



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/20/
UNAT/1647
Judgment No.: UNDT/2010/167
Date: 23 September 2010
Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

JOSE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for applicant:

Antonio Bautista

Counsel for respondent:

Emily Langston, ALS/OHRM, UN Secretariat.

Introduction

1. The applicant joined the United Nations Operation in Mozambique on a three-month fixed-term appointment, at the P-2 level, on 1 March 1993. She continued to serve on a series of fixed-term appointments with various missions until 31 December 1995. Effective 1 September 1995, she was promoted to the P-3 level and served under the 300 Series of the Staff Rules, on a number of Appointments of Limited Duration (ALDs).

2. On 13 March 2003, while serving with the United Nations Mission in the Democratic Republic of Congo (MONUC), the applicant was advised that her appointment would be completed on 31 March 2003 upon expiration of her contract. On 24 March 2003, the applicant's contract was extended to 20 April 2003, pending the completion of her performance appraisal.

3. On 8 April 2003, the applicant requested the Under-Secretary-General, Office of Internal Oversight Services ("USG/OIOS"), inter alia, to initiate an investigation into the reasons for the non-renewal of her appointment. On 15 April 2003 the USG, OIOS confirmed the decision. The applicant was separated from the Organization effective 20 April 2003.

4. On 13 May 2003, the applicant replied to the USG, OIOS, requesting reconsideration of the decision not to renew her ALD. On 21 May 2003, the Executive Officer, OIOS, replied that there were no grounds for making any changes to the decision not to renew the applicant's ALD.

5. On 18 June 2003, the applicant requested administrative review of the decision not to renew her contract. On 27 August 2003, the Administrative Law Unit of the Office of Human Resources Management of the Secretariat transmitted to the applicant its review of the decision not to renew her contract.

6. On 25 August 2003 the applicant filed an incomplete Statement of Appeal with the Joint Appeals Board (JAB). On 28 August 2003, the Secretary

of the JAB informed the applicant's counsel that pursuant to Rule III.E of the JAB Rules of Procedure and Guidelines, a complete Statement of Appeal must be submitted within one month, in the absence of which, the appeal would be deemed abandoned and removed from the calendar. In August of 2003, the applicant acknowledged receipt of this letter.

7. On 24 September 2003, the applicant requested the JAB to grant her an extension of time for the filing of her complete Statement of Appeal, which was granted.

8. On 2 March 2007, the applicant filed a complete Statement of Appeal. The respondent submitted a reply on 28 March 2007, limited to the issue of receivability, while reserving a right to reply on the merits.

9. On 25 September 2007, the JAB submitted its report to the Secretary-General. The Panel concluded that the appeal to the JAB was not receivable because the applicant did not submit a complete statement of appeal within a reasonable time frame. The Panel further found that the applicant did not substantiate her claim that exceptional circumstances existed which justified a waiver of the time limits.

10. On 14 November 2007, the Deputy Secretary-General transmitted a copy of the JAB Report to the applicant, informing her that the Secretary-General agreed with the findings and conclusions of the JAB and had decided to take no further action on the matter.

11. On 12 November 2008, the applicant filed her Application to the former UN Administrative Tribunal against the Secretary-General's decision of 14 November 2007. The Respondent received the Application on 12 December 2008. On 4 February 2010 the case was transferred to the United Nations Dispute Tribunal.

12. On 27 May 2010, the Tribunal issued Order No. 095 (UNDT/2010) in which the parties were advised to file their written submissions on the question of waiver of time limits by or before, 30 June 2010. The applicant and the respondent filed the said submissions on 24 and 30 June 2010 respectively.

Applicant's Submissions

13. The applicant submits the following as the exceptional reasons justifying a waiver of the time limits in her case:

a. The JAB had granted her an open-ended extension for the filing of the complete Statement of Appeal. The applicant, had all along in good faith, relied on the integrity and validity of that extension. The JAB prior to its decision had not informed/written to the applicant that the case was deemed abandoned due to passage of time.

b. The JAB could not decide arbitrarily that the case had been abandoned considering that the applicant has been always in contact with the JAB Secretary and the Panel of Counsel and therefore the respondent's contention that she had waited for three years and 5 months to file her complete Statement of Appeal was not correct.

c. The exceptional circumstance justifying a waiver of time limits was the denial of entry into the United States as evidenced by a letter from the U.S. Authorities dated 14 July 2003 and her letter to the U.S. Authorities dated 20 August 2003.

Respondent's Submissions

14. The respondent's submissions on the question of waiver of time limits are:

a. The applicant received notification of the Secretary-General's decision accepting the findings of the JAB on 14 November 2007, and a Corrigendum to the report on 10 June 2008. The applicant was therefore

required to file her Application with the former UN Administrative Tribunal by 12 February 2008. Even assuming that time started running from the date of the issuance of the Corrigendum, the applicant was required to file her Application with the former UN Administrative Tribunal by 8 September 2008. However, the applicant did not file the present Application until 12 November 2008, more than two months beyond the deadline.

c. No submissions were made by applicant to the effect that her personal situation prevented her from filing the Application of 12 November 2008 to the former UN Administrative Tribunal within the time limits set out in Article 7(4) of the former UN Administrative Tribunal Statute. The respondent also submits that, on the basis of the information before it, there is no record of the applicant having requested or having been granted an extension of time to submit her Application to the former UN Administrative Tribunal. Accordingly, the respondent submits that the applicant has not demonstrated the existence of an “exceptional case” which would warrant the waiver of the said time limits for filing the Application pursuant to Article 8(3) of the Statute of the Dispute Tribunal.

d. In light of the foregoing, the respondent submits that the present Application is time barred and not receivable and that waiver of the time limits is not warranted.

Judgment

15. In UNDT Judgment No. 037, *Sethia* (2010), the Tribunal set out the applicable law in determining whether the time limits imposed by the Statute of the Dispute Tribunal will be waived. In the present case, having considered the applicant’s submissions, the Tribunal finds that they do not satisfy the requirement of “exceptional” in Article 8.3 of the Statute of the Dispute Tribunal. The applicant’s physical presence was not required in the U.S. for her to file her Application. She

should have filed her application electronically. Having found the Application to be time-barred, the Tribunal rejects the Application in its entirety.

(Signed)

Judge Nkemdilim Izuako

Dated this 23rd day of September 2010

Entered in the Register on this 23rd day of September 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi