



Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

NDOUR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Elisabeth Brown, UNHCR

Introduction

1. The Applicant joined the United Nations High Commissioner for Refugees (UNHCR) in October 1992 as a Programme Officer in Kinshasa DRC at an L2 level. After several promotions and appointments, in 2000 she was appointed as Senior Desk Officer at the P4 level and obtained an indefinite appointment. From 2002 to 2006, the Applicant was the Head of Field Office at various duty stations in Freetown, Geneva, Kimpese DRC, Bamako and Dakar. In March 2006, she was appointed as Head of Field Office in Saclepea, Liberia, a post which was upgraded to the P5 level in November 2007. In December 2009, the Applicant was appointed to the post of Deputy Regional Representative in Kinshasa DRC at a P5 level.

2. On 22 March 2011, she filed an Application before the UNDT challenging the decision, taken on 26 July 2010 by the Director, Division of Human Resources Management (DHRM), to reprimand her for: (a) at least one incident in which she verbally abused a staff member, (b) creating an extremely tense working environment in the Sub-Office Saclepea and (c) creating an atmosphere of fear among the staff caused by her management style.

Facts

3. On 5 May 2008, the Inspector General's Office (IGO) received a complaint implicating the Applicant, then Head of Field Office in Saclepea, Liberia, for possible misconduct.

4. On 6 and 19 November 2008, the IGO conducted a preliminary investigation and interviewed the Applicant.

5. On 29 January 2010, the IGO issued a Preliminary Investigation Report containing allegations of harassment and abuse of authority which was sent to DHRM on 12 February 2010.

6. On 22 March 2010, a charge letter was issued to the Applicant inviting her to answer the allegations, which she did on 21 May 2010.

7. By letter dated 26 July 2010, the Director, DRHM, closed the disciplinary proceedings against the Applicant. At the same time, he issued a letter of reprimand in accordance with staff rule 10.2(b)(i).

8. On 15 October 2010, the Applicant submitted a request for management evaluation of the decision. The Applicant received an answer on 21 December 2010.

9. On 22 March 2011, the Applicant submitted an Application before the UNDT Registry in Geneva. The Application was transferred to the Nairobi Registry on 30 March 2011.

10. In her Application, the Applicant prays for: (a) cancellation of the reprimand, (b) sanctions against colleagues who provided information to the IGO, (c) sanctions against the IGO for being biased, (d) that her Performance Appraisal Report from June 2007 to December 2008 be revised, (e) financial compensation for moral damages and (f) a letter of apology.

11. In a Reply dated 29 April 2011, the Respondent asserted that the Application was time-barred because it was filed out of time. The Respondent averred that the Applicant submitted her request for management evaluation on 15 October 2010 and received a response from the Management Evaluation Unit on 21 December 2010. Hence, pursuant to staff rule 11.4(a), the statutory 90 calendar day time-limit to submit an Application expired on 21 March 2011. As such, the Application had to be filed on 21 March 2011 but was filed on 22 March 2011. Therefore, the Application is not receivable.

12. On 3 October 2013, the Tribunal issued Order No. 220 (NBI/2013) requesting that the Applicant submit to the Nairobi Registry no later than 10 October 2013: (a) comments on the Respondent's Reply on Receivability and (b) documentary evidence

of the date and time of submission of her Application to the UNDT in Geneva in March 2011.

13. Having noted that the Applicant had not complied with the instructions set out in Order No. 220, the Tribunal issued Order No. 246 instructing the Applicant to comply with Order No. 220. On 8 November 2013, the Applicant complied.

Considerations

14. The only issue that the Tribunal has to consider in the present judgment is whether the Application is receivable *ratione temporis*.

15. Pursuant to article 7.1(a) of the UNDT Rules of Procedure, applications should be submitted to the Tribunal within 90 calendar days of the receipt by the applicant of the management evaluation.

16. This provision should be read together with article 8.1(d)(i)(a) of the Tribunal's Statute which, in relevant part, states that, in cases where a management evaluation of the contested decision is required, an application shall be receivable if it is filed within 90 calendar days of the applicant's receipt of the response by management to his or her submission.

17. Further, pursuant to staff rule 11.4(a), a staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation with the United Nations Dispute Tribunal, within 90 calendar days from the date on which the staff member received the outcome of the management evaluation.

18. In the present matter, the Tribunal notes that the Applicant submitted her request for management evaluation on 15 October 2010 and received a response from the Management Evaluation Unit on 21 December 2010. The applicant had 90 calendar days from the receipt of the response of the Management Evaluation response to file her application with the Registry of the Tribunal. The starting date for

the computation of the time limit would on strict and literal reading of article 7.1(a) of the Rules of Procedure and article 8.1(d)(i) of the Statute would be 21 December 2010.

19. However this should not be the case as specific provision is made in art. 34 of the Tribunal's Rules of Procedure on the manner in which time should be calculated:

Calculation of time limits

The time limits prescribed in the rules of procedure:

- (a) Refer to calendar days and shall not include the day of the event from which the period runs;
- (b) Shall include the next working day of the Registry when the last day of the period is not a working day;
- (c) Shall be deemed to have been met if the documents in question were dispatched by reasonable means on the last day of the period.

20. In computing the time within which the Applicant should have filed her Application the date 21 December 2010 should not be counted in view of the clear provisions of article 34 of the Rules of Procedure. The day of the event would be the day on which the response from MEU was received by the Applicant and should be ignored for the purposes of computing the time limit. The 90 day period should therefore start running from 22 December 2010. The Applicant should therefore have filed her Application at latest on 21 March 2011 but it was filed on 22 March. The Applicant is consequently and obviously outside the required time limit by one calendar day.

21. Regarding the time limit for filing, the United Nations Appeals Tribunal stated:

This Tribunal has repeatedly and consistently strictly enforced the time limits for filing applications and appeals. Strict adherence to filing deadlines assures one of the goals of our new system of administration of justice: the timely hearing of cases and rendering of judgments.¹

¹ *Cooke* 2012-UNAT-275 referring to *Mezoui* 2010-UNAT-043 and *Tadonki* 2010-UNAT-005.

Conclusion

22. In the light of the above quoted legal provisions, the Application is not receivable *ratione temporis*.

Decision

23. In view of the foregoing, the Tribunal dismisses the Application.

(Signed)

Judge Vinod Boolell

Dated this day of 22nd November 2013

Entered in the Register on this 22nd day of November 2013

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi