



JUDGE MARY FAHERTY , Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Mr. Wilhelmus Petrus Scheepers against Judgment No. UNDT/2011/074 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 26 April 2011 in the case of *Scheepers v. Secretary-General of the United Nations*.

2. On 3 September 2009, Mr. Scheepers filed a request for management evaluation contesting the decision not to reimburse him for extra work-related expenses and seeking, inter alia, the revision of the existing compensation guidelines and the establishment of new administrative processes. He received a response to his request on 16 October 2009, rejecting his claim.

3. On 7 December 2009, personnel within the Office of Human Resources Management (OHRM) sent a memorandum to the Chief of the Management Evaluation Unit (MEU) re “Revision of the monthly lump-sum compensation of K-9 handlers (Canine Unit)” which confirmed that the amounts being paid to Mr. Scheepers were sufficient to compensate him for his work-related expenses, and that his monthly allowance of USD 1,000 would not be increased. It appears that Mr. Scheepers was given this letter on the date of its issue.

4. The provisions of the UNDT Statute require Mr. Scheepers to file his application challenging the Administration’s response to his request for management evaluation within 90 days of that response.

5. The Dispute Tribunal determined, having regard to the contents of the letter of 16 October 2009, that the applicable date from which time started to run was 16 October 2009. This Tribunal finds no reason to gainsay that finding.

6. Mr. Scheepers’ principal contention before the UNDT and this Tribunal is that exceptional circumstances existed which merited the exercise of the Dispute Tribunal’s discretion to waive the prescribed time limit and admit his application.

7. Mr. Scheepers submits that his reliance on the, effectively, erroneous advice provided by the Office of Staff Legal Assistance (OSLA), namely that while engaged in informal

discussions with management time was not running against him, constituted exceptional circumstances. However, while the Secretary-General contends that Mr. Scheepers adduced no evidence that he relied on the advice given by OSLA, we accept that he probably did so given the contents of OSLA's e-mail of 23 July 2010.

8. The Appeals Tribunal in the present case is not called upon to determine any issue as between Mr. Scheepers and OSLA. However, the Appeals Tribunal in *Larkin*¹ determined that the services provided by OSLA, and the way it implements its representation on behalf of a staff member, can have an impact on the staff member who avails himself or herself of that service.

9. The function of this Tribunal in the present circumstances is to consider whether the Dispute Tribunal erred in law or fact in rejecting the Appellant's contentions that his situation satisfied the "exceptional" circumstances requirement of Article 8(3) of the UNDT Statute. We do not find that it did so. The jurisprudence of this Tribunal to the effect that "ignorance of the law is no excuse"² was, in this Tribunal's considered view, correctly applied in the present case and, unfortunate as it is, the fact that Mr. Scheepers relied on erroneous advice from OSLA cannot bring the case within the ambit of an "exceptional case" as provided for by Article 8(3) of the UNDT Statute.

10. In all those circumstances we do not find any error on the part of the Dispute

13. On 24 July 2009, Mr. Scheepers sent a memorandum to the Security and Safety Service of DSS in which he stated that the 2004 approach for calculating the allowance for the additional expenses incurred by canine handlers was outdated.

14. On 3 September 2009, Mr. Scheepers requested management evaluation of the decision not to reimburse him for his extra work-related expenses. Mr. Scheepers also requested that the monthly allowance and the related guidelines be revised. On 16 October 2009, the MEU rejected Mr. Scheepers' claims for additional compensation. On 7 December 2009, the Officer-in-Charge of the Conditions and Service Section, Human Resources Policy Service (HRPS), OHRM sent a memorandum to the Chief, MEU whereby

appeal only if the decision taken appears to be clearly unreasonable”. However, in his appeal, Mr. Scheepers states that he does not contest the application of the existing case law in this matter.

25. Accordingly, the Secretary-General requests that the Appeals Tribunal affirm Judgment No. UNDT/2011/074 and dismiss Mr. Scheepers’ appeal in its entirety.

Considerations

26. This matter comes before the Appeals Tribunal by way of an appeal by Mr. Scheepers and was considered on foot of written submissions made by the parties and following an oral hearing requested by the Appellant.

27. On 3 September 2009, Mr. Scheepers filed a request for management evaluation contesting the decision not to reimburse him for extra work-related expenses and seeking, inter alia, the revision of the existing compensation guidelines and the establishment of new administrative processes. He received a response to his request on 16 October 2009 from the MEU which rejected his claims for additional compensation, although it made provision for certain reviews of a general nature to be carried out by the Administration by 1 December 2009.

28. On 7 December 2009, personnel within OHRM sent a memorandum to the Chief of the MEU which confirmed that the amounts being paid to Mr. Scheepers were sufficient to compensate him for his work-related expenses and that his monthly allowance of USD 1,000 would not be increased. It appears that Mr. Scheepers was given this letter on the date of its issue.

29. The MEU’s prior letter of 16 October 2009 to Mr. Scheepers advised him, inter alia, as follows:

Any recourse in respect of this decision ma

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be extended by analogy to other informal dispute resolution procedures, precisely because of its exceptional character. Exceptions to time limits and deadlines must be interpreted strictly and are not subject to extension by analogy.

37. Mr. Scheepers' principal contention before the UNDT and this Tribunal is that exceptional circumstances exist which merit the ex

cannot support that this is an exceptional case warranting a waiver of the relevant time limit”.

44. The function of this Tribunal is to consider whether the Dispute Tribunal erred in law or fact in rejecting the Appellant’s contentions that his situation satisfied the “exceptional” circumstances requirement of Article 8(3) of the UNDT Statute. We do not find that it did so. The jurisprudence of this Tribunal to the effect that “ignorance of the law is no excuse” was, in this Tribunal’s considered view, correctly applied in the present case and, unfortunate as it is, the fact that Mr. Scheepers relied on erroneous advice from OSLA cannot bring the case within the ambit of an “exceptional case” as provided for by Article 8(3) of the UNDT Statute.

45. In all those circumstances we do not find any error on the part of the Dispute Tribunal in its rejection of Mr. Scheepers’ application as timed-barred. The appeal is thus dismissed.

46. In view of the foregoing, we do not find it necessary to rule on the argument, advanced by the Secretary-General in the course of the oral hearing, that Mr. Scheepers’ failure to make a written request to the Dispute Tribunal for a suspension or waiver of the deadlines prior to the filing of his application did not in any event allow for the exercise of the Dispute Tribunal’s discretion.

Judgment

47. The appeal is dismissed. The UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 16th day of March 2012 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Garewal

(Signed)

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