



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Morten Albert Michelsen, Officer-in-Charge

GOUIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Mr. Steven Dietrich, ALS, OHRM

Introduction

1. On 11 September 2017, the Applicant, pursuant to art. 30 of the Dispute Tribunal's Rules of Procedure, filed an application for interpretation of the meaning and scope of the Tribunal's final judgment, *Gouin* UNDT/2016/185 ("the Judgment"), issued on 12 October 2016 in Case No. UNDT/NY/2016/012.

2. In his application, the Applicant submits that:

... On 12 October 2016, the Tribunal remanded [Case No. UNDT/NY/2016/012] to the Secretary-General ordering him to issue a decision within 90 days.

... The applicant never received any decision from the administration on the certification of his sick leave and is not aware whether the administration complied with the Tribunal's order.

... The applicant therefore respectfully asks the Tribunal whether it remained seized of the case while remanding it to the Secretary-General and how he should proceed to ask the Tribunal to issue the decision the administration has been refusing to issue since May 2015.

3. The Respondent submits that the application is not receivable as the Applicant is not seeking an interpretation of the Judgment in accordance with art. 12.3 of the Dispute Tribunal's Statute. The Applicant is requesting execution of the Judgment. The Judgment has been executed. In the alternative, the application is without merit on the grounds that the operational paragraphs of the Judgment are clear and do not require interpretation from the Dispute Tribunal.

Procedural history

4. On 13 September 2017, the Registry acknowledged receipt of the application and transmitted it to the Respondent, instructing him to file a reply within 30 days.

5. On 18 September 2017, by Order No. 186 (NY/2017), the Tribunal instructed the Respondent to inform the Tribunal whether the Judgment had been executed.

6. On 28 September 2017, the Respondent filed a submission pursuant to Order No. 186 (NY/2017), confirming that the Judgment has been executed. In his submission, the Respondent filed supportive documentation, including an email from the Medical Services Division (“MSD”) to the Applicant dated 29 December 2016 stating:

... Message from Dr. [...]:

... Dear [Applicant],

The medical documents sent by you to MSD on 14 November 2016 are copies of the same medical documents you have forwarded to us before. You had been requested to send MSD a medical report from your psychiatrist on the attached template which you have not done.

Based on the medical reports you have submitted, your sick leave cannot be approved.

Kind Regards,

...

7. On 12 October 2017, the Respondent filed his reply contending that the application is not receivable, or in the alternative, the application is without merit.

8. On 13 October 2017, by Order No. 228 (NY/2017), the Tribunal instructed the Applicant to provide a response to the Respondent’s reply, together with a confirmation as to whether he has provided the MSD with a copy of the medical report of his psychiatrist on the template attached to the email from MSD dated 29 December 2016, and if so, provide supportive documentation by 20 October 2017.

9. The Applicant did not file a submission pursuant to Order No. 228 (NY/2017).

Background

10. The Judgment in the closed case *Gouin* Case No. UNDT/NY/2016/012, granted the Applicant’s application challenging the refusal by the MSD in New York “to take a decision in regards to [the Applicant’s] sick leave for the past 11 months”.

11. The Tribunal made the following final orders in the Judgment dated 12 October 2016:

28. The application succeeds.

29. The Applicant's request for certification of his sick leave is remanded to the Secretary-General for consideration.

30. Within one month of the date of this judgment, the Applicant shall submit any further documentation to the MSD New York that he wishes to be taken into consideration.

31. Within 90 calendar days of the date of this Judgment, the Respondent, through a properly designated office, shall render a decision on the Applicant's request.

Applicant's submissions

12. The Applicant's principal contentions may be summarized as follows:

a. On 12 October 2016, the Tribunal remanded the case to the Secretary-General ordering him to issue a decision within 90 days. The Applicant never received any decision from the administration on the certification of his sick leave and is not aware whether the administration complied with the Tribunal's order.

b. The Applicant therefore requests that the Tribunal confirm whether it remained seized of the case while remanding it to the Secretary-General. The Applicant further requests "how he should proceed to ask the Tribunal to issue the decision the administration has been refusing to issue since May 2015".

Respondent's submissions

13. The Respondent's principal contentions may be summarized as follows:

a. The Application is not receivable, or in the alternative, is without merit. The Applicant is not seeking an interpretation of the Dispute Tribunal's Judgment in Case No. UNDT/NY/2016/012 in accordance with art. 12.3 of

the Dispute Tribunal's Statute. Judgment No. UNDT/2016/185 is not vague or ambiguous. It does not require interpretation from the Dispute Tribunal. Rather, the operational paragraphs 28 to 31 of the Judgment are clear.

b. The Applicant is requesting execution of the Judgment. The Judgment has already been executed. As directed by the Judgment, a properly designated office has rendered a decision on the Applicant's request for certification of his sick leave.

c. The Respondent, therefore, requests that the Dispute Tribunal dismisses the Application.

Consideration

14. The Appeals Tribunal has stated that the duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content they assign to them, as the judgment must necessarily refer to the scope of the parties' contentions (*Massabni* 2012-UNAT-238).

15. The Tribunal notes that the application is filed within a form entitled "Application for interpretation of Judgment" pursuant to art. 12.3 of the Dispute Tribunal's Statute which states:

... Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgment, provided that it is not under consideration by the Appeals Tribunal.

16. In his application, the Applicant seeks clarification on whether the Administration has complied with the operative parts of the Judgment, stating as follows:

... The applicant never received any decision from the administration on the certification of his sick leave and is not aware whether the administration complied with the Tribunal's order.

... The applicant therefore respectfully asks the Tribunal whether it remained seized of the case while remanding it to the Secretary-General and how he should proceed to ask the Tribunal to issue the decision the administration has been refusing to issue since May 2015.

17. The Tribunal considers that it clearly follows from the Applicant's contentions that he seeks execution of the Judgment rather than an interpretation of the Judgment. In this regard, the Tribunal notes that, in *Chaaban* 2016-UNAT-611, the Appeals Tribunal stated in para. 18 that:

... The Dispute Tribunal was not limited to the staff member's description of the contested or impugned decision; quite properly, it could consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed.

18. The Tribunal considers that similarly, in its determination of the contested decision to be reviewed, the Tribunal is not limited to the title or form of a filing and that it should consider the application as a whole, including the relief requested by the staff member. The Applicant's contentions convey that his application is for execution of the Judgment, with the Applicant stating that he did not receive a decision from the Administration in respect to the certification of his sick leave request and that he is not aware whether the Administration has complied with the Tribunal's final orders in the Judgment. The Tribunal further notes that the Applicant does not request any interpretation of the meaning or scope of the final judgment pursuant to arts. 12.3 of the Dispute Tribunal's Statute. It follows that the Applicant requests execution of the Tribunal's orders in the Judgment.

19. Accordingly, the Tribunal will consider the application as an application for execution of the Judgment under art. 12.4 of the Statute of the Dispute Tribunal and art. 32 of the Dispute Tribunal's Rules of Procedure.

Execution of Gouin UNDT-2016-185

20. Articles 11.3 and 12.4 of the Dispute Tribunal's Statute state:

[Article 11.3]

... The judgements and orders of the Dispute Tribunal shall be binding upon the parties, but are subject to appeal in accordance with the statute of the United Nations Appeals Tribunal. In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal ...

[Article 12.4]

... Once a judgement is executable under article 11, paragraph 3, of the present statute, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

21. Article 32 of the Dispute Tribunal's Rules of Procedure on execution of judgments states that:

1. Judgements of the Dispute Tribunal shall be binding on the parties, but are subject to appeal in accordance with the statute of the Appeals Tribunal. In the absence of such appeal, it shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

2. Once a judgement is executable under article 11.3 of the statute of the Dispute Tribunal, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out.

22. The Tribunal recalls that the operative paragraphs of the Judgment in Case No. UNDT/NY/2016/012 remanded the Applicant's request for certification of his sick leave to the Secretary-General for consideration and ordered that:

30. Within one month of the date of this judgment, the Applicant shall submit any further documentation to the MSD New York that he wishes to be taken into consideration.

31. Within 90 calendar days of the date of this Judgment, the Respondent, through a properly designated office, shall render a decision on the Applicant's request.

23. It follows from the Judgment that the Applicant was required to submit any further documentation to the MSD in New York that he wished to be taken into consideration within one month of the Judgment dated 12 October 2016. The

Respondent was required, through a properly designated office, to render a decision on the Applicant's request by 10 January 2017, being 90 calendar days of the date of the Judgment.

24. Counsel for the Respondent contends that the Judgment has already been executed. In this regard, the Respondent submits that, as directed by the Judgment, a properly designated office has rendered a decision on the Applicant's request for certification of his sick leave on 29 December 2016. The Tribunal notes the supporting evidence provided by the Respondent which consists of an email from the MSD to the Applicant dated 29 December 2016 stating that:

The medical documents sent by [the Applicant] to MSD on 14 November 2016 are copies of the same medical documents [the Applicant has] forwarded to us before. [The Applicant] had been requested to send MSD a medical report from [his] psychiatrist on the attached template which [the Applicant has] not done. Based on the medical reports [the Applicant has] submitted, [his] sick leave cannot be approved.

25. The Tribunal notes that the Applicant did not file any submissions in response to the Respondent's reply in accordance with the Tribunal's instructions in Order No. 228 (NY/2017), nor did he provide a confirmation as to whether he has provided the MSD with a copy of the medical report of his psychiatrist on the template attached to the MSD's email of 29 December 2016.

26. As the Applicant did not comply with Order No. 228 (NY/2017), the Tribunal has decided to determine the matter on the available evidence on file. It follows from the evidence before the Tribunal that the Respondent has executed the Judgment by rendering a decision, through the MSD, on the Applicant's request for certification of his sick leave within 90 calendar days of the date of the Judgment.

Conclusion

27. Having found that the Judgment has been executed, the Tribunal rejects the Application in its entirety.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 1st day of February 2018

Entered in the Register on this 1st day of February 2018

(Signed)

Morten Albert Michelsen, Officer-in-Charge, New York