



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2019-UNAT-933



Olubowale
(Appellant)

v.

Secretary-General of the United Nations

JUDGE DEBORAH THOMAS -FELIX , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2018/120 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 3 December 2018 in the case of Olubowale v. Secretary-General of the United Nations . Mr. Olusegun Ayodele Olubowale filed the appeal on 29 January 2019 and the Secretary-General filed his answer on 1 April 2019.

Facts and Procedure

2. The following facts are uncontested:¹

... On 24 August 2002, the Applicant joined [the Office of the United Nations High Commissioner for Refugees (UNHCR)] as an Administrative Officer in Kigali, Rwanda, at the P-3 level on an indefinite appointment.

... The Applicant is currently assigned and serving in Yangon, Myanmar, as Senior Administrative and Finance Officer at the P-4 level.

... UNHCR advertised job opening No. 12807 for the position of Head of Sub-Office, Jam Jang, South Sudan, at the P-5 level, position No. 10020845, in the September 2016 Compendium. The Applicant applied for the position.

... The Division of Human Resources Management (“DHRM”), UNHCR, identified and short-listed eleven eligible candidates, including the Applicant, for the P-5 post. The Applicant had a telephone conversation with the Hiring Manager about the post to assess his interest therein. On 8 November 2016, DHRM held a meeting in which it recommended another candidate.

... On 16 and 17 November 2016, the Joint Review Board (“JRB”) scrutinized the selection procedure and concluded that it had complied with all procedural and fairness requirements.

... On 7 December 2016, the Director, DHRM, released the Summary of Decisions of the High-Commissioner in an email communicated to all staff members, including the Applicant. The Summary of Decisions contained the selection decision of another candidate to the above-referenced P-5 position and did not list the Applicant’s name.

... On 9 December 2016, the Applicant requested the documentation associated with the three recruitment processes for the posts to which he had applied, including for the above-referenced P-5 post.

¹ Impugned Judgment, paras. 3-12.

understanding that for the purpose of Staff Rule 11.2(c), notification has occurred when “all relevant facts...were known, or should have reasonably been known” by the staff member.

UNHCR's Summary of Decisions issued on 7 December 2016, which was the form of communication used by UNHCR to communicate selection decisions to its staff members, including Mr. Olubowale. Under Staff Rule 11.2(c), Mr. Olubowale had 60 days, i.e. until 5 February 2017, to submit a request for management evaluation; yet, he did not submit such a request until 11 April 2017, more than two months after the deadline.

13. Mr. Olubowale has not established any errors warranting a reversal of the Judgment. Contrary to Mr. Olubowale's assertions, a plain reading of his request for management evaluation and application to the UNDT demonstrates that the UNDT correctly interpreted his submissions as challenging his non-selection and correctly determined that he had been notified of his non-selection on 7 December 2016. His e-mailed dated 9 December 2016 requesting information about the position makes clear that he had learned of his non-selection for the position. Furthermore, Mr. Olubowale's submission that the disclosure of the requested information on 27 February 2017 constituted the notification of the contested decision is without merit. Contrary to Mr. Olubowale's contentions, Auda lends no support to his submissions. The UNDT correctly

15. There is no merit in Mr. Olubowale's submission that the UNDT erred in adopting a restrictive interpretation that is contrary to the interests of judicial economy, in that the implied alternative is to request management evaluation and bring an appeal for every post to which a staff member applies. Indeed, this is the procedure mandated by the Organization. As the UNDT correctly established, paragraph 119 simply establishes a disclosure obligation independent of the management evaluation. Nothing precluded Mr. Olubowale from submitting a request

Considerations

18. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety.
19. The Appeals Tribunal affirms the UNDT's finding that the contested administrative decision to be examined was the non-selection decision which was communicated to Mr. Olubowale on 7 December 2016. According to Staff Rule 11.2(c), Mr. Olubowale, like all other staff members, was afforded 60 days within which to submit a request for management evaluation; he, however, did not submit such a request until 11 April 2017.
20. The Appeals Tribunal has consistently stated that a request for management evaluation (a mandatory first step in the resolution of issues) must be done within the time limit prescribed by Staff Rule 11.2(c).
21. In the instant case, the request for management evaluation was made on 11 April 2017, more than two months after the prescribed deadline. The arguments which Mr. Olubowale advanced do not in any way provide an exception to the Staff Rule.
22. It is the ruling of the Appeals Tribunal

Judgment

24. The appeal is dismissed and Judgment on Recevability No. UNDT/2018/120 is affirmed in its entirety.

Original and Authoritative Version: English

Dated this 28th day of June 2019 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Knierim

(Signed)

Judge Lussick

Entered in the Register on this 19th day of August 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar