

Introduction

1. On 22 February 2010, the applicant, a former local staff member of the World Food Programme (WFP) in Amman, Jordan, filed with the United Nations Dispute Tribunal (UNDT) an application against the decision to separate him from service.

Facts

2. The applicant joined WFP in 1999 as a driver on a fixed-term appointment, in Amman, Jordan. In December 2006, he suffered a back injury while on duty. This injury became the reason for extended periods of sick leave until his separation in July 2009.

3. By e-mail dated 18 March 2009, WFP informed the UN Medical Services Division at UN Headquarters, New York, that the applicant “ha[d] not been able to work for long periods of time due to an extended illness” and therefore “propose[d] his case for a disability benefit”.

4. By e-mail dated 3 April 2009, the UN Medical Services Division informed WFP that the applicant was found not eligible for a disability benefit because he had “not exhausted all the means of treatment for his medical condition”, i.e. surgery.

5. By letter dated 31 May 2009, the WFP Office in Amman informed the applicant that he was not eligible for a disability benefit. In the same letter, the Office informed him that the Regional Bureau had not made any recommendation for the renewal of his contract, which was due to expire on 30 June 2009.

6. Effective 1 July 2009, the applicant’s appointment, which was due to expire on 30 June 2009, was extended for one month until 31 July 2009 to cover the duration of the applicant’s certified sick leave.

7. According to the applicant, on 26 July 2009, he dropped off a medical certificate at the WFP Office in Amman for an additional two-week period of sick leave starting that day. According to the respondent, WFP received copies of medical reports dated 14 July 2009 during the first week of August 2009, i.e. after

the applicant's appointment had already expired, as well as a copy of a medical report dated 26 July 2009 on 26 January 2010.

8. On 28 July 2009, the Officer-in-Charge (OiC), WFP Office in Amman, reportedly called the applicant to inform him that he did not need to submit additional medical reports as his contract would expire at the end of the month.

9. On 29 July 2009, the applicant received a memorandum dated 21 July 2009 from the OiC, WFP Office in Amman, entitled "Your mutually agreed to separation from the Programme" [sic]. The OiC notified the applicant that she had "approved [his] Agreed-Upon separation from the Programme under UN Staff Regulation 9.3 (a) (vi)" and that his last day of service would be 31 October 2009. She further informed him that he would receive as termination indemnity "10 years and one month net base salary as defined

years of service”, WFP was “willing to make that offer available to [him] again”.
The applicant was requested to provide an answer within 14 days.

13. At the request of counsel for the applicant, the respondent consented to an

20. On 22 February 2010, counsel for the applicant filed an application with the Tribunal against the decision to separate the applicant from service. Attached to the application and referred to as the respondent's response to the applicant's request for a management evaluation was the confidential settlement offer dated 24 November 2009.

21. On 24 February 2010, still having received no response on the settlement offer, the respondent informed counsel for the applicant "that the matter would proceed to management evaluation".

22. Also on 24 February 2010, the Tribunal forwarded to the respondent the application and gave him until 26 March 2010 to submit its reply.

23. On 26 March 2010, counsel for the respondent filed a "motion to dismiss application" on the grounds that that it "is not receivable by the Tribunal as the applicant has not yet received a response to his request for management

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that “when the Secretary-General chooses to engage in settlement

- g. The application is receivable because a finding to the contrary would result in irreparable harm to the applicant as the applicant

Programme and his terms of appointment are governed by the UN Staff Regulations and Rules.

33. Turning to the receivability *ratione temporis* of the application, article 8, paragraph 1, of the UNDT statute provides that:

“1. An application shall be receivable if:

...

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the

Tribunal specified in staff rule 11.4 (a) or (b) and the mediation is deemed to have failed in accordance with the rules of procedure of the Mediation Division of the Office of the Ombudsman, the staff member may file an application with the Dispute Tribunal within ninety calendar days of the end of the mediation.”

35. The applicant’s main argument is that the respondent’s letter of

“All documents prepared for and oral statements made during any informal conflict-resolution process or mediation are absolutely privileged and confidential and shall never be disclosed to the Dispute Tribunal. No mention shall be made of any mediation efforts in documents or written pleadings submitted to the Dispute Tribunal or in any oral arguments made before the Dispute Tribunal.”

39. Since the Tribunal found that the letter of 24 November 2009 was not, and could not be mistaken for, a response to a request for a management evaluation, it could save for another day the question of whether the time limit to file an application with the Tribunal would start to run anew if the Administration were to respond to a request for a management evaluation after the expiry of the relevant response period for the management evaluation. Because of the important implications this issue may have in other cases, the Tribunal nevertheless makes the following observation.

40. There is indeed an inconsistency between article 8.1 (d) (i) of the UNDT statute and staff rule 11.4 (a). In accordance with the said article, in order to be receivable, an application must be filed either within 90 days of the applicant's receipt of the Administration' response to his or her request for a management evaluation or within 90 days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. As for provisional staff rule 11.4 (a), it requires that the application be filed by the earlier of these two dates.

41. There is no question that the UNDT statute is legislation of higher level than the Staff Rules and that in case of contradiction or inconsistency, the former must prevail over the latter. Accordingly, and regardless of staff rule 11.4 (a), the Tribunal considers that the time limit to file an application would start to run anew if the Administration were to respond to a request for a management evaluation after the expiry of the relevant response period for the management evaluation.

42. The Tribunal must also reject the applicant's subsidiary argument, i.e. that the time limits for filing the application were tolled by the settlement negotiations, which ended on 17 February 2010.

43. The above-quoted provisions of the UNDT statute and provisional Staff Rules clearly set out that informal resolution may result in the extension of the

deadlines for filing an application with the UNDT o

50. As regards the former, the Tribunal cannot and should not, except in rare situations, excuse an applicant for the failure of his or her counsel to successfully defend his or her case. In judicial proceedings, no distinction should normally be made between a party and its representative. Representation means that a party and its duly authorized counsel are regarded as a single entity. Except in cases where counsel would abuse his or her authority, all actions taken by counsel are to be attributed to the party he or she represents.

51. In this case, the application is time-barred because of the failure of counsel for the applicant to file it within the statutory t