024). She explained that in filing her 17 May 2024 motion to amend the application, she had acted "with the intention of completing it and having her concerns taken into consideration, and in doing so her statements were not made with ill intent or malice to the former legal representative". Therefore, "for the former counsel's sake", the Applicant requests that relevant paragraphs of Order

No. 069 (NBI/2024) “be redacted in order to conceal any reference to the Applicant’s former attorney from public view”. Counsel for the Applicant reiterated this request at the CMD of 3 March 2025, adding that the request is intended essentially as a professional courtesy to the Applicant’s former Counsel.

50. In his response of 18 September 2024, the Respondent states his opposition to the motion for redaction of the order, noting that this request “differs from most motions for anonymity, insofar as it relates to protecting the reputation of a third party”. The Respondent also points out that the Applicant has not recanted the allegation that her former legal representatives failed to show her the application before filing it and failed to take her concerns into consideration. “Rather, the Applicant ostensibly maintains these assertions as factual, while in parallel clarifying that she did so without malice”. Counsel for the Respondent maintained her opposition to this motion at the CMD.

51. The Tribunal is mindful of the increasing calls for greater privacy protections for individuals and parties in judgments, given increased access to judgments online. However, under the jurisprudence of the Appeals Tribunal, requests for anonymity must be balanced against the interests of transparency and accountability (see *Monasebian* 2024-UNAT-1476, para. 46; *Mobanga* 2017-UNAT-741, para. 22, citing *Ahmed* Order No. 132 (2013) of the Appeals Tribunal). The Appeals Tribunal has also stated that personal embarrassment and discomfort are not sufficient grounds for redaction (*Buff* 2016-UNAT-639, para. 21). However, a deviation from the principles of transparency and accountability may be warranted in “the most sensitive cases” (see *AAE* 2023-UNAT-1332, para. 155).

52. In the present case, the Tribunal finds that it has not been shown that there exist any exceptional circumstances to justify a deviation from the established principles of transparency and accountability (see *AAE*, para. 155).

53. The Tribunal also observes that no sensitive private information concerning the Applicant or her former Counsel has been revealed during these proceedings or in Order No. 069 (NBI/2024). In addition, the Applicant was represented by Counsel not only when she filed the application on 15 March 2024, but also when she filed the motion to amend it on 17 May 2024. Despite having had multiple

opportunities to do so, she has not stated that the allegations contained in her 17 May 2024 submission regarding her former Counsel were inaccurate. Thus, on the one hand, if it is true that her former Counsel filed the application “without showing her the final product and without taking her concerns into consideration”, then they should be held accountable for their conduct. On the other hand, if this is not a true statement, then the Applicant should be answerable to the former Counsel who should also be able to seek redress from her. In any event, the Tribunal will not allow the parties to make unsubstantiated statements in the hope that such statements will not be brought to light.

54. For these reasons, the motion is denied.

Conclusion

55. The application is rejected as not receivable.

56. The Applicant’s motions to file an amended application, to file a rejoinder, for anonymity, and for redaction of Order No. 069 (NBI/2024) are denied.

(Signed)

Judge Solomon Areda Waktolla

Dated this 18th day of March 2025

Entered in the Register on this 18th day of March 2025

(Signed)

Isaac Endeley, Registrar, New York