



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2012/018

Order No.: 51 (NY/2012)

Date: 19 March 2012

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

GRANFAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

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

Counsel for Applicant:
Self-represented

Counsel for Respondent:
ALS/OHRM, UN Secretariat

Notice: This Order has been corrected in accordance with the Rules of Procedure of the Dispute Tribunal.

Introduction

1. The Applicant seeks an extension of time to file an application contesting the alleged administrative decision to reassign her from one unit in the United Nations Stabilization Mission in Haiti (“MINUSTAH”) to another. She asks for an extension of time of 40 calendar days to file her application.

2. Between 10 and 13 March 2012, the New York Registry received a number of emails from the Applicant and from the person she considered employing as her representative at the time, attaching two versions of her motion and various supporting documents.

3. On 13 March 2012, after numerous communications with the Registry regarding various issues with her unstructured submissions, the Applicant filed the final version of her motion.

4. The Applicant submits that the Management Evaluation Unit (“MEU”) of the Department of Management, United Nations Secretariat, is still preparing a response to her request for management evaluation and, “based on ongoing discussions with Applicant, some of the issues might be resolved through conciliation”. The Applicant also submits that she has been placed on certified sick leave at least until 31 March 2012, “with repercussions on her capacity to cooperate adequately with legal counsel”.

5. The Applicant requested management evaluation on 11 November 2011. It is unclear when her request was received by the MEU. As the Applicant is located in Haiti, the response to her request for management evaluation was due within forty-five calendar days of receipt of her request by the MEU (see staff rule 11.2(d)). Accordingly, provided that her request was received by the MEU on 11 November 2011, the Administration’s response was due on 26 December 2011.

The Applicant apparently did not receive any communications regarding the outcome of the management evaluation by that deadline.

6. The Statute of the Dispute Tribunal specifically provides for the situation where no response to the management evaluation is received. Pursuant to art. 8.1(d)(i)(b) of the Tribunal's Statute, the Applicant's application under art. 2.1 of the Statute shall be receivable if it is filed "[w]ithin 90 calendar days of the expiry of the relevant response period for the management evaluation *if no response to the request was provided*" (emphasis added). Therefore, in the absence of a response from management evaluation, and provided that her request for management evaluation was received on 11 November 2011, the Applicant has until Monday, 26 March 2012, to file the present application (the exact deadline falls on Sunday, 25 March 2012, which is not a working day).

Consideration

7. 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".

8. Concerning the filing of an application, art. 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.

9. 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.

10. The Applicant has provided two reasons for her request, namely ongoing discussions with the MEU and her certified sick leave until 31 March 2012. Each of these reasons is discussed below.

Ongoing discussions with the MEU

11. With respect to the first reason, no documents have been provided to the Dispute Tribunal to assess the nature of the alleged “ongoing discussions” between the Applicant and the MEU. Considering that the deadline for the Administration’s response to the Applicant’s request for management evaluation expired approximately three months ago, the nature of MEU’s continued involvement in this case is unclear.

12. Under the former system of justice, before initiating an appeal, a staff member had to seek a review of the administrative decision, a process that 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 proceedings before the former Joint Appeals Boards (see paras. 66 and 87 of A/61/205 (Report of the Redesign Panel on the United Nations system of administration of justice), dated 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. In its resolution 66/237 (Administration of justice at the United Nations), adopted on 24 December 2011, the General Assembly decided (see para. 32 of the resolution) that the time limit for completing management evaluation may be extended by the Dispute Tribunal for a period of up to 15 days in exceptional circumstances when both parties to a dispute agree, although this provision is not applicable in this case.

13. 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 the 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.

14. In *Mezoui* 2010-UNAT-043, the United Nations Appeals Tribunal stressed the importance of "strictly enforcing ... the various time limits". In *Macharia* UNDT/2009/081, the Dispute Tribunal refused to grant a further extension of time to file an application, having previously granted the applicant a 21-day 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.

15. If the Tribunal were to allow a request for extension of time solely because the 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 made on 24 October 2011, approximately five months ago, and that the Respondent has had sufficient time to remedy the situation, if at all so inclined.

16. If the parties envisage at this stage that the MEU is still preparing a response to the Applicant's request for management evaluation, it should be pointed out that staff rule 11.2(d) provides that the deadline for the Secretary-General's response,

reflecting the outcome of the management evaluation, may be extended by the Secretary-General “pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General”. (See also para. 32 of General Assembly resolution 66/237.) It appears that, for this provision to have meaningful effect, it has to be interpreted such that resolution efforts through the Office of the Ombudsman (in particular, its Mediation Services) are a required condition for the extension of the deadline for the response by the Secretary-General.

17. In this case, the deadline for the Secretary-General’s response to the management evaluation request expired on 26 December 2011 (provided that the Applicant’s request was received by the MEU on 11 November 2011). Unless the parties can demonstrate that this deadline has been “extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General”, it is unclear on what basis the MEU continues its work on the Applicant’s case.

18. The limitations imposed by art. 8.3 of the Tribunal’s Statute and staff rule 11.2 shall not be ignored. In view of these limitations, the Tribunal finds that, in the circumstances of this case, the first reason provided by the Applicant (i.e., the ongoing discussions with the MEU) does not make this case “exceptional” within the meaning of art. 8.3 of the Tribunal’s Statute. Had her motion been based on this reason alone, it would have been rejected in its entirety.

Certified sick leave

19. The second reason provided by the Applicant is that she is on certified sick leave until 31 March 2012.

20. The Applicant’s request for an extension of time was filed prior to the expiration of the deadline for submission of her application, with documentation supporting the reasons for her request. Generally, the test employed in such situations

by both the Dispute Tribunal and the United Nations Appeals Tribunal is not as strict as in cases when the request is filed after the deadline has passed (see, e.g., *Jaen* Order No. 331 (NY/2010) and *Weerasooriya* Order No. 23 (NY/2011), as well as *Molari* Order No. 15 (UNAT/2010), *Kaddoura* Order No. 21 (UNAT/2010), and *Ishak* Order No. 22 (UNAT/2010)).

21. Based on the Applicant's health situation, and noting that she filed the present application prior to the expiration of the time limit, the Tribunal finds it appropriate to grant the Applicant a limited extension of time until 16 April 2012 to file her application.

22. In view of its findings in the present Order, the Tribunal did not consider it necessary to request the Respondent's comments on the present motion.

Observations

23. When requesting an extension of time, applicants should ensure that all relevant documentation pertaining to the motion, particularly pertaining to the reasons for it, are provided to the Tribunal. In this case, the Applicant did not attach several important documents, including her request for management evaluation and communications confirming its receipt by the MEU.

24. The Applicant stated that she has not yet determined whether she will be represented in this case by a legal counsel. On 13 March 2012, the New York Registry of the Tribunal reminded the Applicant to confirm whether she is represented in this case. In the event the Applicant decides to be represented, she will be required to provide the Tribunal with a copy of her signed authorization, as stipulated in art. 8.2 of the Rules of Procedure.

25. The Tribunal notes that the present motion and supporting documentation were filed not through the eFiling portal, which is the current standard procedure, but through a series of emails sent by the Applicant and her prospective representative.

The Applicant is reminded that it is her responsibility to ensure that submissions before the Tribunal are filed following the established procedures and in a structured and coherent manner. The Applicant is reminded that, if she fails to comply with the procedural requirements for the filing of applications, the Tribunal may decide not to accept her application.

26. The Applicant shall ensure that all relevant documents are attached to her application, including her request for management evaluation. The Applicant should refer to the Rules of Procedure and the Tribunal's website for relevant information on the filing of submissions before the Tribunal.

27. The Tribunal further notes that the parties in this case, as in any other case, are not precluded from attempting to resolve the matter informally after the filing of the application under art. 2.1 of the Statute, including under the auspices of the Mediation Services of the Office of the Ombudsman.

IT IS ORDERED THAT:

28. The Applicant shall file her application, if any, on or before **5:00 p.m. (New York time), Monday, 16 April 2012.**

(Signed)

Judge Ebrahim-Carstens

Dated this 19th day of March 2012