



Case No.: UNDT/NY/2012/036

Judgment No.: UNDT/2013/071

Date: 24 April 2013

Introduction

1. The Applicant, a Security Officer in the Security and Safety Service (“SSS”) of the Department of Safety and Security (“DSS”) in New York, contests the decision not to select him for an S-4 level position advertised on 3 November 2010.

2. The Applicant was successful in his written examination and was invited to participate in a competency-based interview, to be held the very next day. The Applicant was found wanting in two of the required competencies, and thus not suitable for the position. The Applicant claims that he had only a one-day notice of the interview, which did not allow for proper preparation and deprived him of fair and full consideration. He seeks financial compensation as well as placement on the roster for S-4 positions and placement on a special post allowance at the S-4 level.

3. The Applicant was informed of the decision not to select him on 1 December 2011. He requested management evaluation of the contested decision on 13 January 2012 and received a response on 13 February 2012. His application to the Tribunal was received by the New York Registry at 5:53 p.m. on 14 May 2012.

4. The Respondent submits that the application is not receivable as it was filed after the filing deadline, which expired at the latest, at 5 p.m. on 14 May 2012. The Respondent further submits that the application is without merit as the relevant selection rules were properly followed.

Procedural matters

5. On 23 May 2012, the Respondent filed a motion requesting that the Tribunal first consider the matter of receivability of the present application as a preliminary

Applicable law concerning the issue of receivability

10. The Tribunal's Statute states:

Article 8

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 response by management to his or her submission[.]

11. The Tribunal's Rules of Procedure state:

Article 7 Time limits for filing applications

1. Applications shall be submitted to the Dispute Tribunal through the Registrar within:

(a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;

...

Article 34 Calculation of time limits

The time limits prescribed in the rules of procedure:

(a) Refer to calendar days and shall not include the day of the event from which the period runs;

(b) Shall include the next working day of the Registry when the last day of the period is not a working day;

(c) Shall be deemed to have been met if the documents in question were dispatched by reasonable means on the last day of the period.

12. For administrative purposes, the Tribunal adopted an "Information Note to Parties Appearing before the United Nations Dispute Tribunal", which provides on page 3 that the working hours of the New

Monday through Friday. The Information Note also contains a notice on the cover page, stating:

Notice: The information contained in this note is subject to the Dispute Tribunal's Statute and Rules of Procedure, or any direction given by a Judge in a particular case. In the event of any perceived inconsistency, confirmation should be sought from the relevant Registrar in writing as to how the matter is to be administered.

Applicant's filing of the application

13. The Applicant submits that, having requested management evaluation on 13 January 2013, he received the Administration's response to it on 13 February 2012. This submission was not rebutted by the Respondent. Thus, the 90-day time period to file his application expired on 13 May 2012. As that day was a Sunday and therefore the Registry was closed, the Applicant had the day of 14 May 2012 to file his application (see article 84(b) of the Rules of Procedure). The Registry's records in the eFiling portal indicate that the application was received by the Tribunal at 5:53 p.m. on Monday, 14 May 2012.

14. The Respondent submits that, because the application was received after the Registry's working hours (which end at 5 p.m.), the application is not receivable.

Meaning of calendar day

15. Article 34 of the Rules of Procedure provides that "[t]he time limits ... refer to calendar days" and that the time limits "[a]ll be deemed to have been met if the documents in question were dispatched by reasonable means on the last day of the period", taking into consideration that the last day of the period is not

filing purposes is also generally understood as a full twenty-four hour period from midnight to midnight (see, e.g., *Lanni v. Grimes*, 173 Misc. 614, 18 N.Y.S.2d 322, 327 (1940); *Guillory v. Department of Transportation and Development, Division of Maintenance and Field Operations*, 450 So. 2d 1305, 1307 (1984)), an example of a civil law jurisdiction, see Code de procédure civile, art. 642 (Fr.)). The terms “working day” and “calendar day” are not synonymous. The Tribunal notes, in this

Effect of the last day of the time limit to the filing of an application falling on a non-working day

17. The time limit for the filing of an application is measured in calendar days (see art. 8 of the Statute), but if the last day of the calendar period falls on a non-working day, the Applicant has one additional day to file it. In view of the language of art. 34 of the Rules of Procedure, a question arises whether the filing on that additional filing day has to be done before the end of the working day or prior to the end of the calendar day. The Tribunal finds that, although this additional filing day is determined by identifying the “next working day of the Registry” (art. 34(b)), the actual time for the filing of an application on that day does not expire until midnight, i.e., the end of that calendar day. In other words, should the last day of the 90 calendar day period for the filing of an application fall on a non-working day, the last day for filing purposes is the next working day with the applicant having a full calendar day to file his application. The reasons for this are as follows.

18. The purpose of art. 34(b) was not to limit the time of filing to the working hours of the Registry, but to merely assist in correctly determining the final filing day. For example, if the 90 calendar day deadline falls on a Saturday, and the following Monday happens to be a holiday, then the deadline for the filing of an application would move to the next working day of the Registry, which would be Tuesday, but the applicant would have until that Tuesday midnight to file the application.

19. Further, art. 34(c) of the Rules of Procedure provides that the time limits shall be deemed to have been met “if the documents in question were dispatched by reasonable means on the last day of the period”. Crucially, art. 34(a) states that time limits prescribed in the Rules “[r]efer to calendar days”. Thus, if a time limit of a certain number of days without more is mentioned in the Rules, the default reading is as in “calendar day”, unless specifically stated otherwise (art. 34(a)). Therefore, in view of art. 34(a), the phrase “the last day of the period” in art. 34(c) should be read

as “the lastcalendar day of the period”. This finding is further supported by the language of art. 8 of the Tribunal’s Statute, which is superior to the Rules and which requires that time limits for the filing of applications be counted in calendar days.

20. Thus, the use of the working day in art. 31(b) of the Rules of Procedure is merely a way to determine the final day for filing purposes, not to take away several hours from the period measured in calendar days pursuant to the Statute and the Rules.

The application was filed on time

21. Therefore, as the time for the filing of an application is stipulated in the Statute and the Rules of Procedure in calendar days, and in view of the findings above, it follows that the application had to be filed prior to the expiration of the last calendar day of the filing period. As the Applicant had 90 calendar days to file his application, he had until the end of the calendar day (i.e., before midnight) of Monday, 14 May 2012, to file it. The Applicant having filed his application several hours prior to the expiration of the statutory calendar day period, the Tribunal finds that the application is receivable.

22. The Tribunal notes that, when transmitting the application to the Respondent on 15 May 2012, the New York Registry notified the parties that the application was received by it on 15 May 2012; the application was in fact filed on 14 May 2012 and is receivable, as explained in the present Judgment.

De minimis nature of alleged delay

23. Further, even if the Registry’s closing time of 5 p.m. were to be taken as the applicable deadline, in the particular circumstances of the present case, a brief one-hour delay in the filing of the application could be considered to be minimis (see World Bank Administrative Tribunal Decision No. 4273-C (2010)). This is in

light of the circumstances of this case, namely the absence of evidence to suggest that the Applicant was lax in the handling of this case; the admittedly confusing language of art. 34 of the Rules of Procedure, which required clarification and explanation in the present Judgment, and the Tribunal's finding that, in the circumstances of this case, the brief one-hour delay in filing this application, had such delay occurred in this case (which did not, as explained above), would have caused no prejudice to the Respondent.

Conclusion

24. The Tribunal finds that the application is receivable.

25. Further directions as to the future conduct of this matter will be given by separate order.

(Signed)

Judge Ebrahim-Carstens

Dated this 24th day of April 2013

Entered in the Register on this 24th day of April 2013

(Signed)

Hafida Lahiouel, Registrar, New York