



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ABU AMRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Aleksandra Jurkiewicz, OSLA

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Rosangela Adamo, AAS/ALD/OHR, UN Secretariat

INTRODUCTION AND PROCEDURAL HISTORY

1. The Applicant is a former staff member of the United Nations Assistance Mission for Iraq (UNAMI). He filed an incomplete application with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi on 21 June 2019, which was completed on 24 July 2019.

2. When asked to provide details of the contested decision at page 2 of the application, the Applicant describes the decision he is challenging as “the failure of the Administration to undertake its obligation to assist [him] in finding an alternative position following the decision to abolish his post and terminate his appointment.” However, in his explanatory brief that forms part of his application, he explains that he is contesting “the decision of the Administration to terminate his continuing appointment following the abolition of his post, without having made good faith efforts to assist him in finding an alternative position or in undertaking a comparative review exercise.”

3. The Respondent filed a motion on 26 August 2019 requesting that the Tribunal determine receivability as a preliminary matter.

4. The Tribunal has decided, in accordance with art. 16.1 of the Tribunal’s Rules of Procedure, that an oral hearing is not required in determining the issue of receivability and will rely on the parties’ pleadings.

FACTS

5. The Applicant was serving with UNAMI on a continuing appointment as an Administrative Assistant at the FS-5 level when he was separated from service on 31 December 2018.¹

6. The Applicant was notified on 5 August 2018 that his continuing appointment would be terminated as of 31 December 2018 due to the nationalisation of his post. On

¹ Application, annex A.

6 August 2018, UNAMI requested the Applicant's updated Personal History Profile (PHP) for uploading into COSMOS. The Applicant complied.²

7. By memorandum dated 26 November 2018, the Chief of Unit of the Kuwait Joint Support Office notified the Applicant of the administrative procedures necessary for his check-out on 31 December 2018.³

8. On 26 January 2019, the Applicant emailed the Management Evaluation Unit (MEU) seeking advice and information on two posts he had applied for, Job Openings (JOs) 108789 and 109656.⁴

9. On 5 February 2019, the Applicant sent a request for management evaluation to MEU, which is vague and poorly articulates the decision he sought evaluation of. He appears to be seeking review of his exclusion from the selection processes for JOs 108789 and 109656 and the failure of the Organization to find a new post for him after the termination of his continuing appointment.⁵

10. MEU acknowledged receipt of his request on 6 February 2019 and informed him that the management evaluation would be completed by 22 March 2019.⁶ To date, the Applicant has not received said response from MEU.

CONSIDERATIONS

11. The Respondent's case is that the application is not receivable *ratione materiae* because the Applicant failed to timeously request management evaluation of the decision to terminate his continuing appointment. The Respondent submits that since the Applicant was notified of the decision not to renew his appointment when he received the check-out memorandum on 26 November 2018, he ought to have requested management evaluation by 25 January 2019. Given that he waited until 5

² *Ibid*, paras. 4 and 5.

³ *Ibid*, annex D.

⁴ *Ibid*, annex E.

⁵ *Ibid*, annex E-1.

⁶ *Ibid*, annex F.

February 2019 to request management evaluation, he is time-barred.

12. When seeking review of an impugned decision by MEU, a staff member is required to clearly identify the administrative decision he or she is seeking to challenge. The Tribunal has previously noted, however, that the Applicant's request for management evaluation of 5 February is vague and fails to articulate the precise administrative decision he is contesting. It ambiguously mentions the recruitment processes for JOs 108789 and 109656, the termination of his continuing appointment and the lack of effort by the Organization to find him a new post.

13. The impugned decision is better articulated in his application as "the decision of the Administration to terminate his continuing appointment following the abolition of his post, without having made good faith efforts to assist him in finding an alternative position or in undertaking a comparative review exercise." In this context, the Applicant submits arguments supporting his contention that the Respondent violated his rights by failing to conduct a comparative review process before terminating his post and by failing to make good faith efforts to retain him in service or place him in a suitable post once his post was abolished.

14. Since the application makes no mention of the selection processes for JOs 108789 and 109656, the Tribunal will not address it. Consequently, the Tribunal's review will focus solely on whether the claims against the termination of the Applicant's continuing appointment and the absence of good faith efforts to place him in a suitable post are receivable.

15. In accordance with staff rules 11.2(a) and 11.2(c), for an application to be receivable, the applicant must first submit a request for management evaluation within the applicable time limit, which is "60 calendar days from the date on which the staff member received notification of the administrative decision to be contested".

16. The Applicant indicates at paragraph 4 of his application that he was notified on 5 August 2018 of the nationalization of his post and the termination of his appointment on 31 December 2018. The Tribunal finds that this notification was final

and unequivocal in its statement of the course of action that UNAMI intended to pursue in respect of the Applicant's post.⁷ The Tribunal considers therefore that the 26 November 2018 notification of the check-out procedure was just a mere follow-up on the decision that was communicated to the Applicant on 5 August.⁸

17. Since the Applicant was informed of the decision to terminate his continuing appointment on 5 August 2018, he should have requested management evaluation by 4 October 2018. He did not request management evaluation until 5 February 2019 thus his claim is time-barred.

18. The Tribunal does not consider that an alleged failure by the Respondent to make good faith efforts to place a staff member is a discrete and contestable administrative decision. Should it be the Applicant's case that he had the right to be retained in his position unless and until the Organization found him an alternative post, he should have contested it within the context of the 5 August decision with its unconditional phrasing. This he failed to do timely.

19. In any event, once the Applicant was notified of the checkout procedure on 26 November, he was put on notice that UNAMI had not found him a suitable placement. Therefore, even accepting, for the sake of argument, that his claim relates to a discrete and reviewable decision of not securing him another post prior to separation, it is also time-barred because the Applicant became aware or should have become aware by 26 November 2018 that he was not going to be placed in another position and that he was going to be separated from service. The onus was on him to request for management evaluation by 25 January 2019 but he did not do so until 5 February 2019.

JUDGMENT

20. The application is dismissed as irreceivable.

⁷ *Auda* 2017-UNAT-746, paras. 31 and 32.

⁸ *Aliko* 2015-UNAT-539, para 35, citing *Fiala* 2015-UNAT-516, para. 39 and *Sethia* 2010-UNAT-079, paras. 18-22.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 20th day of September 2019

Entered in the Register on this 20th day of September 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi