



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MBALI SAGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
AAS/ALD/OHR

Introduction and Procedural History

1. The Applicant is a former staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He served on a fixed term appointment, as a Property Management Assistant, at the GL3 level and was based in Lumumbashi.

2. On 30 August 2019, the Applicant filed an application with the United Nations Dispute Tribunal in Nairobi challenging the Respondent's decision to separate him from service of the United Nations on grounds of abolition of post. The Applicant submits that the abolition of posts went contrary to General Assembly resolution 2463. He requests compensation as well as the payment of his salary for the month of June 2019 and his severance dues.

3. The Application was served on the Respondent on 3 September 2019.

4. On 13 September 2019, the Respondent moved for the application to be dismissed as not receivable.

Considerations

5. The impugned decision on separation from service is not receivable.

6. In accordance with art. 8 of the Statute of the United Nations Dispute Tribunal, an application is receivable if an applicant has previously submitted the contested administrative decision for management evaluation, where required. Absent a request for management evaluation, the Tribunal may not consider the merits of the case. Concurrently, staff rule 11.2(c) stipulates that:

[a] request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by

the Office of the Ombudsman, under conditions specified by the Secretary-General.

7. Decision on non-extension of a fixed-term appointment and separation on this ground is not exempt from the requirement of seeking management evaluation.

8. The relevant administrative decision triggering the time limits for the Applicant to request management evaluation was a communication of 2 April 2019 whereby the Applicant was informed that, in anticipation of the General Assembly's approval of the abolition of MONUSCO posts, his fixed-term appointment would not be renewed beyond 30 June 2019.¹ The same was reiterated on 29 May 2019.²

9. The Applicant requested management evaluation of the impugned decision on 9 August 2019, thus beyond the prescribed 60-day limit. The Management Evaluation Unit (MEU) issued its decision on 14 August 2019. MEU found the Applicant's request for review to be time-barred and therefore not receivable. The MEU further found that as the Applicant did not submit the Respondent's decision "denying payment of [his] June salary," this element of his request for review was also not receivable.

10. The Tribunal recalls that although staff rule 11.2 and art. 8 of UNDT Statute require only requesting management evaluation and not actually obtaining it, it must be understood that the obligation to "submit the contested administrative decision for management evaluation" means submitting it effectively, so as to enable a response on the merits. The rationale enunciated by the Appeals Tribunal in the case of premature applications applies here as well³: management evaluation provides the Administration an opportunity to correct any errors in an administrative decision and resolve disputes without the necessity to involve judicial review; moreover, provides for the applicant an opportunity to consider reasons on the part of the Administration prior to drafting and filing of the application and in this way fosters rationality and completeness of the

¹ Reply, annex 1.

² Application, annex 2.

³ *Kouadio* 2015-UNAT-558 para 17; *Amany* 2015-UNAT-521, para. 17; *Nagayoshi* 2015-UNAT-498 para 36; *Mosha* 2014-UNAT-446, para. 17; *Christensen* 2013-UNAT-335, para. 2.; *Pirnea* 2013-UNAT-311 para 42.; *Neault* 2013-UNAT-345 at para. 34.

argument before the Tribunal. Where the management evaluation was requested late, the result is as if it were not requested at all.

11. It is settled law that there is no power to waive the deadlines for requesting management evaluation.⁴ Accordingly, the present claim is not receivable because of the Applicant's failure to request management evaluation in good time.

12. The Tribunal, moreover, considers that no claim for unpaid separation entitlements has been effectively put before it, as the application does not relate to any administrative decision taken in this regard. Given that the usual time for processing the separation entitlements is several weeks and given that massive reduction of staff faced by the MONUSCO administration might be responsible for delays, the Tribunal assumes that at the date of the filing of the application a decision on the Applicant's separation entitlements had not yet been taken. This Judgment, in any event, does not debar raising the issue of separation entitlements once an express or implicit decision on this matter is identified and put before the Tribunal.

Judgment

13. The application is not receivable and is dismissed in its entirety.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 17th day of September 2019

Entered in the Register on this 17th day of September 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁴ See *Costa* 2010-UNAT-036; *Trajanovska* 2010-UNAT-074; *Sethia* 2010-UNAT-079; *Ajdini et. al.* 2011-UNAT-108.