



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/073
Order No.: 157 (NBI/2011)
Date: 19 December 2011
Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

OMWENGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON RESPONDENT'S MOTION
PURSUANT TO ARTICLE 19 OF THE
UNDT RULES OF PROCEDURE**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Bartolomeo Migone, WFP
Simone Parchment, WFP

1. The Applicant was employed as a Programme Assistant by the World Food Programme (WFP) in Nairobi in January 2001. She was separated from service on 20 August 2008.

2. On 23 November 2011, the Applicant filed an Application with the United Nations Dispute Tribunal (UNDT), together with a Motion for waiver of the time limit for submitting an Application, since her Application was out of time. These documents were served on the Respondent on 30 November 2011. Thus in accordance with art. 10 of the Rules of Procedure of the Tribunal, the Respondent has until 2 January 2012 in which to file a Reply.

3. By Motion dated 12 December 2011, the Respondent requests the Tribunal to permit him to file a Reply on the issue of receivability alone. The Respondent further requests that the Tribunal deal with the issue of receivability as a preliminary matter, before looking into the Applicant's complaint on the merits.

4. The basis for the Respondent's request is that the Applicant states that the contested decision was taken as long ago as 1 January 2001. The Applicant further appears to accept that she did not request a review of the decision until 6 May 2007. Given that the Tribunal has no jurisdiction to waive the time limits for requests for administrative review, the Respondent contends there is a clear issue of receivability to be considered.

5. Furthermore, the Respondent submits that the issue of receivability is quite distinct from the subject matter of the complaint, and it would therefore serve judicial economy and would not prejudice the Applicant to deal with this as a preliminary issue.

Consideration

6. Article 19 of the Rules of Procedure of the Tribunal allows that it may “issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.” Article 35 of the Rules of Procedure of the Tribunal allows it to “waive any rule when the interests of justice so require.” It is therefore well within the powers of the Tribunal to grant the Respondent’s Motion.

7. The question is then whether or not the interests of justice would be served by so doing. Since the Applicant herself has filed a Motion for Waiver of Time Limits, and has stated that the decision she contests is dated 1 January 2001, it seems to the Tribunal only reasonable that the issue of the receivability of the Application should be dealt with as a preliminary issue.

8. As the Applicant is no longer in the service of the Organisation, any brief delay caused by considering this matter is unlikely to cause her any prejudice. However, the Tribunal is of the view that the Applicant should be afforded the opportunity to respond to the Respondent’s submissions on the preliminary issue of receivability, so as to ensure that any ruling made by the Tribunal, as a result of the same, should be composed with the fullest appreciation of the facts available.

IT IS ORDERED THAT:

9. The Respondent’s Motion that the receivability of the Application be considered as a preliminary issue is granted.

10. The requirements of art. 10 of the Rules of Procedure of the Tribunal are waived pending the decision of the Tribunal on the preliminary issue of receivability.

11. The Respondent is to file his submissions on the preliminary issue of
receivability by **Wednesday 18 January 2012.**

12. The Applicant may file any Response to the Respondent's submissions by
Wednesday 1 February 2012.

(Signed)

Judge Vinod Boolell

Dated this 19th day of December 2011

Entered in the Register on this 19th day of December 2011

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi