



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

WILSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR WAIVER OF TIME
LIMIT TO FILE AN APPLICATION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is the Chief, Proactive Investigations Unit, Investigations Division, Office of Internal Oversight Services (“OIOS”).
2. On 3 April 2016, the Applicant filed a motion titled ‘motion for waiver of time to file an application’, requesting “a waiver of any of the time lines associated to paragraph 1 Article 7 (UNDT rules of procedure) in consideration of 1) my forthcoming Application and 2) a request for an expedited hearing before the UNDT.” The Applicant attached seven annexes, containing more than 250 pages of documents.
3. On 4 April 2016, the New York Registry of the Dispute Tribunal transmitted the Applicant’s motion to the Respondent, directing that the response be filed by 11 April 2016.
4. On 11 April 2016, the Respondent filed a response requesting that the Applicant’s motion be rejected.
5. On 12 April 2016, the Applicant filed a further motion also titled ‘motion for waiver of time to file an application’, in which he requested leave to provide further information and documents. He attached four new annexes.

Background

6. By interoffice memorandum, dated 9 March 2016, the Applicant wrote to the Under-Secretary-General (“USG”), OIOS, requesting Special Leave with Pay (“SLWP”) for the period 3 March 2016 to 16 May 2016.
7. The Applicant submits that on 24 March 2016, he was verbally informed by the USG/OIOS that his request for SLWP was denied.

8. On 25 March 2016, the Applicant filed a request for management evaluation of the decision denying his request for SLWP with the Management Evaluation Unit (“MEU”). In his request for management evaluation, the Applicant stated (emphasis in original):

... I require a response from MEU as soon as possible; but nonetheless no later than **COB 1 April 2016** at which time, under the provisions of paragraph 5 of Article V of the UNDT Rules of Procedure I will be submitting an Application to the UNDT based on 1) the MEU already having been provided a reasonable time for response and 2) the fact that as each day goes by its costs me an additional day of my limited sick leave entitlements.

9. On 28 March 2016, the MEU wrote to the Applicant acknowledging receipt of his request for management evaluation, stating that, although the request was dated 25 March 2016, it was received by the MEU on 28 March 2016. The MEU further noted that, pursuant to staff rule 11.2(d), the management evaluation is to be completed within 30 days of receipt of the Applicant’s request, “or no later than 27 April 2016” and that:

In any event, please be advised that, pursuant to Staff Rule 11.4 (a), the 90-day deadline for filing an application to the UNDT, should you wish to do so, will start to run from 27 April 2016, or the date on which the management evaluation was completed, if earlier, unless the deadline has been extended by the Secretary-General to facilitate efforts for informal resolution under the auspices of the Office of the Ombudsman.

Consideration

10. In his motion of 3 April 2016, the Applicant requested (a) a waiver of the time limits for filing an application with the Dispute Tribunal; and (b) an expedited hearing of his substantive case, yet to be filed. He also requested that his forthcoming application on the merits be processed under seal.

Request for waiver of time limits

11. The Applicant requests a waiver of the time limits set out in art. 7 of the Dispute Tribunal's Rules of Procedure. In essence, he seeks leave from the Tribunal to file an application on the merits before he has received a substantive response to his request for management evaluation from the MEU. He states that the "succinct rationale for this request is because as each day passes I am forced to utilize one of my limited/remaining sick days, not because of an illness ... but rather because of the actions associated to other UN staff members and Management."

12. The Respondent states that the request for management evaluation is still under consideration and submits that the Secretary-General has until 27 April 2016 to communicate the outcome of the review in accordance with staff rule 11.2(d). He further submits that art. 8.3 of the Dispute Tribunal's Statute prohibits the Tribunal from waiving the deadlines for management evaluation.

Applicable law

13. Staff Rule 11 sets out the mandatory requirements regarding management evaluation and the applicable timelines for filing (emphasis added):

Rule 11.2

Management evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), *shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.*

...

(d) *The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York ... The deadline 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.

...

Rule 11.4

United Nations Dispute Tribunal

(a) *A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within 90 calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2 (d), whichever is earlier.*

14. The Dispute Tribunal's Statute reiterates that an application is receivable only if management evaluation has been requested, and following receipt of MEU's response or upon expiry of the requisite period for MEU's response (emphasis added):

Article 8

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, 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.*

15. The Dispute Tribunal's Rules of Procedure provide, insofar as relevant:

Article 7 Time limits for filing applications

1. Applications shall be submitted to the Dispute Tribunal through the Registrar within:

(a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;

(b) 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;

...

5. In exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1 above. Such request shall succinctly set out the exceptional circumstances that, in the view of the applicant, justify the request. The request shall not exceed two pages in length.

...

Article 35 Waiver of time limits

Subject to article 8.3 of the statute of the Dispute Tribunal, the President, or the judge or panel hearing a case, may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require.

16. In para. 51 of A/RES/62/228 (Administration of justice at the United Nations), the General Assembly reaffirmed the importance of the general principle of exhausting administrative remedies before formal proceedings are initiated.

17. The Appeals Tribunal has held that the purpose of management evaluation is to afford the Administration the opportunity to correct any errors in an administrative

decision so that judicial review of the administrative decision is not necessary (*Nagayoshi* 2015-UNAT-498, para 36; *Pirnea* 2013-UNAT-311, para. 42).

18. In *Planas* UNDT/2009/070 (not appealed), the Tribunal dismissed an application as not receivable, stating:

14. ... in terms of receivability of an application before the Tribunal it is not sufficient merely to initiate the management evaluation procedure. Applicants have to await, in general, the outcome of this administrative review before they may submit an application to the Tribunal. Only when no response to a request for management evaluation is provided within the time limits of article 8.1 (d) (i) (b), a direct application to the Tribunal is receivable. A “response” in that sense is characterized by a decision from the Management Evaluation Unit which obviously has not yet been taken.

19. The Applicant requested management evaluation on 25 March 2016 and on 3 April 2016, moved a motion to file his substantive application before the Dispute Tribunal on an expedited basis whilst the matter is still pending management evaluation, and before the expiry of 30 days. The time for the management evaluation process has not expired, and the Tribunal cannot “suspend or waive the deadlines for management evaluation”—art. 8.3 of the Tribunal’s Statute.

20. A matter cannot be before the MEU and the Dispute Tribunal simultaneously. As noted by the Appeals Tribunal, the management evaluation process provides the Administration an opportunity to resolve disputes before they reach the Dispute Tribunal. Allowing applicants to circumvent this process and file applications with the Tribunal before the deadline for a response to a request for management evaluation has passed would contravene the Tribunal’s Statute and Rules of Procedure, undermine the time lines set out in the Staff Rules, and would be contrary to the intentions of the General Assembly.

21. For all the foregoing reasons, the Tribunal rejects the Applicant’s motion for waiver of time to file an application. Consequently, the Applicant’s subsequent motion of 12 April 2016 too must fail. In accordance with staff rule 11.4,

the Applicant may file an application on the merits when he receives the outcome of his request for management evaluation or upon the expiry of the deadline specified under staff rule 11.2(d), whichever is earlier.

Request for an expedited hearing

22. The Applicant also requests an expedited hearing, on the basis that “the only way a fair determination of my sick leave with pay request can be considered (in order to protect my limited/remaining sick days) is by means of a (expedited) hearing; so that those management officials identified in various documents can provide an explanation to the issues at hand.”

23. The Tribunal having rejected the Applicant’s motion for waiver of time to file an application, there is no substantive case before the Tribunal to be heard. Therefore, the Tribunal rejects the Applicant’s request for an expedited hearing. The Applicant may resubmit this request if he files an application on the merits in due course in relation to this matter.

Request for application to be processed under seal

24. Similarly, the Applicant may resubmit this request if he chooses to file an application on the merits in relation to this matter.

IT IS ORDERED THAT:

25. The Applicant's motion for waiver of time to file an application, filed on 3 April 2016, and the subsequent motion filed on 12 April 2016, and all requests contained therein, are rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 14th day of April 2016