



Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

SHAKIR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

None

Counsel for Respondent:

Adele Grant, ALU/OHRM, UN Secretariat

Introduction

1. In an appeal submitted on 31 March 2008 to the New York Joint Appeals Board (JAB) and transferred to the United Nations Dispute Tribunal (UNDT) as of 1 July 2009, the Applicant contests “the decision to not allow her to return to the [United Nations Assistance Mission for Iraq (UNAMI) in January 2007] despite [having] received an intention to renew her contract”. The alleged decision is linked to the non-renewal of her appointment beyond 28 February 2007.

Facts

2. On 24 June 2005, the Applicant joined UNAMI as a Political Affairs Officer at the P-3 level within the Political Affairs Office (PAO) under a six-month appointment of limited duration (under the 300 series of the former Staff Rules). Her contract was subsequently extended twice, from 24 December 2005 to 30 June 2006 and, thereafter, until 31 December 2006.

3. From 30 July 2006 to 23 August 2006 (half day), the Applicant was on occasional recuperation break (ORB) combined with annual leave. At the end of this period, she did not return to the Mission but informed her supervisor about her delayed return to duty due to family reasons.

4. At her request, from 23 August 2006 to 6 February 2007, the Applicant was granted special leave without pay (SLWOP). She stressed however that she expected to resume her work in January 2007.

5. In December 2006 and January 2007, the Applicant sent several e-mails to senior management in UNAMI in which she informed them of her availability to come back to the Mission as of January 2007.

6. Effective 1 January 2007, the Applicant’s contract was renewed until 28 February 2007.

7. By e-mail dated 23 January 2007, the Chief, Civilian Personnel Officer, UNAMI, informed the Applicant that her contract “[would] be extended until the end of February 2007 in order to enable [her] to return to the mission ... [and to] prepare for [her] repatriation”.

8. On 7 February 2007, the Applicant returned to UNAMI.

9. On 28 February 2007, the Applicant's contract expired and she was separated from service.

10. By letter dated 3 August 2007, the Applicant requested to the Secretary-General an administrative review of several actions linked to the non-renewal of her appointment of limited duration and requested his intervention to "[allow] her to return to work".

11. The Administrative Law Unit (ALU) of the UN Secretariat acknowledged to have received the Applicant's request for review on 2 October 2007.

12. On 31 January 2008, the Applicant received a letter dated 21 January 2008 from the Chief, ALU, in reply to her request for review. The request was considered as time-barred. Furthermore, the decision not to renew the Applicant's appointment was assessed as having been made in accordance with the applicable regulations, rules and administrative issuances.

13. On 31 March 2008, the New York JAB received the Applicant's appeal. The Respondent served his reply to this appeal on 3 June 2008, followed by the Applicant's comments thereon, dated 11 September 2008. In her comments, the Applicant dealt with the question of time bar of her request for administrative review. Among other things, she reported that her daughter had become gravely ill and that the Applicant herself had been hospitalized for several months. She referred to a "medical certification that supports the fact that both the Applicant and her daughter had medical emergencies". Therefore, she requested the JAB "to find that the Appellant's case is receivable". The Applicant also mentioned that she was "grateful to the members of the JAB for allowing her the additional month to file her comments on the Respondent's reply".

14. On 1 July 2009, the case was transferred from the New York JAB to the New York Registry of UNDT in accordance with the General Assembly resolution 63/253. The case was referred to the Geneva Registry of UNDT in November 2009.

15. By letter dated 3 February 2010, the Geneva Registry of UNDT acknowledged receipt of the Applicant's case. The parties were informed that according to former staff rule 111.2 (a) (i), the Applicant only had one month as of the receipt of the Secretary-General's reply to submit an appeal to the JAB. It

was announced that, accordingly, the Judge in charge of its examination intended to decide on the case by summary judgment under article 9 of the rules of procedure of the UNDT (UNDT RoP). The parties were requested to submit their comments by 10 February 2010.

16. On 6 February 2010, the Applicant replied to the Tribunal's request stating *inter alia* that "[her] reply to the JAB was extended because [she] had had an accident few days before submitting her reply". She added that "[she had] provided a report from the hospital [which was] in [her] file". By letter dated 10 February 2010, the Respondent submitted his comments claiming that the "case is non-receivable *ratione temporis*".

Considerations

17. According to article 9 of the UNDT RoP, which are based on article 7.2 of the UNDT statute, the Tribunal may determine that summary judgment is appropriate. This may usually happen when there is no dispute as to the material facts and judgment is restricted to a matter of law. It may be even more appropriate for issues related to the receivability of an application. The crucial question in this case – whether the application is time-barred – is such a matter of law.

18. The Tribunal notes that since the alleged decision dates back to 2007 and the appeals procedure was initiated under the previous internal justice system, the relevant provisions to assess the receivability of the present application are contained in former staff rule 111.2 (a) and (f).

19. Former staff rule 111.2 (a) provided that:

“A staff member wishing to appeal an administrative decision ... shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing.

- (i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply...”

20. Former staff rule 111.2 (f) read:

“An appeal shall not be receivable unless the time limits specified in paragraph (a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal.”

21. According to the record, ALU replied by letter dated 21 January 2008, which was received by the Applicant on 31 January 2008, as indicated in her statement of appeal. Hence, according to the time limits quoted above the Applicant had until 29 February 2008 to submit her appeal. It is thus clear that the Applicant’s appeal, which was received by the New York JAB on 31 March 2008, was late.

22. In the case at hand, no exceptional circumstances within the meaning of former staff rule 111.2 (f) existed, which may justify a waiver of the time limits for the submission of the statement of appeal to the JAB.

23. The Tribunal applies the definition provided by the former United Nations Administrative Tribunal (UNAT), according to which “exceptional circumstances” for the purpose of former staff rule 111.2 (f) are circumstances which are “beyond the control of the Applicant” (see judgement No. 372, *Kayigamba* (1986), and, generally, judgement No. 913, *Midaja* (1999) and judgement No. 1054, *Obuyu* (2002)). The Tribunal also recalls its recent jurisprudence which states that “[t]his definition rightly refers to the Appellant’s capacity to comply with the time limits. Whether circumstances are within or beyond the control of the Applicant should be assessed against individual standards... Since it is in the Applicant’s interest to obtain a suspension, waiver or extension of time limits, the burden of proof is on the Applicant” (see UNDT/2010/019, *Samardzic et al.*)

24. In this regard, it must be noted that the Applicant claims exceptional circumstances to waive the time limits applicable to her request for review dated 3 August 2007. This question may be left open. This is also the case with respect to the Applicant’s statement dated 6 February 2010 in which she argues that “[her] reply to the JAB was extended because [she] had an accident few days before submitting her reply”. This “reply” (i.e. comments on the Respondent’s reply) was received on 11 September 2008. The only crucial question is whether there were exceptional circumstances justifying not submitting her statement of appeal to the

JAB, received on 31 March 2008, within the one-month time limit provided for in former staff rule 111.2 (a) (i). The Applicant does not offer any explanation in this respect.

Conclusion

25. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 12th day of February 2010

Entered in the Register on this 12th day of February 2010

(Signed)

Víctor Rodríguez, Registrar, Geneva