



Before: Judge Solomon Areda Waktolla

Registry: New York

Registrar: Isaac Endeley

AKERMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Yun Hwa Ko, UNFPA

Introduction

1. The Applicant, a former staff member of the United Nations Population Fund (“UNFPA”), filed an application seeking to reopen his old case which had been closed on 20 March 2018.
2. The Respondent filed a reply submitting that the application is not receivable *ratione materiae* and *ratione temporis*.
3. For the reasons set out below, the Tribunal rejects the application.

Procedural history

4. On 6 November 2024, the Tribunal’s New York Registry received via the United States Postal Service an envelope containing the following documents with the header “UNDT/NY/2018/008”:
 - a. “Proof of Service” dated 1 November 2024.
 - b. “Motion to Reopen Case for Enforcement of Settlement Agreement Due to Respondent’s Breach” dated 1 November 2024.
 - c. “Attachment A” (background information) dated 1 November 2024.
 - d. “Attachment B” (cover note regarding the Settlement Agreement between the Applicant and UNFPA) dated 1 November 2024.
 - e. “Order No. 61 (NY/2018): Order on Withdrawal” dated 20 March 2018 regarding Case No. UNDT/NY/2018/008.
 - f. “Confidential – Settlement Agreement between the United Nations Population Fund and Mr. Martin Akerman” dated 14 March 2018.
5. The Registry immediately telephoned the Applicant, explained the electronic filing procedure to him, and requested him to refile his application using the appropriate forms available on the Tribunal’s website, in accordance with the relevant Practice Direction.

6. Later on the same day, 6 November 2024, the Applicant used the Tribunal's e-Filing portal and filed a "Motion for extension of time to file an application". He requested an extension of 14 calendar days from 6 November 2024 "to prepare and file the corrected submission with UNFPA as the respondent using the specified UNDT forms".

7. On the same date, by email from the Registry, the Duty Judge granted the Applicant the requested 14-day extension. Thus, his submission would be due by 20 November 2024.

8. On 7 November 2024, the Applicant filed (a) a "Motion for Interim Measures Pending Proceedings" and (b) a "Motion for Leave to Exceed Page Limit for 'Application for Suspension of Action Pending Management Evaluation'".

9. By email dated 7 November 2024 from the Registry, the Duty Judge informed the Applicant, regarding the motion for interim measures, that pursuant to art. 10.2 of the Dispute Tribunal's Statute and art. 14.1 of the Rules of Procedure, the Tribunal can order interim measures only "during the proceedings" and that in order for the proceedings to be initiated, an applicant must first file a proper application, which will be served on the Respondent who will then be given the opportunity to reply.

10. Regarding the application for suspension of action, the Duty Judge informed the Applicant that pursuant to art. 2.2 of the Statute and art. 13.1 of the Rules of Procedure, a prerequisite for a suspension of action order is that an applicant must have previously submitted a request for management evaluation which must be "ongoing", and the contested decision must not have been implemented already.

11. Noting that the Applicant indicated that he had submitted a request for management evaluation on 9 November 2017, the Duty Judge stated that if the management evaluation response had already been received, then the management evaluation could no longer be considered as "ongoing".

12. Finally, as the Applicant is self-represented, the Duty Judge recommended that he contact the Office of Staff Legal Assistance (“OSLA”) if he needed legal advice and guidance.

13. On 8 November 2024, after apparently contacting OSLA, the Applicant requested the Registry to grant him access to Case No. UNDT/NY/2018/008, his old case that had been closed in March 2018.

14. The Registry granted the Applicant access but on noticing that he was having difficulty using the e-Filing portal, the Registry sent him the documents in the case file as email attachments on 11 November 2024.

15. On 22 November 2024, as the 14 calendar days granted to the Applicant to file his submission had already elapsed, the Duty Judge, via email from the Registry, granted him a further extension until 27 November 2024 to file the submission.

16. On 25 November 2024, the Applicant filed a “Motion for extension of time to comply with order”. He submitted that he needed an extension of 30 calendar days “to ensure that the Tribunal has adequate time to consider the implications of the Respondent’s failure to comply with the 13 November 2024 [Appeals Tribunal] Order, requiring the agency’s response by 23 November 2024”.

17. The Registry transmitted the motion to the Duty Judge on the same day.

18. On 20 December 2024, the Applicant filed a “Motion to Certify for Appealability the Decision to Open a New Case”. He alleged that he had intended to reopen his old case (UNDT/NY/2018/008) but that “[o]n 6 November 2024, the Registry instructed the Applicant to file under a new case number (UNDT/NY/2024/046), effectively severing the interconnected claims initially raised”.

19. On 14 January 2025, as all the time extensions granted to the Applicant had expired and he had still not properly filed his submissions, the Duty Judge instructed the Registry to serve all the documents in the current case file (Case No. UNDT/NY/2024/046) on the Respondent and request his reply within 30 days.

20. On 12 February 2025, the Respondent filed his reply.

21. Also on 12 February 2025, the Applicant filed a “Motion for Leave to File a Sur-Reply and Request for Response to Interim Measures Request”.

Considerations

Contested decision

22. Pursuant to well-established Appeals Tribunal jurisprudence, the Dispute Tribunal has the authority to define the contested administrative decision in a case (see *Dia* 2024-UNAT-1452, para. 39, citing *Massabni* 2012-UNAT-236, paras. 25-26). The Appeals Tribunal has also reiterated that “[i]t is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties’ contentions. Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review” (*Fasanella* 2017-UNAT-765, para. 20).

23. The Tribunal also recalls that the Appeals Tribunal has consistently held that where an applicant is not legally represented, it is appropriate and in the interest of justice to allow such an applicant some latitude in presenting his or her case. (See, for example, *Najjar* 2021-UNAT-1084, para. 26; *Ghusoub* 2019-UNAT-905, para. 18; and *Abdellaoui* 2019-UNAT-928, para. 18.) However, “this generous approach is not unlimited” and it cannot be allowed to get to the point where the Tribunal substitutes itself for the applicant in identifying the contested administrative decision (*Hammad* 2024-UNAT-1435, para. 15).

24. In various motions submitted to the Tribunal, the Applicant emphasized that his case pertains to UNFPA's failure to fulfill the terms of a settlement agreement dated 14 March 2018. Specifically, he alleges that UNFPA did not uphold its obligation to maintain his retirement account, which directly impacted his access to retirement and disability benefits under the Organization's pension provisions—a key condition for his withdrawal of his prior claims. He stated that the core issue revolves around UNFPA's noncompliance with its settlement obligations.

25. Having reviewed all of the Applicant's submissions, the Tribunal concludes that although the Applicant has failed, despite multiple time extensions, to comply with the filing requirements for an application under art. 8 of the Dispute Tribunal's Rules of Procedure, his goal in the present case was to reopen Case No. UNDT/NY/2018/008 in order to request the Tribunal to enforce the Settlement Agreement he signed with UNFPA on 14 March 2018.

26. In that regard, the Tribunal recalls that Case No. UNDT/NY/2018/008 was formally closed on 20 March 2018 by Order No. 61 (NY/2018): Order on Withdrawal. In issuing the Order, the Tribunal had noted that the Applicant "expressed in his motion his will to withdraw his application and thereby to end the pending litigation". The Tribunal had therefore granted the motion and closed the case "without liberty to reinstate".

Receivability

27. The Respondent submits that the Applicant "does not contest an appealable administrative decision in accordance with Article 2, paragraph 1" of the Dispute Tribunal's Statute. The Respondent also states that the Applicant signed a Settlement Agreement with UNFPA dated 14 March 2018 which provides that any dispute arising out of the Agreement should be resolved amicably and by mutual agreement, through the offices of the United Nations Funds and Programmes Ombudsman.

28. The Respondent further asserts that if the Applicant is claiming that UNFPA failed to uphold the terms of the Settlement Agreement, then the Applicant should first attempt to resolve such dispute through the Ombudsman's Office. As there is no indication that the Applicant has attempted to contact the Ombudsman's Office to seek an amicable resolution to the dispute, the application is not receivable *ratione materiae*.

29. Moreover, the Respondent submits that to the extent that the Applicant can be understood to be requesting the Tribunal to enforce the implementation of the Settlement Agreement under art. 2.1(c) of the Dispute Tribunal's Statute, the application is time-barred pursuant to art. 8.2 of the Statute. Given the circumstances of this case, and considering that as part of the Settlement Agreement the Applicant's fixed-term appointment was extended until 11 November 2018, the Applicant had "90 calendar days from 11 November 2018 to file an application" under art. 2.1(c) of the Statute. As that date has long passed and the Applicant "has provided no cogent reason for why he submitted the [a]pplication almost 6.5 years after the signature of the Settlement Agreement", the application is not receivable *ratione temporis*.

