



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-071



Before: Judge Mark P. Painter, Presiding
Judge Jean Courtial
Judge Rose Boyko

Judgment No.: 2010-UNAT-075

Date: 29 October 2010

Registrar: Weicheng Lin

Counsel for Appellant: Amal Oummih

Counsel for Respondent: Melanie Shannon

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. Under former Staff Rule 111.2(a)(ii), Ayse Irem Saka (Saka) had until 23 April 2007 to file an appeal with the Joint Appeals Board (JAB). She did not do so until 25 September 2008, some 17 months beyond the deadline. Though she asserts reasons for the delay, none of the reasons justify a 17-month late appeal. The trial court also considered some other factual issues and determined that Saka could not prevail on the merits. We do not consider the merits, because the case is clearly out of time. We dismiss the appeal by Saka.

Facts and Procedure

2. Saka joined the Branch Office of the United Nations High Commissioner for Refugees (UNHCR) in Ankara, Turkey, in May 2002 as a Senior Protection Clerk (G-5) under a fixed-term appointment, which was renewed for varying periods through 31 December 2003. Saka continued to work as a Temporary Assistant from January to April 2004. In July 2005, Saka was re-hired as a G-3 Legal Clerk on a one-month temporary assistance contract, which was subsequently renewed on a monthly basis.

3. On 27 November 2006, Saka raised the matter of her entitlement to maternity leave with her supervisor, but did not receive a reply. On 12 December 2006, Saka was informed that she was not entitled to maternity leave because her contract was monthly.

4. On 19 December 2006, Saka was informed orally that her contract would not be renewed beyond 31 December 2006. She was notified of the decision in writing on 21 December 2006. By letter dated 29 December 2006 to the Secretary-General, Saka requested administrative review of the decision not to renew her contract. By letter dated 30 January 2007 to Saka, the Officer-in-Charge of the Administrative Law Unit acknowledged receipt of her letter. But the Secretary-General did not reply to Saka's request for administrative review.

5. Saka commenced legal proceedings against UNHCR in Turkey in the 7th Labour Court of Ankara. UNHCR asserted its immunity from domestic legal processes.

6. Saka gave birth to a child on 2 April 2007. In a letter dated 25 October 2008, Saka's psychiatrist stated that Saka had been receiving treatment for more than three years for a generalized anxiety disorder, but

[a]fter the discontinuation of her contract in December 2006, [Saka] developed an Adjustment Disorder with Depressive Features which required treatment with antidepressant medication. Hospitalization with possible placenta previa further increased her distress. Clinical signs worsened and symptoms became severe enough to warrant a diagnosis of Major Depressive Episode.

7. By letter dated 25 September 2008 to the Geneva JAB, Saka submitted an incomplete statement of appeal. She perfected her appeal on 29 October 2008.

8. In its report dated 30 April 2009, the JAB considered the issue of receivability of Saka's appeal. The JAB considered that there were no exceptional circumstances justifying her delay, and that her delay was "the result of a choice freely made by [Saka], on the basis of her own assessment of the situation and her chances of making a successful appeal". The JAB concluded that Saka's appeal was inadmissible and recommended that the Secretary-General reject it, which he did.

9. On 28 August 2009, Saka filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the decision by the Secretary-General to reject her appeal. On 28 September 2009, the Secretary-General filed a reply raising the issue of receivability. On 14 December 2009, Saka filed supplemental comments. In response, the Secretary-General filed comments on 15 January 2010 which addressed the merits of the case.

10. In Judgment No. UNDT/2010/007 dated 19 January 2010, the Dispute Tribunal determined that "[Saka] has not established the unlawfulness of the contested decision and therefore, without any need to rule on the admissibility of her application for reasons of time, there are grounds to reject it on the merits." Saka received the English translation of the Judgment on 10 February 2010.

11. On 29 March 2010, Saka filed an appeal from the UNDT Judgment. Her appeal was forwarded to the Secretary-General on 13 April 2010. On 28 May 2010, the Secretary-General filed an answer to the appeal.

Submissions

Saka's Appeal

12. Saka submits that the UNDT is required, but failed, to first resolve the jurisdictional issue of receivability before examining the merits of the case.

13. Saka contends that the Secretary-General's submission concerning the merits of the case was shared with her just days before the UNDT rendered its Judgment, but she was not given the opportunity to respond to this submission. The UNDT's failure to give her an opportunity to respond was an error in procedure that denied her the fundamental right to be heard. The UNDT considered the merits of the case without giving Saka an opportunity to address the decisive factual issues and argue that there was an abuse of discretion by the Administration.

14. As he did not address the merits of Saka's appeal in his reply filed in September 2009, the Secretary-General should have been prevented from filing his submission addressing the merits except with the leave of the UNDT. In the alternative, Saka should have been given the same opportunity to address the merits of her case.

15. Saka requests that the Appeals Tribunal remand the case to the Dispute Tribunal for a *de novo* hearing on the merits.

Secretary-General's Answer

16. The Secretary-General submits that the UNDT correctly dismissed Saka's application, and contends that her application was also time-barred and thus not receivable. Under former Staff Rule 111.2(a)(ii), Saka had until 23 April 2007 to file an appeal with the JAB. Saka did not do so until 25 September 2008, some 17 months after the deadline.

17. The Secretary-General argues that the medical evidence submitted to the UNDT concerning the difficulties faced by Saka prior to the birth of her child, her post partem depression and anxiety and adjustment disorders do not provide an adequate explanation for the delay in filing her appeal. Further, Saka sought legal assistance in connection with her legal proceedings against UNHCR in Turkey, and there is no reason why she could not have

sought legal assistance to obtain administrative review within the framework of the internal justice system of the United Nations.

18. The Secretary-General argues that the UNDT's consideration of the merits of the case without examining the issue of receivability does not constitute an error that would vitiate the Judgment. On the merits, the Secretary-General submits that the UNDT was correct in its determination that Saka had no right to renewal of her fixed-term appointment.

19. The Secretary-General requests that the Appeals Tribunal dismiss the appeal.

Considerations

20. The case must be considered under the rules in effect at the time. Under former Staff Rule 111.2(a)(ii), Saka had until 23 April 2007 to file an appeal with the JAB. She did not do so until 25 September 2008, some 17 months beyond the deadline. Though she asserts reasons for the delay, none of the reasons justify a 17-month late appeal. The trial court also considered some other factual issues and determined that Saka could not prevail on the merits. We do not consider the merits, because the case is clearly out of time.

21. There is no error in considering the merits of a case at the same time as receivability, but judicial economy is usually—but not always—better served by considering time issues first. Here, we consider only the time issues, because the case is so clearly out of time that we need not consider any other issues. Of course, the situation might sometimes be reversed. Thus any alleged error by the UNDT in considering the merits is moot.

Judgment

22. This case is out of time. This Court affirms the UNDT Judgment and dismisses the appeal.

Dated this 29th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Painter, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Boyko

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar