



Judgment No. 2015-UNAT-559

Counsel for Mr. Khan:

Salim U. Shaikh

Counsel for Secretary-General:

John Stompor

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8. On 16 December 2013, the Chief of the Policy and Administrative Law Section, Division of Human Resources, UNICEF, advised the Appellant that his request for management evaluation was time-barred pursuant to Staff Rule 11.2(c) as it was submitted more than seven months after the decision of 23 April 2013.
9. On 31 December 2013, the Appellant separated from service with UNICEF.
10. On 17 March 2014, the Appellant filed an application with the Dispute Tribunal contesting the abolishment of his post.
11. On 24 April 2014, the UNDT issued Order No. 98 (NY/2014) (Order) which ordered, inter alia, that the Secretary-General file his reply to the Appellant's application, and that the Appellant file a response to the Secretary-General's reply.
12. On 27 June 2014, the UNDT issued a summary judgment and dismissed the Appellant's application. Finding that the co

internal justice system, he diligently pursued the issue with UNICEF management. Further, the Appellant's UNDT application was submitted within 90 days of the decision of management evaluation, therefore rendering the issue of "receivability null and void".

15. The Appellant otherwise makes submissions concerning, inter alia, the correctness of the decision by UNICEF to abolish his post, and alleging impropriety in the manner in which the decision was reached. The Appellant requests the Appeals Tribunal to rescind the Judgment and reinstate him to his post as he had seniority over two other drivers who were allowed to keep their posts. He further requests the Appeals Tribunal "order payment of appropriate damages for causing unemployment on unjust and unethical grounds" and any other relief deemed fit.

The Secretary-General's Answer

16. The Dispute Tribunal correctly concluded that the Appellant's application was not receivable by reason of his failure to adhere to the deadline prescribed by Staff Rule 11.2(c) when he requested management evaluation more than four months after the deadline had passed. The UNDT also correctly applied the Appeals Tribunal's jurisprudence to hold that subsequent responses to a staff member's requests for reconsideration simply confirm the original decision and do not have the effect of suspending or re-starting the time limits for initiating formal proceedings. ¹

17. The Appellant has not established any errors by the Dispute Tribunal warranting a reversal of the Judgment in accordance with Article 2(1)(e) of the Appeals Tribunal Statute. Regardless of whether the Order notified the Appellant that receivability would be preliminarily considered, the Appellant was aware that the issue was in contention given the Secretary-General raised the issue in his reply, and the Appellant thereafter submitted a request for a writ of mandamus. ⁷ Tp-i7

19. The Respondent requests the Appeals Tribunal to dismiss the appeal and affirm the UNDT Judgment. Should the Appeals Tribunal determine that the UNDT erred in concluding that the case was not receivable, the Respondent requests that the case be remanded to the Dispute Tribunal to be adjudicated on the merits.

Considerations

20. On 23 April 2013, Mr. Khan was informed by the Officer-in-Charge of the UNICEF Country Office in Pakistan that his post would be abolished on 31 December 2013.

21. On 6 September 2013, Mr. Khan requested the UNICEF Representative to revisit this decision. On 14 September 2013, the Representative replied to Mr. Khan confirming the decision.

22. On 12 November 2013, Mr. Khan submitted his request for management evaluation of the 23 April 2013 decision, almost seven months after he had received notification of the said decision. On 16 December 2013, Mr. Khan was informed that his request was time-barred.

23. Mr. Khan then filed his application with the UNDT contesting that decision. The UNDT decided that as he had failed to comply with the deadline for filing his request for management evaluation, which was accordingly time-barred, his application to the UNDT was consequently not receivable.

24. In reaching that decision, the UNDT was cognizant of the applicable statutory law and jurisprudence. It considered that it had jurisdiction under Article 2(1) of the UNDT Statute to hear applications appealing administrative decisions when a staff member has previously submitted the impugned decision for management evaluation. It considered Staff Rule 11.2(c), whereby a request for management evaluation shall not be receivable unless it is sent within 60 calendar days from receipt of the contested administrative decision. It noted that pursuant to Article 8(3) of the UNDT Statute, the UNDT shall not suspend or waive the deadlines for management evaluation. It noted that the UNDT “has no jurisdiction to waive deadlines for management evaluation” or to make any exceptions thereto.²

² Impugned Judgment, para. 23, citing *Ajdini et al. v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108, *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079, and *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

“new internal justice system” had been in force for well over three years when Mr. Khan received his letter of termination. Further, as mentioned earlier, Article 8(3) of the UNDT Statute specifically precludes the UNDT from suspending or waiving the deadlines for management evaluation.

32. Mr. Khan further submits that as the letter from UNICEF’s Policy and Administrative Law Section dated 16 December 2013 informing him that his request was time-barred advised that “recourse lies with the UNDT and must be initiated within ninety (90) calendar days from the date of receipt of this letter”, his “submission to the UNDT was, therefore, within the limitation period of 90 days since the Application was submitted on 11 March 2014. Hence, it renders their plea of receivability null and void.” This submission is without merit. Mr. Khan is confusing an application to the UNDT, to which this letter was referring, with an application for management evaluation. The letter cannot be construed as a waiver by the UNICEF Administration of the deadline for requesting management evaluation.

33. This Tribunal is satisfied that the UNDT properly considered the facts and the applicable statutory law and jurisprudence in arriving at its decision that Mr. Khan’s application was not receivable.

34. Having failed to demonstrate that the UNDT committed any error of law or any error of fact resulting in a manifestly unreasonable decision, Mr. Khan’s appeal cannot succeed.

Judgment

35. The appeal is dismissed and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Weinberg de Roca