30. In his "Motion for Leave to File a Sur-Reply and Request for Response to Interim Measures Request" dated 12 February 2025, the Applicant submits that the Respondent "misrepresents the nature of [the Applicant's] claim, asserting that it concerns only a contractual dispute, when in fact it involves a continued pattern of whistleblower retaliation". According to the Applicant, the Respondent "fails to recognize the procedural link between this case and the prior whistleblower retaliation case (UNDT/NY/2018/008)", thus violating the Applicant's rights.

31. The Applicant further states that the motions he has filed "sought immediate relief to mitigate the ongoing harm caused by the Respondent's alleged retaliation and partial non-compliance with the settlement agreement". The Applicant also asserts that the Respondent's reply "presents legal and factual inaccuracies that the Applicant seeks to correct", including the failure to address "the ongoing impact of

post-settlement retaliation and its relation to the good faith principle”; mischaracterization of the claim “as a contractual dispute rather than an instance of continued whistleblower retaliation”; and the improper fragmentation of claims, which “undermines procedural safeguards”.

32. The Tribunal notes that in accordance with art. 2.1(c) of its Statute, it is competent to hear and pass judgment on an application to enforce the implementation of an agreement reached through mediation pursuant to art. 8.2 of the Statute.

33. At the same time, the receivability of an application to enforce implementation is delineated by art. 8.2 of the Statute, which provides:

An application shall not be receivable if the dispute arising from the contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 calendar days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

34. The Tribunal recalls that under the consistent jurisprudence of the Appeals Tribunal, 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).

35. More recently, the Appeals Tribunal has explained that in determining the receivability of an application, the Dispute Tribunal is to examine: (a) whether an applicant has standing; (b) whether the requirements for the Dispute Tribunal’s substantive jurisdiction are met; and (c) whether temporal requirements are met. If

the applicant has standing, the Tribunal should next examine whether the necessary requirements for its substantive jurisdiction are met. “This means the existence of an appealable individual administrative decision, positive or implied, that was previously submitted to the Administration for management evaluation, or any other equivalent administrative remedy, where required”. The Dispute Tribunal should then also examine the temporal requirements to make sure that the application is filed within the statutory time limits. “Once these three elements are met, the gateway test of receivability is satisfied, and the Tribunal can turn to the merits of the application” (*Majook* 2024-UNAT-1408, paras. 29-30).

36. In the present case, the Tribunal is satisfied that as a former staff member of UNFPA, the Applicant has standing to file an application. However, whether the Applicant also meets the second and third elements of the “gateway test of receivability” (see *Majook*, para. 30) is less evident.

37. The Tribunal has carefully examined the confidential Settlement Agreement signed between the Applicant and UNFPA on 14 March 2018 and notes that it formed the basis for the Applicant’s notice of withdrawal resulting in the Tribunal’s Order No. 61 (NY/2018) of 20 March 2018.

38. In that case, even though the Tribunal had closed the matter “without liberty to reinstate”, the Applicant would have been within his rights to seek to enforce implementation of the Settlement Agreement if it had been reached through mediation and if he had sought the enforcement “within 90 calendar days after the last day for the implementation as specified in the mediation agreement” as required under art. 8.2 of the Tribunal’s Statute.

39. In the instant case, the Applicant has not demonstrated the existence of any exceptional circumstances or any factors beyond his control that prevented him from filing a timely request for enforcement of the Settlement Agreement (see, for instance, *Gelsei* 2020-UNAT-1035, paras. 19-24). In any event, the Tribunal considers that a delay of six and a half years to seek enforcement of implementation is excessive. Moreover, the Applicant has also failed to show that he made any

attempt to have the matter reviewed by the United Nations Funds and Programmes Ombudsman as required by the Settlement Agreement itself. There is also no mechanism by which the Tribunal may reopen a case that has been closed for seven years. Thus, with reference to the “gateway test of receivability” established in *Majook*, the Tribunal is not satisfied that the substantive jurisdiction and temporal requirements are met.

40. Accordingly, the Tribunal finds that the application is not receivable.

Conclusion

41. The application is rejected as not receivable.

(Signed)

Judge Solomon Areda Waktolla

Dated this 21st day of March 2025

Entered in the Register on this 21st day of March 2025

(Signed)

Isaac Endeley, Registrar, New York