



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

HINEDI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR EXTENSION OF
TIME TO FILE AN APPLICATION**

Counsel for Applicant:
Esther Shamash, OSLA

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Introduction

1. In her motion for extension of time to file an application dated 20 January 2012 (“the motion”), the Applicant explains that, on 10 February 2011, she was notified of “the decision to recover from her a sum of [USD]16,227.63 and the decision not to pay her in accordance with the initial representations made to her”. The Applicant further notes that, on 22 February 2011, she “embarked on efforts to informally resolve the matter through the office of the ombudsman which “[u]nfortunately ... ended on 22 August 2011”.

2. On 21 September 2011, the Applicant filed a request for management evaluation with the Management Evaluation Unit (“MEU”) in which she appealed both the decisions contested in the motion.

3. By letter dated 7 October 2011, more than two weeks later, MEU acknowledged receipt of the Applicant’s request for “management evaluation of the decision to recover an alleged overpayment made to [the Applicant] by UNMIT, ... received at this office on 22 September 2011”. However, MEU’s letter did not mention the alleged second decision “not to pay [the Applicant] in accordance with the initial representations made to her”. MEU noted that “[i]n accordance with Staff Rule 11.2, the 45-day period for evaluating the administrative decision will begin to run from the date [MEU] received [the Applicant’s] complete request at this office, *i.e.*, 22 September 2011” (emphasis in the original). MEU further stated that it “will review [the Applicant’s] request for management evaluation and, where possible, identify possible options for informal resolution”.

4. To this date, the Applicant has apparently not received a response from MEU reflecting the outcome of the management evaluation.

5. On 18 January 2012, the Applicant initially filed the motion through the Tribunal eFiling portal, using an incorrect form for submitting such motion (Form UNDT/F/10E). On 19 January 2012, the Applicant filed the motion using the proper

form (Form UNDT/F.2E), although she did not insert all the required information on the form. The Applicant finally re-filed the motion with all the required information inserted in the correct form on 20 January 2012.

Consideration

6. Article 8.3 of the Dispute Tribunal's Statute provides that:

[t]he Dispute Tribunal may decide ... to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

7. Concerning the filing of an application, article 7.5 of the Rules of Procedure states that an applicant may request suspension, waiver, or extension of time limits "[i]n exceptional cases" and that he or she must succinctly set out the exceptional circumstances justifying such a request.

8. Pursuant to art. 7.1(b) of the Dispute Tribunal's Rules of Procedure, the Applicant's application under art. 2.1 of the Statute shall be submitted to the Dispute Tribunal within:

90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices.

9. Although the contested decisions appear to have been taken in New York, in its 7 October 2011 letter, MEU notes that its response to the Applicant's request for management evaluation was due within 45 calendar days of its receipt. The 45 days deadline applies under staff rule 11.2(d) to staff members stationed outside New York, whilst the Dispute Tribunal's Rules of Procedure also stipulate that this time limit pertains if the dispute arises from an office outside Headquarters (art. 7.1(b), set out above). Under both provisions, the time limit would otherwise be 30 days.

10. Pursuant to staff rule 11.2(d), and in accordance with art. 7.1(b) of the Dispute Tribunal's Rules of Procedure, "the Secretary General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member" within the appropriate deadline of 30 or 45 calendar days of receipt of the request for management evaluation. The only reason or ground for granting an extension to this time limit that staff rule 11.2(d) prescribes is that the Secretary-General may do so "pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General".

11. Applying the 45 days time limit, the communication of the response to the Applicant's request for management evaluation was due on 6 November 2011, insofar as MEU received the request on 22 September 2012. However, the Applicant did not receive, and still has not received a response reflecting the outcome of the management evaluation. Neither has the Secretary-General granted an extension of time pending mediation by the office of the Ombudsman. Therefore, the Applicant has until 7 February 2012 to file her application.

12. In the present case, the only communication on the case record from the Respondent to the Applicant after MEU's 7 October 2011 letter is an email of 16 January 2012 from the MEU legal officer assigned to the case addressed to the Applicant and her Counsel, and dated more than two months after the expiry of the deadline for the communication of a response to a management evaluation, namely 6 November 2011. In this email, the MEU legal officer stated:

I am currently on home leave, however I'll be back in [New York] next week and will have a close look at the case. I will probably have to meet with [Department of Field Support] legal department, before I can schedule a meeting with [the Applicant]. I will let both of you know if I require a meeting.

By the way—[another MEU legal officer] is no longer working on this case. It has been my case from the start and at some point [the other MEU legal officer] was kindly helping with it. But now it's back with me.

13. It appears that consultations with a view to mediation had unsuccessfully been undertaken for approximately six months under the office of the Ombudsman,

before the Applicant submitted her management evaluation request. Furthermore, the 45 days having elapsed on 6 November 2012, the mandate for management evaluation within the statutory period is over.

14. Under the former system of justice, before initiating an appeal, a staff member had to seek a review of the administrative decision, a process which normally took 60 days. The Redesign Panel recommended that this system of administrative review before action be abolished, having identified it as one of the factors causing egregious delays in the former Joint Appeals Boards proceedings (see paragraphs 66 and 87 of the Report of the Redesign Panel in the United Nations system of administration of justice, A/61/205 of 20 July 2006). It is instructive that the General Assembly thereafter adopted the current system of management evaluation with strict deadlines in the Statute of the Dispute Tribunal. The deadline for completion of management evaluation has only recently been amended by General Assembly (see document A/C.5/66/L.10 adopted on 23 December 2011); although this amendment is not applicable in this case.

15. Under the internal justice system of the United Nations, management evaluation is an administrative process, which is primarily intended to afford the Administration the earliest opportunity to reconsider and remedy a situation in which an administrative decision has been challenged (*Omondi* UNDT/2011/020). Whilst ordinarily, with a few exceptions, submission to management evaluation is a necessary requirement for having a case determined by the Dispute Tribunal, awaiting the receipt of MEU's response beyond the requisite time period is not. If MEU fails to deliver a management evaluation within the prescribed period, by default, as the time for management evaluation may generally not be extended, the original administrative decision stands as adopted by the respondent.

16. In *Mezoui* 2010-UNAT-043, the United Nations Appeals Tribunal stressed the importance of "strictly enforcing ... time limits". Concerning a request for extension of time to file an application, the United Nations Dispute Tribunal in *Macharia* UNDT/2009/081 refused to do so after having initially granted the

applicant a 21 days extension. On appeal, the Appeals Tribunal, in *Macharia* 2010-UNAT-015, reaffirmed the Dispute Tribunal's findings, noting that:

The evidence about negotiations either being contemplated, needed, or underway was refuted on appeal. There is nothing exceptional about this case. [The applicant] reveals no reason why her application cannot be filed at this time and tenders no evidence to persuade [the Dispute Tribunal] or [the Appeals Tribunal] that her request for an extension of time is reasonable.

17. In this case, the Applicant submits that “the process of Management Evaluation is still ongoing”, and requests an unlimited extension of time within which to submit an appeal to the Tribunal” pending receipt of the decision on her request for management evaluation”. The time for completion of management evaluation has long passed and the process of management evaluation cannot be said to still be ongoing. Neither the Applicant nor this Tribunal is under any obligation to await the receipt of MEU's response beyond the requisite time period. Certainly, the Tribunal cannot indefinitely await the outcome of management evaluation.

18. Furthermore, if the Tribunal were to allow a request for extension of time solely because MEU failed to render a timely response, an unintended consequence would be that the determination of cases may be prolonged unreasonably and go against the time limits prescribed by the Tribunal's Statute and Rules of Procedure. In this regard, it is noted that the initial administrative decision was issued on 1 February 2011, almost a year ago from the date of this Order, and that the Respondent has had sufficient time to remedy the situation, if at all so inclined.

19. By email of 24 January 2012, the Respondent requested at least 10 days to respond to the motion in light of the “complexity of the issues in this matter”. As this would further delay the proceedings, and considering the Tribunal's findings in the present Order, the Tribunal deems it unnecessary to request the Respondent's comments in this particular case.

IT IS ORDERED THAT:

20. In all the above circumstances, the Applicant's request for extension of time to file her application is dismissed. The Applicant shall file her application by **7 February 2012**, if she still intends to do so.

(Signed)

Judge Ebrahim-Carstens

Dated this 26th day of January 2012