



**IONS APPEALS TRIBUNAL
APPEL DES NATIONS UNIES**

Judgme

**Survo
pellant)
v.
l of the United Nations
spondent)**

DGMENT

Before

y Faherty, Presiding
hia Adinyira
; Weinberg de Roca

Case N

Date:

2016

Registi

Lin

Counsi

represented

Counse

aa Chohan

... In the context of ESCAP attempts to achieve 100% compliance with e-PAS procedures, by email of 6 July 2011, the Executive Secretary, ESCAP, urged ESCAP managers to finalise all pending e-PASes for 2010-2011 before 31 July 2011 and to ensure that all 2011-2012 workplans were approved electronically by the same date.

... On 19 August 2011, the Applicant emailed to his new supervisor, the Chief of Staff, OES, ESCAP, and his two additional

that the Organization had failed to approve his 2010-2011 and 2011-2012 workplans at the latest, by 31 July 2011. Accordingly, the UNDT dismissed the application.

Submissions

Mr. Survo's Appeal

7. The UNDT erred when it found that Mr. Survo's application was not receivable. In particular, the UNDT erred on a question of fact in interpreting the evidence, since, as outlined at paragraph 12 of the Judgment, HRMS followed up on Mr. Survo's missing workplans for 2010-2011 and 2011-2012 on 11 and 12 April 2012, at which time they confirmed that a decision to continue pursuing both workplans had been made and explicitly promised that the respective performance appraisals would follow. Mr. Survo never doubted that HRMS' communication of 12 April 2012 could not be relied on as it was clear that the two performance appraisals were being pursued in accordance with Administrative Instruction ST/AI/2010/5, titled "Performance Management and Development System". As the Secretary-General also failed to submit any evidence with regard to the decisions concerning Mr. Survo's workplans, in the absence of anything to the contrary, the Dispute Tribunal should have relied on the available evidence and found his application receivable.

8. The UNDT erred on a question of law by misinterpreting the time limits relevant to its jurisdiction. Pursuant to Article 8(1)(d)(iv) of its Statute, the UNDT has jurisdiction where an application is filed within 90 calendar days after mediation has broken down. Mr. Survo and ESCAP representatives entered into formal mediation for extended periods in 2011 and 2014 on interrelated issues, both of which included discussion of the missing workplans and performance appraisals. As mediation finally broke down in mid-August 2014, and Mr. Survo requested management evaluation on 26 September 2014, he was well within the 90-day time limit.

9. The UNDT also erred on a question of law by failing to consider whether it could extend the filing deadlines, pursuant to Article 8(3) of its Statute, in view of the "exceptional circumstances" of his case. His two workplans were not approved in retaliation for his having filed prior UNDT applications.

10. Further, in view of the three-year maximum outlined in Article 8(4) of its Statute,

approved electronically within the same timeframe. Despite this request, Mr. Survo's

22. As correctly noted by the Dispute Tribunal, the contested decisions at stake were implicit decisions in view of the Administration's failure to follow the requisite steps with regard to either of the workplans. Accordingly, it was open to Mr. Survo to contest the said decisions. There is no doubt but that the first procedural step in such a challenge was for Mr. Survo to seek management evaluation of the contested decisions.

23. Staff Rule 11.2 concerning "Management evaluation" provides:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment,

Staff Rule 11.2(a) (iv) as amended by 2010/12/30/15 (by) 65 - 4 si h(in was) ia.51 TD-.0160953.3405-22(uss)-6.31vnmgs.8((al

He asserts that in the mediation processes in which he was involved in 2011 and 2014 “the missing work plans and performance appraisals were among the issues on the table”. He submits that as the 2014 mediation only broke down on 15 August 2014 he had ninety days from that date in which to file his request for management evaluation. He contends that as he filed his request on 26 September 2014 he was well within the limit provided for in Article 8(1)(d)(iv) of the UNDT Statute.

30. Mr. Survo’s reliance on this provision is misconceived. In the first instance, the mediation processes upon which he relies related to other cases which Mr. Survo had pursued before the Dispute Tribunal and therefore those mediation processes cannot constitute the “dispute” which is the subject of the present case. Secondly, the 90 days envisaged by Article 8(1)(d)(iv) allows a staff member to file an application to the UNDT once the requirements of the provision are met. In the present case, the UNDT did not declare Mr. Survo’s application non-receivable because he failed to respect the time limits for filing an application, rather it declined jurisdiction on the basis that he had not sought timely management evaluation, i.e., within the requisite sixty days of the contested decisions, as required by Staff Rule 11.2(c).

31. Mr. Survo also points to Article 8(3) of the UNDT Statute, which provides:

The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

He contends that notwithstanding that he did not argue before the Dispute Tribunal for a waiver or suspension of the requisite deadlines in his case, it was the Dispute Tribunal’s prerogative to examine if the circumstances in his case were “exceptional”. Insofar as Mr. Survo suggests that the Dispute Tribunal should have admitted his case pursuant to Article 8(3) of the UNDT Statute, his reliance on the aforesaid provision is misplaced. While Article 8(3) allows the Dispute Tribunal to admit an application that does not meet the required time limits if the particular circumstances precluding filing come within the narrow confines of Article 8(3), that same section clearly and unambiguously provides that the Dispute Tribunal has no jurisdiction to waive or suspend the time limits for management evaluation.

32.

Judgment

36. The appeal is dismissed and the Judgment of the Dispute Tribunal is affirmed.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar