



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

LUTTA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON THE RESPONDENT'S
MOTION FOR EXTENSION OF TIME-
LIMIT**

Counsel for Applicant:
Rose Dennis, OSLA

Counsel for Respondent:
ALU/OHRM

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal

1. Background

1.1 By a motion in writing dated 24 October 2009, the Respondent seeks an extension of the time limit to file his action. The background to this motion is summarized below.

(i) According to the ad-hoc Joint Disciplinary Committee (JDC) Report No. 243 dated 19 June 2009, on 11 November 2007, the Applicant was involved in a traffic accident while driving an official UN vehicle bearing license plate UN53794. It was alleged that the Applicant was driving under the influence of alcohol at the time, which caused the said accident.

(ii) The Applicant was subsequently charged with:

(a) violating the applicable UNOCI (United Nations Operation in Cote d'Ivoire) driving rules, which strictly prohibit driving under the influence of alcohol or drugs;

(b) failing to exercise reasonable care when utilizing the property and assets of the Organization; and

(c) acting in a manner unbecoming of his status as an international civil servant in violation of Staff Regulations 1.2(t) and (q) and Staff Rule 101.2(b).

(iii) The JDC Panel considering the Applicant's case adopted its report on 19 June 2009 and made the following unanimous conclusions/recommendation:

(a) that there was no adequate evidence that the Applicant was driving under the influence of alcohol on the day of the accident;

(b) that the Applicant had not breached his duty to exercise reasonable care while driving the UN vehicle;

(c) that the general charge alleging that the Applicant acted in a manner unbecoming of a UN staff member was not adequately substantiated by the available evidence; and

(d) that based on the foregoing conclusions, that all charges against the Applicant be dropped.

(iv) On 24 June 2009, the Deputy-Secretary-General informed the Applicant that the Secretary-General had considered his case in light of the JDC Report as well as the entire record and totality of circumstances and had accepted the findings and conclusion of the JDC.

(v) The Applicant filed an Application with the Nairobi UNDT on 24 September 2009 in which he requests to be compensated for the substantive and procedural irregularities committed in the conduct of investigations against him, the resulting impact on his career advancement and the professional and moral injury to him caused by his having been negligently and wrongfully charged with drink-driving. The Applicant requests:

(a) that he be reimbursed the amount of \$939.49 deducted from his Mission Subsistence Allowance;

(b) that he be compensated for transportation allowance based on the official ONUCI monthly rate for transportation allowance per kilometer for the period between 14 May 2007 to 2 May 2009 since he was wrongfully deprived of the use of a UN vehicle which he required to enable him to properly carry out his functions; and

(c) that he be compensated in an amount deemed by the Tribunal to be appropriate to compensate him for the impediment to his career advancement, as well as moral and professional damage caused by the charges being negligently and wrongfully leveled against him, and for such a protracted period of time.

(vi) On 25 September 2009, the Nairobi UNDT Registry transmitted the Application to ALU/OHRM and advised, inter alia, that in accordance with Article 10 of the UNDT Rules of Procedure (“the Rules”), the Respondent had thirty calendar days from the date of receipt of the Application to file a Reply, that is, by or before 25 October 2009.

(vii) On 27 October 2009, the Respondent’s Counsel filed the present Motion seeking an order from the Tribunal for an extension of the time limit to file the Respondent’s Reply on the following grounds:

- (a) that exigencies of service contributed to his inability to comply with the deadline;
- (b) that he did not have sufficient time to prepare a substantive reply due to his extended absence from the office to attend to an urgent family matter at the time the instant application was filed;
- (c) that the two-week extension of time required by the Respondent would not unduly delay the progress of this matter before the Tribunal;
- (d) that the Applicant would not be unduly prejudiced by the grant of the Respondent's motion for extension of time limit; and
- (e) that based on the foregoing, in the interest of justice and under these exceptional circumstances, this Tribunal grant a two-week extension of the time limit, until 6 November 2009.

2. Considerations

2.1 The Applicable Law

2.1.1 Article 8(3) of the Statute of the UNDT provides as follows:

“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.”

2.1.2 Article 7(5) of the Rules provides as follows:

“In exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1 above. Such request shall succinctly set out the exceptional circumstances that, in the view of the applicant, justify the request. The request shall not exceed two pages in length.”

2.1.3 Article 10 (1) of the Rules provides as follows:

“The respondent’s reply shall be submitted within 30 calendar days of the date of receipt of the application by the respondent. The signed original reply and the annexes thereto shall be submitted together. The document may be transmitted electronically. A respondent who has not submitted a reply within the requisite period shall not be entitled to take part in the proceedings, except with the permission of the Dispute Tribunal.”

2.1.4 Article 19 of the Rules provides as follows:

“The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.”

2.1.5 From a literal reading of the above-cited provisions, it is clear that the Statute and Rules do not allow a Respondent to request for an extension of the time limit to submit a Reply. The only available remedy for a Respondent who has not filed a

Reply in time is to “seek the permission of the Dispute Tribunal” to take part in the proceedings in accordance with Article 10(1).

2.2 The importance of time limits

2.2.1 The underlying idea for the introduction of the new system of administration of justice is to ensure timely dispensation of cases without delay as expressed in General Assembly Resolution A/RES/61/261 - *Administration of justice at the United Nations*, where it was recognized,

“...that the current system of administration of justice at the United Nations is slow, cumbersome, ineffective and lacking in professionalism, and that the current system of administrative review is flawed.”¹

2.2.2 The Report of the Redesign Panel on the United Nations system of administration of justice emphasized the fact that requests for extension of time limits from management were invariably granted.

“After an appeal has been filed, management has two months in which to file a reply. However, JABs [Joint Appeals Boards] frequently grant an extension for the filing of management’s reply.”²

2.2.3 The absence of any rule to allow the Respondent to file an application for extension of time has no doubt been motivated by the fact that management is in a better position to answer a claim filed by a staff member. Another reason that may have prompted the framers of the Rules is that management was obtaining extensions too frequently as evidenced by the Report of the Redesign Panel.

¹ General Assembly Resolution A/RES/61/261 – paragraph 5 of the preamble.

² General Assembly A/61/205, paragraph 67 of the Report.

2.3 Time limits and the Respondent

2.3.1 To have left the Respondent without any other option at all in cases of failure on its part to file a timely response to a claim would have been perceived as denial of fairness and against the equality of arms principle in proceedings before the Tribunal.

2.3.2 Article 10.1 therefore comes to the rescue of a Respondent who has not complied with the procedural delay laid down therein. A Respondent in that predicament is not without a remedy but that remedy is subject to a more stringent condition in that the Respondent guilty of a delay needs the permission of the Tribunal, not to file a reply outside the delay, but to continue participating in the proceedings.

2.4 Interpretation of Article 10(1)

2.4.1 In the Tribunal's view, there are two stages that should be followed in the application of Article 10.1. There is first the permission aspect and secondly the reply aspect.

2.4.2 The Respondent who finds himself outside the time limit for filing a reply should first seek the permission of the Tribunal to take part in the proceedings. This is so because by putting himself outside the requisite delay he is no longer considered to be part of the proceedings.

2.4.3 What should be understood by the term "proceedings"? There is no definition or guideline on what should be understood by "proceedings". It is the view of the Tribunal that proceedings start with the filing of a claim and include all the pleadings until they are closed as well as the hearing and deliberation. The proceedings will be complete with the pronouncement of the decision of the Tribunal.

2.4.4 The filing of a reply by the Respondent is part of the pleadings and is therefore part of the proceedings. For the purposes of Article 10.1, a Respondent will be entitled to request the Tribunal to allow him to take part in the proceedings and to

state the reasons why he should be granted such permission and the Tribunal should rule on this.

2.4.5 If the Tribunal grants the Respondent's motion and authorizes him to be part of the proceedings, the next stage is to determine whether the Respondent should be allowed to file a reply. The application by the Respondent for permission to participate in the proceedings may also contain a motion for a belated filing of the reply under Article 19 of the Rules. Such an application should give the reasons why the reply was not filed in a timely manner.

2.4.6 The Respondent may, on the strength of Article 19 of the Rules, request the Tribunal that it would be fair and expeditious that he be allowed to file the reply belatedly. As the Tribunal may also, on its own initiative, make an order allowing the Respondent to file a belated reply, it would be helpful if in his initial request to take part in the proceedings the Respondent canvasses the issue of reply. This would enable the Tribunal to rule on that issue notwithstanding the fact that the Tribunal may on its own initiative make an order that would be fair and expeditious in the circumstances of a case and to do justice to the parties.

3 Conclusion

3.1 The Respondent is enjoined to submit a proper application requesting the Tribunal that he should be allowed to take part in the proceedings. The determination of whether he will be authorized to file a reply will be taken in the light of the Respondent's motion.

(Signed)

Judge Vinod Boolell

Dated this 3rd day of November 2009

Entered in the Register on this 3rd day of November 2009

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi