



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

BIEN-AIMÉ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Miles Hastie, OSLA

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decisions to reassign him from the Personnel Section to the Security Section in the United Nations Stabilization Mission in Haiti (“MINUSTAH”), and the removal of his computer’s hard drive during the course of an investigation without providing him with a copy it.

Facts

2. On 26 May 2011, the Applicant received a memorandum from the Chief of the Mission Support (“CMS”), MINUSTAH, dated 25 May 2011, informing him, along with four other staff members being investigated by the Office of Internal Oversight Services (“OIOS”), that senior management had taken a decision, which had to be implemented as soon as possible, to deploy them to other sections within

(b) Both the staff member and the Secretary-General may initiate informal resolution, including mediation, of the issues involved at any time before or after the staff member chooses to pursue the matter formally.

(c) The conduct of informal resolution by the Office of the Ombudsman, including mediation, may result in the extension of the deadlines applicable to management evaluation and to the filing of an application with the United Nations Dispute Tribunal, as specified in staff rules 11.2 (c) and (d) and 11.4 (c) below.

17. In accordance with staff rules 11.2(a) and (c) on management evaluation, a staff member wishing to formally contest an administrative decision alleging non-compliance with his/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 a request for a management evaluation of the contested decision to the Secretary-General in writing within 60 calendar days from the date on which the staff member received notification of the administrative decision. This deadline may only be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General (staff rule 11.2(c)).

18. The Tribunal considers that an extension of the time limit to file a request for management evaluation does not occur automatically and can only be actioned:

a. During the pursuit of genuine informal resolution and/or mediation through the Office of the Ombudsman; and

b. At the initiative of the Secretary-General through a reasoned decision which can be separate or included in his response to the management evaluation request or at the initiative of the staff member through a diligent and reasoned request addressed to the Secretary-General which can be filed separately before the expiration of the time limit for requesting management evaluation or together with the management evaluation request. The Secretary-General is the only entity vested with the authority to extend or

suspend the deadline by which a staff member is required to file a request for management evaluation

19. Based on the evidence before it, including the Applicant's request for management evaluation and application with the Tribunal, the Applicant was notified of the contested decision on 26 May 2011 and any request for management evaluation of this decision should have been filed within 60 calendar days—by 26 July 2011. However, the Applicant's request for management evaluation was not filed until 4 August 2011, after the expiration of the applicable time limit.

20. In July 2011, the Applicant contacted the Office of the Ombudsman, however, as results from the 20 July 2011 email exchange between the Applicant and the Ombudsman, no informal negotiations took place prior to 26 July 2011, the date by which the 60-day period to request management evaluation expired. The 20 July 2011 email exchange only served the purpose of informing the Applicant of some of the legal steps necessary to formally contest the decision and to obtain more details regarding the charges being investigated by OIOS and cannot be considered part of any official informal resolution efforts.

21. The Tribunal considers that there is no evidence of further informal efforts having been conducted after the receipt of this email. Further, the Applicant indicated in his updated 19 August 2011 management evaluation request that he did not contact the Ombudsman after 5 August 2011. Consequently, there were no real ongoing informal resolution efforts that took place between the date on which the Applicant was notified of the decision on 26 May 2011 and when he filed his request for management evaluation on 4 August 2011, later updated on 19 August 2011.

22. When considering the waiver and/or suspension of an already running time

importantly, the deadline for filing a request for management evaluation pending informal resolution efforts conducted by the Office of the Ombudsman may generally only be extended by the Secretary-General under the terms of staff rules 11.1(a), 11.1(b) and 11.2(c) (see *Wu* 2013-UNAT-306 and *Egglesfield* 2014-UNAT-402).

23. The Applicant did not, prior to the expiration of the deadline of 26 July 2011, by which he was required to request management evaluation of the contested decision, or as part of his filings with the MEU, request that the Secretary-General extend or waive the deadline by which he was required to file his request for management evaluation.

24. It is clear from the 15 August 2011 MEU's letter, and from the Secretary-General's 14 October 2011 letter, that at no time was the deadline for filing a request for management evaluation extended at the initiative of the Secretary-General. This is further evidenced by the Secretary-General's conclusion from 14 October 2011 that he reserved the right to raise the issue of receivability during any potential appeal proceedings before the Dispute Tribunal.

25. The Tribunal concludes that the 4 August 2011 request for management evaluation request, including the updated 19 August 2011 request, were filed after the expiration of the applicable time limit and the deadline was not extended.

26. The Applicant's appeal was filed on 7 December 2011, within the 90-day time limit from the 14 October 2011 response of the MEU to the Applicant's request for management evaluation.

27. Article 8.1 of the Dispute Tribunal's Statute states that the Tribunal only has jurisdiction to hear and pass judgment on an application filed by an individual when the Applicant has previously submitted the contested administrative decision for management evaluation, where required. In the present case the management evaluation request was filed after the expiration of the time limit. The time limit was not extended under conditions specified in staff rule 11.2(c). The request for

management evaluation was therefore time-barred in front of the MEU and the present application is not receivable *ratione materiae*.

Conclusion

In the light of the foregoing the Tribunal DECIDES,

28. The application is rejected as not being receivable *ratione materiae*.

(Signed)

Judge Alessandra Greceanu

Dated this 27th day of June 2014

Entered in the Register on this 27th day of June 2014

(Signed)

Hafida Lahiouel, Registrar, New York