



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/050

Order No.: 123 (GVA/2012)

Date: 9 July 2012

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

Counsel for Applicant:

Jeffrey C. Dahl
Jonathan Goldin

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. In the course of April 2012, the Tribunal received applications filed by, or on behalf of, a total of 274 staff members or former staff members of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) to contest the decisions whereby the Assistant Secretary-General for Human Resources Management refused to grant them permanent appointments. These applications were registered under Cases Nos. UNDT/GVA/2012/030, 031, 032, 033, 035, 036, 037, 038, 039, 040, 041, 042, 043 and 045, the latter concerning 261 individual applications consolidated into one case.

2. On 29 May 2012, the Applicant, another ICTY staff member, also filed an application against the decision of the Assistant Secretary-General for Human Resources Management not to grant her a permanent appointment. The Applicant had received a response to her request for management evaluation on 18 January 2012 and she thus filed her application with the Tribunal with over a month’s delay.

3. On 18 June 2012, the Applicant filed a “motion for extension of time to file an application” in relation to the application submitted on 29 May 2012. She explained that she had been “unable to meet the UNDT deadline because, at the time, she was suffering from a temporary total disability beyond her control”. In support of her motion, she produced a medical certificate dated 25 May 2012 and issued by the Senior Medical Officer at the ICTY Medical Unit, which confirmed that the Applicant “was on an extended period of sick leave and unable to work or travel: 15 February-9 May 2012”.

4. On 25 June 2012, the Respondent filed his reply in which he claimed *inter alia* that the application was time-barred.

Consideration

5. Article 8.3 of the Tribunal’s Statute provides that “[t]he Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive

the deadlines [for the filing of an application] for a limited period of time and only in exceptional cases”.

6. In *Diagne* et al. 2010-UNAT-067, the Appeals Tribunal held that “a delay can generally be excused only because of circumstances beyond an applicant’s control” (see also *El-Khatib* 2010-UNAT-034).

7. The Tribunal wishes to emphasize that it is not sufficient for an applicant to claim that he or she was unable to file an application within the statutory time limit due to his or her health condition. In the present case, the Applicant presents a medical certificate, issued by the competent Medical Unit, confirming that she was unable to work and travel for a certain period of time and was, therefore, on certified sick leave. Under these conditions, the Tribunal is satisfied that the medical certificate produced by the Applicant establishes that circumstances beyond her control prevented her, between 15 February and 9 May 2012, to submit her application to the Tribunal.

8. The Tribunal further considers that those circumstances, during the same period, had the effect of suspending the time limit for the filing of an application. Since the Applicant received the response to her request for management evaluation on 18 January 2012 and the 90-day time limit for the filing of an application was suspended from 15 February to 9 May 2012, she had until 11 July 2012 to file her application.

9. In view of the foregoing, the Tribunal concludes that the application is receivable *ratione temporis*.

10. By Order No. 120 (GVA/2012) of 26 June 2012, the Tribunal decided to hold a joint hearing on 22 August 2012 regarding Cases Nos. UNDT/GVA/2012/030, 031, 032, 033, 035, 036, 037, 038, 039, 040, 041, 042, 043 and 045. It further ordered Counsel for the Respondent to file and serve, in each of these cases, additional submissions to address the issue of the authority of the Assistant Secretary-General for Human Resources Management to take the contested decisions.

11. As this case raises issues identical to those raised by the above-mentioned cases and for the reasons set out in Order No. 120 (GVA/2012), the Tribunal considers that they should be heard together and finds it appropriate to order the Respondent to file and serve the same additional submissions.

IT IS ORDERED THAT:

12. A copy of Order No. 120 (GVA/2012) shall be transmitted to the Applicant.

13. The Applicant's case will be heard on **Wednesday, 22 August 2012 at 3.30 p.m.** (Geneva time) during the joint hearing previously scheduled for Cases Nos. UNDT/GVA/2012/030, 031, 032, 033, 035, 036, 037, 038, 039, 040, 041, 042, 043 and 045.

14. By **4 p.m. (Geneva time) on Thursday, 12 July 2012**, Counsel for the Respondent shall file and serve additional submissions to address the issues raised in paragraphs 6 to 11 of Order No. 120 (GVA/2012).

(Signed)

Judge Thomas Laker

Dated this 9th day of July 2012

Entered in the Register on this 9th day of July 2012

(Signed)

René M. Vargas M., Registrar, Geneva