



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

REID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Zoltan Szalai

Counsel for Respondent:

Marietta Hristovski, UNHCR

Jan Schrankel, UNHCR

Introduction

1. The Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision to terminate her indefinite appointment effective 30 August 2023.
2. For the reasons set out below, the Tribunal rejects the application.

Facts

3. The Applicant joined UNHCR on 10 June 2003 as a Secretary, at the G-3 level, in Geneva, Switzerland. On 1 January 2008, she was granted a fixed-term appointment as Performance Management Clerk at the G-4 level. On 1 October 2011, the Applicant’s fixed-term appointment was retroactively converted to an indefinite appointment effective 30 June 2009 in the context of a one-time review exercise. She has served UNHCR at the G-4/G-5 level in different support functions for 21 years.
4. On 1 April 2022, the Applicant became a staff member in between assignments, on special leave with full pay, following the discontinuation of her position at the end of March 2022.
5. Following a period of sick leave related to a traffic accident, the Applicant was on a temporary appointment as Senior Administrative Assistant in the Staff Council from 1 June 2022 to 30 September 2022.
6. On 30 May 2023, the Applicant was informed of the decision to terminate her indefinite appointment effective 30 August 2023. The decision letter reads, *inter alia*, as follows:

As you have remained without an assignment for [nine] cumulative months, it is with regret that I have to inform you that your Indefinite Appointment will be terminated, under the terms of Staff Rule 13.3(c) and ... IOM/004-FOM/005/2011/Rev.1.

This letter constitutes formal notice of termination of your appointment as required by Staff Rule 9.3 (a). While the period of [nine] ... cumulative months expires on 6 June 2023, under the terms of your current appointment, you are entitled to a period of notice of three months, as per Staff Rule 9.7 (a). Your Indefinite Appointment will therefore be terminated on 30 August 2023.

7. On 10 August 2023, the Applicant requested management evaluation of the contested decision.
8. On 28 August 2023, the Applicant received a response to her request for management evaluation indicating, *inter alia*, that her request was time-barred and, consequently, not receivable.
9. On 27 November 2023, the Applicant filed the present application.
10. On 8 December 2023, the Respondent filed a motion for summary judgment challenging the receivability of the application.
11. By Order No. 4 (GVA/2024) of 17 January 2024, the Tribunal ordered the Applicant to file her comments on the issue of receivability by 24 January 2024.
12. Following a request for an extension of time, which was granted, the Applicant filed her comments on the receivability of her application on 2 February 2024.

Consideration

The Respondent's motion

13. Art. 9 of the Tribunal's Rules of Procedure provides that "[a] party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law".

14. Having reviewed the parties' submissions, the Tribunal considers it appropriate to grant the Respondent's motion to determine receivability as a preliminary issue and decides to dispose of the present matter by way of summary judgment (see *Chahrour* 2014-UNAT-406; *Gehr* 2013-UNAT-313; *Cherneva* UNDT/2018/081; *Cherneva* UNDT/2020/074; *Cherneva* UNDT/2021/003; *Auda* 2017-UNAT-740; *Kazazi* 2015-UNAT-557).

Receivability

15. It is now established that receivability of an application is a condition *sine qua non* for judicial review by the Tribunal.

16. The Respondent submits that the application is not receivable *ratione materiae* because the Applicant did not submit a timely request for management evaluation of the impugned decision.

17. Under art. 8.1 (c) of the Tribunal's Statute, an application is receivable if an "applicant has previously submitted the contested administrative decision for management evaluation, where required".

18. Staff rule 11.2(c) provides that a request for management evaluation shall not be receivable

unless it is sent within 60 calendar days from the date on which the staff member received notification of the administration 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.

19. The United Nations Appeals Tribunal has consistently held that the Dispute Tribunal may only review decisions that have been the subject of a timely request for management evaluation (see *Khan* 2022-UNAT-1284, para. 52).

20. The Applicant acknowledged in her submissions that she was notified of the contested decision on 30 May 2023, and that she filed her request for management evaluation on 10 August 2023, that is, after the 60 calendar days' deadline, which in her case expired on Monday, 31 July 2023.

21. The Applicant further conceded that she did not request a suspension or a waiver of the deadline to request management evaluation, and that there were no efforts for an informal resolution between the parties under the auspices of the Office of the Ombudsman.

22. However, the Applicant submitted that she was misled by the advice provided by a Senior Personnel Administration Assistant, Personnel Administration Section, Human Resources Staff Services, UNHCR, in response to her inquiry of 15 June 2023 on whether it would be possible for her to work on a temporary appointment from Geneva. Said Assistant informed the Applicant, *inter alia*, as follows:

If you are successful at receiving a short-term appointment, please note that the separation date will be reconsidered accordingly.

23. The Applicant claims that she relied on said advice in good faith and requests the Tribunal to restore the deadline in her favour.

24. The Tribunal is, however, not competent to “suspend or waive deadlines for management evaluation” as per art. 8.3 of its Statute (see *Diallo* 2019-UNAT-936, para. 27 and *Khan* 2015-UNAT-559, para. 25).

25. In any event, the advice provided by the Senior Personnel Administration Assistant to the Applicant did not have an impact on the calculation of the time limits to contest the decision notified to her on 30 May 2023. It only referred to the possibility of reconsidering her separation date in case she received a short-term appointment in the meantime, which did not happen.

26. The Appeals Tribunal has consistently held that “time limits in the context of the administration of justice in the United Nations’ internal justice system must be observed and strictly enforced” (see *Lolo Mkhabela* 2022-UNAT-1289, para. 34).

27. Accordingly, the Tribunal finds that since the Applicant’s request for management evaluation was time-barred, the present application is not receivable *ratione materiae*.

Conclusion

28. In view of the foregoing, the Tribunal DECIDES to reject the application as not receivable.

(Signed)

Judge Sun Xiangzhuang

Dated this 26th day of February 2024

Entered in the Register on this 26th day of February 2024

(Signed)

René M. Vargas M., Registrar, Geneva