



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

REID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for applicant:

Self Represented

Counsel for respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant filed this Application on 7 December 2011, alleging breach of contract and discrimination, following his application for the position of Chief of Staff (07-POL-PMSS-415519-R-MULTIPLE D/S) with the United Nations Mission in the Central African Republic and Chad (MINURCAT), which he was told he was selected for but was never issued a letter of appointment. The Applicant submits that, following several queries on the cause of the letter being held up, he came to find out that the position was being offered to a female candidate who was also a friend of the Special Representative to the Secretary-General (SRSG) of the Mission.

2. The Applicant became aware of the decision on or around 29 February 2008. The Applicant received no written communication of the decision to not appoint him, or that the post has been filled.

3. The Applicant sought management evaluation of the impugned decision on 26 July 2011. The Management Evaluation Unit issued its decision on 8 September 2011, dismissing the request for management evaluation as time-barred.

4. The Respondent filed his Reply to the Application on 16 January 2012, which includes a motion for this Application to be dismissed on grounds of receivability.

5. Having reviewed the submissions of the Parties, the Tribunal considers it necessary to first rule on whether the present Application is receivable before adjudicating the matter on the merits.

Parties' Submissions

6. The Applicant submits that as he never received written notice of the decision to not appoint him, the case of *Schook*¹ applies to him.

7. The Respondent submits that the Applicant must fail on grounds of receivability, because the Applicant failed to submit his Application within sixty days of being notified of the impugned decision *per* staff rule 11.2 (c). The Respondent points out that the new rule replaced former staff rule 111.2 under which time (60 days) began to run from the date of receipt of the impugned decision in writing.

8. The Respondent contends that the Applicant's reliance on *Schook* is misplaced and distinguishable because the Applicant in that case filed his request for administrative review under the *old* staff rules. The Applicant's case falls under the ambit of the new rule.

9. The Respondent cites Article 8(4) of the Statute of the Tribunal and the case of *Zewdu* in support of his argument.²

Deliberations

10. The question before the Tribunal is not whether this complaint was filed timeously before the Management Evaluation Unit. It is whether the Application before the Tribunal complies with the timelines enshrined in the Statute and Rules of the Tribunal.

11. The threshold for receivability before this Tribunal is governed by Articles 7 and 35 of the Rules of Procedure. Article 7 (1) provides:

Applications shall be submitted to the Dispute Tribunal through the Registrar within:

¹ 2010-UNAT-013.

² UNDT/2011/043.

- (a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;
- (b) 90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or
- (c) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

12. This provision must be read together with Article 8 of the Statute of the Dispute Tribunal. Article 8, in relevant part, provides

3. The 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. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding paragraph 3 of the present article, an application **shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.**

13. In the present case, the Applicant first became aware that something was amiss in the recruitment process on 29 February 2008 when he was told that a “hold had been put on” the issuance of his letter of appointment by the SRSG. Subsequently, the Applicant was aware of the decision to appoint another candidate to the post in question in June 2008. Still later, *circa* April 2009, and from the Applicant's own submissions, while in New York, he received what he called a “verbal apology” (for the way things turned out) from the Assistant Secretary-General (ASG) for Peacekeeping Operations, Mr Edmond Mulet.

14. The Tribunal notes that any one of these ‘events’ would have been a suitable time for the Applicant to seek administrative review of the selection decision. He did not.

15. In *Zewdu*, the Tribunal opined on the concept of statutes of limitations and receivability thus:

Generally, for the statute of limitations to commence, time runs from the earliest time that legal action could have been brought. Every fact required to commence an action must be in existence before time begins to run. Applicants have a duty to pursue their causes of action promptly. Delay can cause considerable uncertainty and inconvenience not only for the Respondent but for third parties as well.

16. The principle being thus espoused, the Tribunal finds that the earliest the Applicant could and should have sought administrative review was in March of 2008. Properly, the Applicant could have sought a review of the selection exercise decision when he became aware that a candidate had been appointed despite notice having been given to him that he was the selected candidate. And at the very latest, the Applicant could have sought review of the process when he had the conversation with the ASG for Peacekeeping Operations and other colleagues in New York in April 2009.

17. Instead, the Applicant chose to wait until 2011 before raising the matter first with the Secretary-General and then the Tribunal.

18. While timelines before the Tribunal normally begin to run from the date of receipt of a decision by management evaluation or the expiry of the time allocated to the Management Evaluation Unit to respond i.e. ninety (90) days from the date of the receipt of a management evaluation decision or ninety days following the expiry of the thirty (30) or forty-five (45) day (depending on where the complaint was filed) deadline.

19. But Article 7(1) (a) and (b) of the Rules must be read together with Article 8(3) and (4) which prohibits the Tribunal from considering any application that is brought to it three (3) years after the issuance of the administrative decision that a potential applicant is seeking to challenge.

20. In otherwise, the discretion afforded to the Tribunal by Article 8(3) of the Statute and Article 35 of the Rules *must* be read together with Article 8(4) of the Statute. The use of the words “notwithstanding” and “shall” in the latter Article leaves little room for interpretation on the spirit and intent of that provision.

21. While some exceptions on the strictures of the applicable statutes of limitations have been granted by the Dispute Tribunal, these have been granted under very exceptional circumstances and the Tribunal has always explained those circumstances.

22. The principles of ‘interest of justice’ and ‘exceptional circumstances’ which govern the application of Articles 35 and 8(3) of the Rules and Statute respectively must be applied against recognized and recognizable principles to avoid mystery as to where the law stands.

23. Assuming the Applicant was to challenge the ‘decision’ following the conversation with colleagues at the Department of Peacekeeping Operations (DPKO) in New York, the Tribunal finds no exceptional circumstance or particular interest of justice that will be served by the Tribunal exercising its discretion in favour of the Applicant.

24. Alternatively, three years from June 2008 expired in June of 2011. The Applicant in the present case came more than three years after a definitive and identifiable administrative decision on the selection process was made.

25. The Tribunal has examined the papers in this matter from as many angles as has been raised by the Parties, and finds that this matter is properly time-barred.

26. The Tribunal therefore lacks the jurisdiction to continue adjudicating this matter.

27. The Application is **DISMISSED**.

(Signed)

Judge Vinod Boolell

Dated this 3rd day of December 2012

Entered in the Register on this 3rd day of December 2012

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi