

Translated from French

UNITED NATIONS APPEALS TRIBUNAL

TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-090

Ms. Umpleby

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before: Judge Jean Courtial, Presiding

Judge Mark Philip Painter

Judge Rose Boyko

Judgment No.: 2010-UNAT-090

Date: 29 October 2010

Registrar: Weicheng Lin

Counsel for Appellant: Amal Oumih

Counsel for Respondent: Amy Wood

Judgment No.: 2010-UNAT-090

Judge Jean Courtial, Presiding Judge

Synopsis

1. Ms. Josiane Umpleby Lamborot (Umpleby), a staff member with the Office of the United Nations High Commissioner for Refugees (UNHCR), filed an application with the United Nations Dispute Tribunal (the Dispute Tribunal) contesting the decision to exclude her from a comparative review process for the filling of vacant posts. Following the Dispute Tribunal's judgment rejecting her application, she filed an appeal with the United Nations Appeals Tribunal. The Appeals Tribunal finds that the appeal was filed after the deadline for filing appeals had passed. The appeal is dismissed as irreceivable.

Facts and procedure

2. On 30 April 2007, Ms. Umpleby, a staff member at the G-6 level with UNHCR

in Geneva, was informed that her post would be eliminated on 31 December 2007

following the relocation of services from Geneva to Budapest. In August 2007,

vacancies for several General Service posts in Geneva were advertised. On 8 October

2007, Ms. Umpleby was appointed to a G-6 post as an internal communication

assistant in the UNHCR Media Relations and Public Information Service in Geneva.

3. On 22 October 2007, the High Commissioner approved the “Guidelines for the

Implementation of the Comparative Review Process for General Service Staff at

Headquarters” and, on 23 November 2007, the staff were informed accordingly.

4. On 15 January 2008, the Comparative Review Panel (CRP), established in

accordance with the Guidelines, met to consider the status of 12 unplaced staff

members for 12 vacant posts. On 29 February 2008, the Deputy High Commissioner

approved the appointment of the 12 staff members to fill the 12 vacant posts. On 30

July 2008, Ms. Umpleby contested that decision before the Joint Appeals Board. The

Board concluded, in a report dated 21 April 2009, that the appeal was not receivable

on the grounds that the applicant's rights were not affected by the contested decision,

as she could not aspire to be assigned to any of the 12 posts in question. By a letter

dated 3 June 2009, the Deputy Secretary-General informed Ms. Umpleby that the

Secretary-General had decided to abide by the Joint Appeals Board's conclusions.

5. On 3 September 2009, Ms. Umpleby filed an application with the Dispute

Tribunal contesting the Deputy High Commissioner's decision of 29 February 2008.

That application was dismissed in the Dispute Tribunal's Judgment No. 2010/014 of

27 January 2010. The Dispute Tribunal found that paragraph 19 of the Appointments,

Postings and Promotions Committee (APPC) Procedural Regulations of June 2006

stipulated that only staff members who had served for a minimum of one year in their current post could apply for vacancies. Thus, as Ms. Umpleby had been appointed to her last post in October 2007, the impugned decision, which was taken on 29 February 2008, “could not have been prejudicial to the rights arising from her contract or from her terms of appointment ...” Ms. Umpleby was notified of the judgment in French by e-mail on 28 January 2010.

6. On 6 April 2010, Ms. Umpleby appealed against the Dispute Tribunal’s Judgment No. 2010/014. On 30 April 2010, she was notified by the registry of the Appeals Tribunal that her appeal had been filed late, as the 45-day deadline for filing appeals had started to run on 28 January 2010, the date when she had been notified of the judgment in the language in which the appeal had been submitted (French), and not on 22 February 2010, the date when she had received an English translation of the

judgment. Nonetheless, on 5 May 2010, counsel for Ms. Umpleby submitted a brief on the receivability of the appeal which was communicated on 14 May to counsel for the Secretary-General, who submitted a statement of defence on 28 June.

Submission from parties

Ms. Umpleby

7. In the present case, there is reason to believe that the deadline started to run only on 22 February 2010, the date when she received the judgment in English. As the judgment had been communicated to her in English without her requesting it, she had reason to believe that she could file an appeal in English, based on a new deadline. Communication of the judgment in English should be treated on the same footing as the notification thereof in French.

8. Ms. Umpleby informed the Dispute Tribunal of her intention to appeal once

she received the judgment in English. It was indicated to her that she had a deadline

of 45 days. Denying her the right to appeal would be highly prejudicial to her, as she

bears no responsibility for the confusion created by the communication of the English

version of the judgment. As the primary language of counsel for Ms. Umpleby is

English, counsel has the right to file an appeal in that language. Besides, that must

have been the reason for communicating the English version of the judgment to Ms.

Umpleby.

9. Alternatively, Ms. Umpleby prays the Appeals Tribunal to suspend or waive

the 45-day deadline using the powers conferred on it by article 7 of its Statute, owing

to the confusion created by the communication of the judgment in English.

10. The Dispute Tribunal erred in law by ruling that Ms. Umpleby's rights were not infringed, thereby disregarding the unequal treatment to which she was subjected.

She was excluded from the comparative review process, even though one of her

colleagues, who, like Ms. Umpleby, had occupied her post for less than one year, was

authorized to participate in the process and ended up obtaining a post with a higher

grade.

11. Ms. Umpleby prays the Appeals Tribunal to reverse the impugned decision and

to remand the case to the Dispute Tribunal for consideration of all her requests on

their merits.

Secretary-General

12. The appeal is not receivable *ratione temporis*. Ms. Umpleby was notified of the

contested judgment on 28 January 2010. She therefore had until 15 March 2010 to

file her appeal. She only submitted the appeal on 8 April 2010, 24 days after the deadline had passed.

13. Counsel for Ms. Umpleby claims that he was unaware that his client had been notified of the judgment in French on 28 January 2010. However, that is contradicted by the correspondence record. The contention that communication of the English translation of the judgment gave him reason to believe that that was the official communication is undermined not only by the practice of the Dispute Tribunal, but also by the wording used in the accompanying e-mail letter sent to Ms. Umpleby. The fact that the primary language of counsel for Ms. Umpleby is English is irrelevant when considering the application of the provisions relating to deadlines.

14. The Dispute Tribunal was right to conclude that Ms. Umpleby's application could not be allowed *ratione materiae*. In that case, it applied the APPC Procedural

Regulations and determined correctly that Ms. Umpleby could not aspire to be

assigned to any of the posts covered by the decision of 29 February 2008, as she had

held her last post since October 2007. Ms. Umpleby had no personal stake in that

process. Her application did not fall under the purview of article 2 of the UNDT

Statute.

15. The case of Ms. Umpleby's colleague was different. When staff members are in different circumstances, treating them differently does not violate the principle of equal treatment. Ms. Famy was appointed to a G-6 post as a replacement programme assistant in the Africa Bureau in September 2007. Her appointment was expected to end in April 2008. By the end of the APPC session in October 2007, Ms. Famy had not been selected for any post and she was therefore automatically included in the comparative review process.

16. Ms. Umpleby did not demonstrate that the Dispute Tribunal had committed errors which should be corrected by reversing the judgment and referring the case to this Tribunal.

Considerations

17. First of all, the Appeals Tribunal finds that oral submissions are not required for a rapid and equitable consideration of the case and therefore rejects Ms. Umpleby's request to that end.

18. The Appeals Tribunal recalls that article 7, paragraph 1, of its Statute, which must be read in conjunction with article 11, paragraph 5, of the Statute of the Dispute Tribunal, provides that a staff member's appeal shall not be receivable unless it is filed within 45 calendar days of the receipt of notification of the Dispute Tribunal's judgment written in the language in which the staff member submitted his or her

application to that Tribunal, or in one of the other official languages of the United

Nations if the staff member requests that the notification should be written in that

language.

19. The Appeals Tribunal notes that Ms. Umpleby submitted her appeal to the

Dispute Tribunal in French. She received notification of that Tribunal's judgment in

French by e-mail on 28 January 2010, along with a letter from the registrar which

clearly stated as follows:

Please note that, in accordance with article 11, paragraph 3, of the Statute of the

United Nations Dispute Tribunal, this judgment is subject to appeal before the

United Nations Appeals Tribunal. Pursuant to article 7, paragraph 1, of the Statute of

the Appeals Tribunal, the appeal must be filed within 45 calendar days of the receipt

of the judgment.

20. Nonetheless, Ms. Umpleby waited until 8 April 2010 to submit her appeal

against the judgment, after the deadline had passed.

21. Ms. Umpleby avers that the registry of the United Nations Dispute Tribunal

sent her, by e-mail on 22 February 2010, a copy of the judgment in English, even

though she had not requested it. She also says that the e-mail recalled that pursuant to

article 7, paragraph 1, of the Statute of the Appeals Tribunal, the appeal must be filed

within 45 days following the receipt of the judgment. This Tribunal finds,

nonetheless, that the e-mail, which mentioned that the copy of the English translation

of the judgment had been sent to her for her information only, could not mislead Ms.

Umpleby as to the starting point of the deadline, or create a legitimate expectation of

the right to submit an appeal in English, by an English-speaking counsel, where

applicable, based on a new deadline.

22. Under article 7, paragraph 3, of its Statute and article 7, paragraph 2, of its rules of procedure, the Appeals Tribunal may decide to suspend, waive or extend the deadline in exceptional cases. The Tribunal finds that the needless forwarding of an English copy to the applicant for her information does not constitute an exceptional case which would justify the extension of the deadline, considering the previous unambiguous communication of the original version of the judgment in French.

23. In the light of the foregoing, Ms. Umpleby's appeal was filed late and must therefore be dismissed.

Judgment

24. Ms. Umpleby's appeal is dismissed.

Done on this 29th day of October 2010 at New York, United States of

America.

Original and authoritative version: French

(Signed)

(Signed)

(Signed)

Judge Courtial, Presiding

Judge Painter

Judge Boyko

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

United States of America.

(Signed) Weicheng Lin, Registrar