



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ABOU HAMIA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT
ON RECEIVABILITY**

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, ALS/OHRM, UN Secretariat
Nusrat Chagtai, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a former Economic Affairs Officer at the P-4 level. He was employed with the United Nations Department of Economics and Social Affairs (DESA) in Riyadh, Saudi Arabia, on a fixed-term appointment.

2. The Applicant filed an application with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi on 28 June 2017 contesting the decision to place him on unpaid leave since July 2016.

3. The Respondent filed a reply to the application on 10 August 2017 in which he asserted, *inter alia*, that the application is not receivable *ratione materiae*.

4. Pursuant to art. 16.1 of the UNDT Rules of Procedure, the Dispute Tribunal has discretionary authority as to whether to hold an oral hearing. Additionally, art. 19 of the Rules of Procedure provides that the Tribunal may at any time issue any order or give any direction which appears to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

5. In the present matter, the Tribunal has concluded that the issues before it can be determined based on the parties' pleadings and supporting documentation. Hence, an oral hearing is not necessary.

Facts

6. On 1 February 2015, the Applicant joined DESA on a fixed-term appointment for one year at the P-4 level, step I, in Riyadh, Saudi Arabia.

7. On 1 February 2016, the Applicant's appointment was extended for another year until 31 January 2017.

8. On 23 June 2016, the Applicant was reportedly involved in a physical assault with another party at King Khaled International Airport in Riyadh, Saudi Arabia. At the time of the incident, the Applicant and the other party were both passengers en route to Beirut, Lebanon.

9. A Saudi police officer had arrived at the scene and offered the two parties an opportunity to reconcile in accordance with Saudi law since the incident did not lead to any severe injuries. The Applicant refused reconciliation. When a DESA Security Advisor who was dispatched to the airport due to the incident arrived, at the Applicant's insistence, the Saudi Bureau of Investigation and Prosecution opened a criminal investigation into the incident. The Applicant gave a statement to the authorities and was thereafter allowed to continue his journey to Lebanon the next day.

10. On 5 July 2016, the Applicant wrote to the Respondent claiming that his immunity may not be recognized by the Saudi Authorities because his visa was not stamped in his United Nations Laissez-Passer (UNLP).

11. Between 5 July 2016 until 26 July 2016, the Applicant exchanged emails with DESA regarding his diplomatic status and immunities in light of the ongoing investigation into the altercation he had with the other passenger on 23 June 2016.

12. The Applicant was subsequently placed on Special Leave Without Pay (SLWOP) effective 5 August 2016. The information regarding his placement on SLWOP was conveyed to him on 9 August 2016. In the same communication, the Respondent offered the Applicant three options: (a) the Applicant request leave without pay to be extended for a limited period for personal reasons (b) the Applicant return to his duty station and assume his functions fully aware of the ongoing investigation by the Saudi Authorities and (c) the Applicant seek an agreement terminating his contract. The Respondent also informed the Applicant that he had ten working days within which to reply otherwise he would be deemed to have abandoned his post under ST/AI/400 (Abandonment of Post) and ST/AI/2005/5 (Abandonment of Post, amending AI ST/AI/400).

13. On 22 August 2016, the Applicant who had still not returned to his duty station wrote to the Respondent complaining about his visa status and his inability to take advantage of his diplomatic status in Saudi Arabia. He also complained about religious intolerance in the country and the working conditions, which included not having a First Reporting Officer (FRO) and requested that he be allowed to work remotely from Beirut.

14. In an email to the Applicant on 17 September 2016, the Respondent reiterated that the Applicant had been placed on SLWOP and that since the project in which he was engaged was to terminate in May 2017, his contract would not be renewed upon its expiry in January 2017.

15. On 23 December 2016, the Respondent informed the Applicant that the project was being closed and that his contract would not be renewed and that the incident on 23 June 2016 did not entitle him to any privileges and immunities because he was not acting in his official capacity as a United Nations staff member when he had the altercation with the other passenger.

16. On 30 January 2017, the Applicant approached the Office of Staff Legal Assistance (OSLA) for legal representation but was not successful as OSLA would not take up the brief.

17. On 8 February 2017, the Applicant requested management evaluation of his placement on SLWOP from July 2016 and the non-renewal of his appointment beyond 31 January 2017.

18. On 29 March 2017, the Management Evaluation Unit (MEU) wrote back to the Applicant upholding the contested decisions.

19. On 27 June 2017, the Applicant filed a Motion for Intervention in which he sought an extension on the timelines by the Tribunal.

Receivability

Respondent's case

20. It is the Respondent's case that the application is not receivable *ratione materiae* because the Applicant failed to seek management evaluation in time.

21. The Respondent argued that the Applicant acknowledged that he was first informed of the contested decision on 9 August 2016 and thus, the time to request management evaluation started to run from the said date. The Applicant requested management evaluation on 8 February 2017. The Respondent submitted that the

request was four months late and that the Applicant's repeated appeals to reconsider the contested decision did not extend the deadline.

22. It is also the Respondent's case that the Applicant's complaints regarding his reporting officers, work plan and webmail were not the subject of management evaluation and hence, are not receivable.

Applicant's case

23. The Applicant contests the decision to place him on unpaid leave since July 2016.

24. The Applicant admits that he first came to know of the contested decision on 9 August 2016.

25. The Applicant filed a Motion for Intervention with the Tribunal on 27 June 2017, in which he prayed that the Tribunal issue orders which would allow him to reset the time to request management evaluation if the Tribunal found that he requested management evaluation out of time.

26. It is also the Applicant's case that he relied on the Respondent's promise of 17 September 2016 to revert to him. According to the Applicant, the Respondent did not revert as promised until the expiry of the period in which he ought to have sought management evaluation.

Considerations

27. Was the contested administrative decision conclusively made and communicated to the Applicant on 9 August 2016?

28. On 9 August 2016, the Respondent informed the Applicant that due to his absence from work for personal reasons, he would be placed on SL WOP and the fact that he had exhausted his annual leave and uncertified sick leave meant that his August salary would be withheld.

29. On 17 September 2016, the Respondent again informed the Applicant that his placement on SLWOP took effect on 5 August 2016. The Respondent also

informed the Applicant that the project which he was engaged in would come to an end in May 2017 and his contract would not be extended beyond its expiry in January 2017.

30. On 23 December 2016, the Respondent informed the Applicant about the closure of the project in Saudi Arabia and that his contract would not be renewed in view of the closure of that project.

31. The Tribunal has judiciously examined all the correspondence between the parties and is not persuaded by the Applicant's arguments that the decision to place him on SLWOP was communicated to him on two different dates, namely: 9 August 2016 and 17 September 2016.

32. In the prevailing circumstances, the Tribunal finds and holds that from the Applicant's own admission, the contested administrative decision was conclusively made and communicated to him on 9 August 2016.

33. In view of the Tribunal's findings, the question to be settled is whether the Applicant sought management evaluation in time.

34. Pursuant to art. 8.1(i)(c) of the UNDT Statute and staff rule 11.2(c), for an application to be receivable, the Applicant must first request management evaluation of the contested decision and the said request for management evaluation must be made within specified timelines.

35. In *Kouadio* 2015-UNAT-558, the United Nations Appeals Tribunal (the Appeals Tribunal) held that it is "settled law that requesting management evaluation is a mandatory first step in the appeals process".

36. It is also settled law that the time limit of 60 days for requesting management evaluation begins to run from the date of notification of the decision being challenged. The Tribunal does not have power to waive the deadlines for the filing of requests for management evaluation or to make any exception to it (*Barned* 2011-UNAT-169; *Muratore* 2012-UNAT-191; *Christensen* 2013-UNAT-335).

37. Under art. 2.4 of the UNDT Statute and arts. 22 and 23 of the Tribunal's Rules of Procedure, only a person who is not a party to a case but whose interests maybe affected by the outcome, may seek to intervene. The Applicant's Motion for Intervention of 27 June 2017 is misguided. The Applicant cannot bring a Motion for Intervention in his own case or ask the Tribunal to reset the time limits for management evaluation.

38. In the present case, the contested administrative decision was communicated to the Applicant on 9 August 2016. In the circumstances, the Applicant had 60 days thereafter to request management evaluation. In other words, the Applicant had until 8 October 2016 to submit a management evaluation request. From the record, the Applicant requested management evaluation on 8 February 2017 and therefore did so out of time.

39. It follows that the Applicant's claim is not receivable, and that the Tribunal does not have jurisdiction to consider the respective contentions of the parties on the merits of the case.

Judgment

40. It is the judgment of the Tribunal that the Applicant's claim is not receivable.

(Signed)

Judge Nkemdilim Izuako

Dated this 13th day of September 2017

Entered in the Register on this 13th day of September 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi