



JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. In this case, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that the application by Jamil Abu-Hawaila (Abu-Hawaila) was time-barred. This Tribunal affirms the Judgment of the Dispute Tribunal. The Administration's letter containing a settlement offer did not constitute the Administration's response to Abu-Hawaila's request for management evaluation, and Abu-Hawaila filed his application after the expiry of the applicable time limit. The settlement negotiations between the parties did not toll the applicable time limits as the negotiations were not conducted by the Office of the

6. By letter dated 17 September 2009, received on 19 September 2009, Abu-Hawaila requested a management evaluation of the decision to separate him from service. By letter dated 29 September 2009, the WFP General Counsel informed Abu-Hawaila that he would receive a management evaluation “from the Executive Director not later than 3 November 2009”, the deadline for the response to the request for management evaluation. No response was sent to Abu-Hawaila.

7. By letter dated 24 November 2009, marked “PRIVILEGED & CONFIDENTIAL FOR SETTLEMENT PURPOSES ONLY” (Settlement Offer), the WFP General Counsel reiterated the earlier separation offer. Counsel for Abu-Hawaila and WFP exchanged correspondence until February 2010 regarding the separation of Abu-Hawaila and the deadline to respond to the Settlement Offer.

8. On 22 February 2010, Abu-Hawaila filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the decision to separate him from service. On 26 March 2010, the Secretary-General filed a motion to dismiss the application on the grounds of non-receivability as there was no response to the request for management evaluation. On 15 April 2010, the Dispute Tribunal held a directions hearing and the Judge drew the parties’ attention to the issue of receivability, noting that the application should have been filed on or before 1 February 2010, 90 calendar days after the deadline for the response to the request of management evaluation. The proceedings were suspended until 13 May 2010 to enable settlement discussions to continue. No settlement was reached.

9. On 3 June 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/102, which dismissed the application on the ground that it was time-barred. Abu-Hawaila contended that the Settlement Offer, dated 24 November 2009, was the Administration’s response to his request for management evaluation and he filed his application on 22 February 2010, within the 90-day time limit. The Dispute Tribunal found that the Settlement Offer was not the “response by management” to the request for management evaluation within the meaning of Article 8(1) of the Statute of the Dispute Tribunal (UNDT Statute), or the “outcome of the management evaluation” under provisional Staff Rule 11.4. The purpose of the Settlement Offer was not to respond Abu-Hawaila’s request for management evaluation and did not contain any decision with respect to the request.

10. The Dispute Tribunal also found that the time limit for filing the application was not

the request for management evaluation, the Secretary-General is estopped from asserting that the claim is time-barred.

15. In the alternative, Abu-Hawaila contends that the Dispute Tribunal erred on a question of fact in holding that there were no exceptional circumstances to justify a waiver of the time limits to file his application. Both parties were operating under a mistake of law in believing that the time limits for responding to the request for management evaluation and filing the application were tolled by the settlement negotiations.

16. Abu-Hawaila requests that the Appeals Tribunal reverse the Judgment and remand the case to the Dispute Tribunal for a trial on the merits.

Secretary-General's Answer

17. The Secretary-General argues that Abu-Hawaila has not established that the Dispute Tribunal made any errors warranting a reversal of its decision that the application is not receivable. The Dispute Tribunal correctly found that the Settlement Offer was not a response to the request for management evaluation. The additional evidence relied upon by Abu-Hawaila is not admissible under Article 2(5) of the Statute as it was known to him at the time of the hearing before the Dispute Tribunal and should have been disclosed before the Dispute Tribunal.

18. The Secretary-General submits that the Dispute Tribunal correctly concluded that the time limits for filing the application were not tolled by the informal settlement negotiations, and that there were no exceptional circumstances warranting a waiver of the time limits.

19. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and reject the appeal in its entirety.

Considerations

20. Two preliminary issues must first be addressed by this Tribunal. We reject Abu-Hawaila's request for an oral hearing as the pleadings filed by the parties address the relevant issues in sufficient detail. Second, Abu-Hawaila requests that this Tribunal admit additional evidence under Article 2(5) of the Statute. There are no exceptional

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25. This Tribunal is not persuaded by the arguments made by Abu-Hawaila that the UNDT erred in its Judgment, and the 90-day time limit to file his application ran from the receipt of the Settlement Offer.

26. The Settlement Offer was made approximately three weeks after 3 November 2009, the date of expiry of the 45-day deadline for the Administration to respond to the request for management evaluation under Article 8(1) of the UNDT Statute. The Settlement Offer was clearly marked as confidential and for settlement purposes only.

27. Despite the fact that the letter refers to the request for management evaluation and addresses the claims made by the staff member, we share the views of Judge Laker set out in paragraphs 36 and 37 of the UNDT Judgment, in which he notes that there was no reference to a final decision on evaluation nor guidance on future courses of action by the staff member. The settlement purpose was clearly stressed throughout the letter in such a way that would not allow any party assisted by counsel, like Abu-Hawaila, to reasonably conclude that the letter, sent after the deadline for a response to the request for management evaluation, was the management evaluation.

28. At the time of receipt of the Settlement Offer, the time limit to file the application to the UNDT had already run for approximately three weeks. In these circumstances, nothing prevented Abu-Hawaila, for instance, from filing his application or at least applying fthui-2(d a2(Jude.24

Trial Judge may be overturned on appeal only if the decision taken appears to be clearly unreasonable. In the present case, this Tribunal considers that the decision was reasonable and there are no grounds for overturning it.

Judgment

31. For the foregoing reasons, this Tribunal affirms the Judgment under appeal.

Original and Authoritative Version: English

Dated this 11th day of March 2011 in New York, United States.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 19th day of April 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar