



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Gil Bradley Williams of the decision of the Secretary General of the International Civil Aviation Organization (Secretary General and ICAO, respectively), dated 19 September 2012, to accept the recommendation of the Advisory Joint Appeals Board (AJAB) in Appeal No. 178 not to waive the time limit for Mr. Williams to seek administrative decision review.

Facts and Procedure

2. Mr. Williams began employment with ICAO on 12 October 2010 as Chief, Field Operations Section, Technical Cooperation Bureau (TCB), at the P-5 level, Step 1, on a three-year fixed-term appointment. His appointment required a one-year probationary period and was subject to the ICAO Staff Regulations, known as the Service Code, and the ICAO Staff Rules.

3. In September 2011, Mr. Williams was informed that, due to concerns about his performance, his probationary period would be extended for six months, or until 10 April 2012. He was also advised that his performance would be reviewed before the end of February 2012.

4. On 24 January 2012, Mr. Williams sent the Secretary General a memorandum, in which he offered to resign “without prejudice”, stating: “In light of the current disagree02 379m5.5(e)382.(G)-

8. On 8 August 2012, the AJAB sent Mr. Williams a letter referring to Staff Rule 111.1, paragraph 5, and informing him that “[i]n order to permit the [AJAB] to complete its consideration of the receivability of [his] submission and its competence regarding the matter”, he should advise it of the administrative decision he was appealing and the date he had requested the Secretary General to review that decision, and he should provide a copy of his request for review.

9. On 21 August 2012, Mr. Williams sent a responding letter to the AJAB, acknowledging that he had not sought review from the Secretary General and requesting that the Secretary General “waive the procedural requirements and the delay to allow [him] to submit [his] appeal ... in accordance with Staff Rule 111.1[,] paragraph 8”. To support his request for a waiver of time, Mr. Williams explained:

... I was so demoralized and in total state of shock and fearful of any type of reprisal ... the Secretary [General] of ICAO and the Executives of TCB ... could have waged against me (e.g. unnecessary retaining my final payments and emoluments), that I did not formally request the Secretary General to review the above-mentioned administrative decisions that forced me out of the

111.1, paragraph 8; thus, the Secretary General did not receive the appeal for review. Mr. Williams was notified of this decision on 2 October 2012.

13. On 2 January 2013, Mr. Williams, proceeding pro se, appealed the Secretary General's decision to the Appeals Tribunal, without submitting an appeals brief. On 9 January 2013, Mr. Williams requested an extension of time to file his brief, stating he had recently retained counsel. By Order No. 121 (2013), this Tribunal granted Mr. Williams an extension of time until 13 February 2013, and the appeals brief was filed on that date.

14. By Order No. 145 (2013), the Appeals Tribunal rejected Mr. Williams's motion for stay of proceedings and by Order No. 161 (2013), it denied Mr. Williams's motion for the filing of additional pleadings.

Submissions

Mr. Williams's Appeal

15. Mr. Williams asserts that the death of his father constituted "exceptional circumstances" for a waiver of time to seek review within the meaning of Staff Rule 111.1, paragraph 8. He argues that the grieving process is "unpredictable" and he was so bereft that he "was unable to articulate the primary reasons (death of his father) he was unable to meet the original filing deadline" when he initially submitted his appeal to the AJAB.

16. Mr. Williams also addresses the merits of his many allegations that ICAO did not meet its contractual obligations toward him and treated him unfairly or otherwise failed to comply with mandatory legal requirements. Among other things, he claimT2 1 A 6 0 Te9(ct)-4oimT2 1 A n0003 T8

17. Mr. Williams requests that the Appeals Tribunal remand the case to the AJAB for consideration of the merits of his claims or, in the alternative, address the merits of his claims. Mr. Williams also requests other remedies, including his reinstatement, payment of certain benefits and entitlements, and an award of compensation.

Secretary General's Answer

18. The Appeals Tribunal does not have authority to waive the deadline for administrative review under Staff Rule 111.1, paragraph 5, since administrative review is comparable to management evaluation and Article 7(3) of the Appeals Tribunal Statute (Statute) and the jurisprudence of the Appeals Tribunal preclude such waivers. Thus, the appeal must be denied.

19. Mr. Williams cannot for the first time on appeal proffer a new reason or new facts, i.e., his father's death, to support his contention that "exceptional circumstances" existed to waive the time limit for seeking review under Staff Rule 111.1. Mr. Williams was aware of his father's death when he made his request for waiver to the AJAB, and chose not to raise his father's death before the AJAB. Under Article 2(5) of the Statute and the jurisprudence of the Appeals Tribunal, the Appeals Tribunal is precluded from considering new facts on appeal. In any event, despite his father's death, Mr. Williams managed to carry out numerous administrative and legal responsibilities during the time he should have been appealing to the AJAB; thus, his grief over his father's death does not constitute "exceptional circumstances" and the appeal must be denied.

20. The Appeals Tribunal is not competent to address the merits of Mr. Williams's substantive claims when those claims have not been adjudged before the AJAB. Article 2(10) of the Statute requires that the Appeals Tribunal hear appeals of ICAO matters only after they are considered by a "neutral first instance process" that includes a written record and decision containing reasons, fact and law. For ICAO, the "neutral first instance process" is the AJAB (unless the staff member and Secretary General have agreed to submit the matter directly to the Appeals Tribunal, which was not done in Mr. Williams's case). Since Mr. Williams's appeal was not received by the AJAB, it did not address the merits of his claims and the merits are not properly before the Appeals Tribunal.

21. Mr. Williams's appeal is not receivable *ratione materiae* because he does not contest an administrative decision but challenges his own voluntary resignation, which was made in anticipation of a decision not to retain him and to "avoid any negative impact to [his] employment record".

Considerations

22. As a preliminary matter, Mr. Williams requests an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). This Tribunal does not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. Thus, Mr. Williams's request for an oral hearing is denied.

23. Effective 1 July 2009, the United Nations and ICAO entered into a written agreement providing the Appeals Tribunal with "competen[ce] to hear and pass judgement on an application filed by staff members of [ICAO]" "in accordance with Article 2, paragraph 10 of the Statute".

24. Article 2(10) of the Statute provides:

The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity

Secretary General for his decision” and Staff Regulation 11.3 sets forth the composition of the AJAB. Staff Rule 111.5 provides that “[a] staff member shall have the right to appeal to the United Nations Appeals Tribunal ... under Regulation 11.5 of th

28. The AJAB found that since Mr. Williams “had not requested the Secretary General to review his decision(s)”, as required under paragraph 5, his appeal was “time-barred” under paragraph 7 unless he could show “exceptional circumstances” to waive the delay in filing under paragraph 8. Mr. Williams concedes that he never sought administrative review by the Secretary General. The AJAB determined that the reasons proffered by Mr. Williams in his letter of 21 August 2012 - he was “so demoralized and in total state of shock and fearful of any type of reprisal” - did not constitute “exceptional circumstances” to waive the time limit for seeking review. Based on this conclusion, the AJAB determined Mr. Williams’s appeal was not receivable and made this recommendation to the Secretary General.

29. The Secretary General accepted the AJAB’s recommendation not to waive the time limit and not to receive the appeal, and notified Mr. Williams of the decision.

30. Article 7(3) of the Appeals Tribunal Statute provides, in part, that “[t]he Appeals Tribunal shall not suspend or waive the deadlines for management evaluation”. This provision is identical to Article 8(3) of the United Nations Dispute Tribunal (UNDT) Statute.

31. This Tribunal has consistently opined that Article 8(3) of the UNDT Statute must be read literally to prohibit the UNDT from waiving the deadlines for seeking management evaluation; thus, the UNDT has no jurisdiction or competence to waive such deadlines.³

32. The Secretary General contends that administrative review by ICAO is the equivalent of management evaluation under Article 7(3) of the Appeals Tribunal Statute, and Article 7(3) must be interpreted in the same manner as Article 8(3) of the UNDT Statute. Applying Article 7(3), the Secretary General argues, prohibits this Tribunal from waiving the deadline by which Mr. Williams was required to seek administrative review by the Secretary General. This Tribunal agrees. Thus, the Secretary General’s decision not to waive the time limit for Mr. Williams to seek review should be affirmed.

33. Moreover, even assuming *arguendo* this Tribunal could review the reasons, conclusions and recommendation of the AJAB, which the Secretary General accepted, we would determine that the Secretary General acted properly since Mr. Williams had not shown

³ See *Ajdini v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108; *Trajanovska v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-074; *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

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