



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MOKROVA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Shubha Naika, OSLA

Counsel for the Respondent:

Alan Gutman, AAS/ALD/OHR

FACTS AND PROCEDURE

1. The Applicant is a Chief Security Advisor working with the United Nations Assistance Mission for Iraq (“UNAMI”).¹
2. On 28 December 2018, the Applicant applied for the “Recruit from the Roster” job opening for the post of Chief Security Advisor (“JO 106382”) in UNAMI.² Having not received any notification on her application for the post, on 11 February 2019, by way of email, the Applicant contacted the United Nations Under-Secretary General for Safety and Security (“USG-DSS”), and among others, she informed him that she had knowledge but was seeking confirmation of the fact that another candidate had been appointed to the position.³
3. On 21 February 2019, the USG-DSS replied confirming that the position had already been filled.⁴ On 27 March 2019, the Applicant wrote back thanking the USG-DSS and informing him that she had applied for another position.⁵
4. On 27 April 2019, the Applicant requested management evaluation⁶ and on 9 September 2019, she filed an application with the United Nations Dispute Tribunal contesting the decision of UNAMI not to select her for the position of Chief Security Advisor, P-5.⁷
5. On 10 September 2019, the application was served on the Respondent with a deadline to file his reply by 10 October 2019.
6. On 24 September 2019, the Respondent filed a motion in which he requested that the Tribunal should determine the receivability of the application as a preliminary matter pursuant to art. 19 of the Tribunal’s Rules of Procedure. In the motion, the Respondent argued that the application is not receivable *ratione materiae*. The

¹ Application, section I.

² Application, section VII, para 5.

³ Application, section VII, para 6; Reply R/1.

⁴ Reply, R/1.

⁵ Reply, R/2, page 2.

⁶ Application, annex C.

⁷ Application, section I.

Respondent also sought a suspension of the 10 October 2019 deadline for the filing of the reply pending the Tribunal's determination of the motion.

7. By Order No. 145 (NBI/2019), issued on 25 September 2019, the Tribunal granted the Respondent's motion. The Tribunal also directed the Applicant to file a detailed response to the Respondent's motion specifically on the issue of receivability and to include how she became aware of her non-selection for the Chief Security Advisor position.

8. The Applicant complied and filed her submissions pursuant to Order No. 145 (NBI/2019) on 10 October 2019.

SUBMISSIONS

9. The Respondent contends that the application is not receivable *ratione materiae* because the Applicant did not request management evaluation within the 60-day statutory period of staff rule 11.2(c). The 60-day period commenced at the latest on 11 February 2019, when the Applicant expressed that she knew that she had not been selected for the position. Therefore, when she requested the management evaluation on 27 April 2019, she was already time-barred.

10. The Applicant submits that UNAMI failed to inform her of the administrative decision. To date, the *Inspira* status of the job is indicated "under consideration". The date of 11 February 2019 cannot be construed as the latest by which she had knowledge of the selection because they were merely corridor rumors about the selection of the contested post. The only notification of the impugned decision was the email from the USG-DSS. The Applicant indicates in her application that she received this communication on 27 March 2019.⁸

CONSIDERATION

11. The question before the Tribunal is whether or not the Applicant sought management evaluation within the stipulated timelines, so as to make her application

⁸ Application, section V, para. 5.

receivable before the Tribunal. For this determination, it is necessary to establish based on the evidence on file, which of the communications triggered the running of the deadline to request management evaluation and, consequentially, the deadline for judicial review.

12. The Tribunal agrees with the Applicant that the information she had on 11 February 2019, which she had obtained through the grapevine, does not amount to notification of the decision. The Tribunal notes however, that in her application the Applicant indicates that she had been informed through an email by the USG-DSS who, upon her inquiry, checked and confirmed the status of the recruitment. The information relayed to her by the head of the department fully informed that she had not been selected for the position. This email, however, is dated 21 February 2019 and not 27 March 2019.

13. The Tribunal therefore, establishes that the Applicant became aware of the decision on 21 February 2019. She requested management evaluation on 27 April 2019 and she was late by 5 days.

14. If the request for management evaluation is time-barred, the application before the UNDT is not receivable because the UNDT Statute forbids the waiving of time limits for management evaluation.⁹ The Appeals Tribunal also affirms that an untimely request for management evaluation bars applications before the Tribunal even if management evaluation was actually received.¹⁰

JUDGMENT

15. The application is dismissed as irreceivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 12th day of May 2020

⁹ *Rosana* 2012-UNAT-273.

¹⁰ *Awan* 2015-UNAT-588 para 13-14.

Entered in the Register on this 12th of May 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi