



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

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Schook
(Appellant)
v.
Secretary-General of the United Nations
(Respondent)
JUDGMENT
[No. 2010-UNAT-013]

Before: Judge Kamaljit Singh Garewal, Presiding
Judge Sophia Adinyira
Judge Rose Boyko

Case No.: 2009-018

Date: 30 March 2010

Registrar: Weicheng Lin

Counsel for Appellant: Self-Represented

Counsel for Respondent: John Stompor

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. The Appellant, Steven P. Schook (Schook), was never notified in writing that his appointment would not be renewed beyond 31 December 2007. Therefore, the time limit of two months provided by Rule 111.2(a) of the Staff Rules does not apply. The appeal was thus receivable. The UNDT judgment is set aside and the case is remanded back for a fresh hearing on the merits.

Facts and procedure

2. Schook, a retired Brigadier General of the US army, was appointed Principal Deputy to the Special Representative of the Secretary-General (SRSG) of the United Nations Mission in Kosovo (UNMIK) on 26 April 2006. His post was in the rank of Assistant Secretary-General and was covered by the 300 series of the Staff Rules. His appointment was extended twice, the last extension being through 31 December 2007. On 15 December 2007, Schook received a telephone call from Under-Secretary-General, DPKO, who informed him that the Secretary-General would not extend his contract beyond 31 December 2007 and that he was to return to New York immediately. On 4 January 2008, Schook met the Chef-de-Cabinet and was informed that he served at the pleasure of the Secretary-General and that his contract was not extended “because the Secretary-General did not want to answer questions about your sexual exploitation, corruption, ethics violations and the ICTY indictment”. No written administrative decision was communicated to Schook.

3. According to Schook, in 2007 he faced investigations by three separate entities: the Office of Internal Oversight Services (OIOS), the Ethics Office, and the International Criminal Tribunal for the former Yugoslavia (ICTY). For reasons which will become apparent from our decision, we shall not delve into the details regarding what the allegations against Schook were, so as not to prejudice the Dispute Tribunal. Suffice it to say that none of the above investigations found any misconduct by Schook. The Ethics Office cleared Schook in March 2008, the ICTY cleared him in April 2008, and finally, by letter dated 27 May 2008, Schook was informed by OIOS that there was insufficient evidence against him and the investigation was closed.

4. Thereafter, Schook for the first time addressed a complaint to the Secretary-General on 14 July 2008. A reply to his letter came from the Administrative Law Unit, Office of Human Resources Management on 6 January 2009 (letter dated 30 December 2008). Thereupon Schook presented his appeal to the Joint Appeals Board (JAB) on 5 February 2009. In his appeal Schook sought a letter from the Secretary-General clearing him of misconduct, a clarification regarding his immunity, compensation for irreparable damage to reputation, compensation for loss of income, and reimbursement of legal expenses. Schook did not seek his reinstatement.

Considerations

5. UNDT considered 15 December 2007 as the date of the contested decision, to assess the question of receivability under Rule 111.2(a) of the Staff Rules. UNDT has taken Schook's letter to the Secretary-General dated 14 July 2008 as the appeal which an appellant was entitled to present. However, the main appeal to the JAB was presented on 5 February 2009. It has been held by UNDT that the appeal was not receivable as it was not filed within two months from the date of the decision: 15 December 2007.

6. In Tabari's case decided by the Appeals Tribunal during its first sessions in Geneva, the question was whether in the absence of a written administrative decision, Tabari could file an appeal. The Appeals Tribunal referred to judgment No. 1157 *Andronov* (2003) rendered by the former United Nations Administrative Tribunal and held that not making a decision was also a decision because it could be a decision by implication. The present case is distinguishable. Without receiving a notification of a decision in writing, it would not be possible to determine when the period of two months for appealing the decision under Rule 111.2(a) would start. Therefore, a written decision is necessary if the time-limits are to be correctly calculated, a factor UNDT failed to consider. Schook never received any written notification that his contract had expired and would not be renewed. He did not receive a "notification of the decision in writing", required by Rule 111.2 (a). The UNDT judgment is reversed and the case is remanded back for a fresh decision on merits.

7. However, before parting we would like to highlight certain provisions regarding receivability of cases transferred from the Joint Appeals Board to UNDT. The General Assembly by resolution A/RES/63/253 dated 17 March 2009 radically amended the system of internal justice and introduced wide ranging reforms. It decided to adopt the statutes of the United Nations Dispute Tribunal and the United Nations Appeals

Tribunal, to abolish, as of 1 July 2009, the Joint Appeals Boards, and to transfer all cases pending before the Joint Appeals Boards to the United Nations Dispute Tribunal. This tribunal became operational as of 1 July 2009

8. Article 2 (7) of the Statute of the United Nations Dispute Tribunal provides:

As a transitional measure, the Dispute Tribunal shall be competent to hear and pass judgment on:

(a) A case transferred to it from a joint appeals board or a joint disciplinary committee established by the United Nations, or from another similar body established by a separately administered fund or programme;

(b) A case transferred to it from the United Nations Administrative Tribunal;

as decided by the General Assembly.

9. Article 8(1) provides that an application shall be receivable if the Dispute Tribunal is “competent to hear and pass judgment on the application, pursuant to article 2 of the present statute”.

10. Furthermore, article 8(3) provides that “[t]he 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”.

11. Lastly, article 8(4) states, “an application shall not be receivable if it is filed more than three years after the applicant’s receipt of the contested administrative decision”.

12. Schook’s appeal could have additionally been examined in the light of articles 7 and 8(1), (3) and (4), but we refrain from examining the legal implications of these provisions because we are convinced that Schook’s appeal before JAB was not barred by time. The appeal was receivable because he had not been notified of any written administrative decision of his not continuing in service after 31 December 2007. We find that UNDT has completely ignored that the time of two months, required by rule 111.2(a), begins to run “from the date the staff member received notification of the decision in writing”. Schook was never communicated any written administrative decision. UNDT has failed to examine the case from this angle. The learned Dispute Tribunal has erred in holding that the appeal was not receivable.

Judgment

13. The judgment of UNDT in case No. UNDT/GVA/2009/47 (Judgment No. UNDT/2009/065) dated 4 November 2009 is set aside. The case is remanded back to UNDT, and the appeal shall be received and decided on its merits.

THE UNITED NATIONS APPEALS TRIBUNAL

Case No. 2009-018



Judge Garewal, Presiding



Judge Adinyira



Judge Boyko

Dated this 30th day of March 2010 in Geneva, Switzerland.

Original: English

Entered in the Register on this 26th day of April 2010 in New York, United States.



Weicheng Lin, Registrar, UNAT