



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

SEYFOLLAHZADEH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON MOTION TO STRIKE OUT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Teresa Lopez Posse, UNDP

Introduction

1. By application filed on 12 January 2015, and upon the Registry's request completed on 21 January 2015, the Applicant, a staff member of the United Nations Development Programme, Iran, contests and refers to, *inter alia*, her separation from service, her being deprived from after service health insurance and from the benefits of the United Nations Joint Staff Pension Fund.

2. The application was served on the Respondent who was granted until 26 February 2015 to file his reply.

3. On 17 February 2015, the Respondent filed a motion to strike out the application as being manifestly inadmissible, alleging that since efforts to resolve the matter informally under the auspices of the Ombudsman ended on 28 January 2015, he had until 14 March 2015 to respond to the Applicant's request for management evaluation.

4. By Order No. 37 (GVA/2015) of 18 February 2015, the Tribunal ordered the Applicant to file comments and additional documents in response to the Respondent's motion by 19 February 2015. In her submission of 19 February 2015, the Applicant provided the Tribunal with information indicating that the informal settlement under the auspices of the Ombudsman had already failed on 20 December 2014, and not on 28 January 2015, as argued by the Respondent.

Consideration

5. According to staff rule 11.2(d)

The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within thirty calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within forty-five calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York. The deadline may be extended by the Secretary-

General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

Article 8 of the Dispute Tribunal's Statute *inter alia* provides:

1. An application shall be receivable if:

...

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

...

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

...

(iv) Where the parties have sought mediation of their dispute within the deadlines for the filing of an application under subparagraph (d) of the present paragraph, but did not reach an agreement, the application is filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

6. The Tribunal notes that, on 18 July 2014, the Applicant filed a request for management evaluation of the decision not to provide her with after-service healthcare, communicated to her on 27 May 2014.

7. On 22 August 2014, the parties agreed to suspend the consideration of the request for management evaluation in order to attempt an informal resolution of the matter. Thereafter, on 28 November 2014, with the agreement of the parties, the Office of the Ombudsman engaged in mediation efforts in this matter. These efforts ultimately failed and the Applicant filed the present application.

8. Pursuant to the above-quoted staff rule 11.2(d), and since the Applicant was stationed in Iran, the Secretary-General had 45 calendar days from the receipt of

the request for management evaluation to respond to it, that is until 1 September 2014. It is clear from the wording of that provision that the deadline for the Secretary-General's response reflecting the outcome of the management evaluation may be extended by the Secretary-General only pending efforts for informal resolution conducted under the auspices of the Office of the Ombudsman (see also *Egglesfield* 2014-UNAT-402).

9. It is not disputed that, in the case at hand, the Ombudsman engaged in the informal settlement only as of 28 November 2014, that is at a time the 45-day management evaluation deadline had expired as per staff rule 11.2(d). Any prior settlement negotiations conducted only between the parties, without the involvement of the Ombudsman, were not apt to allow for an extension of the management evaluation deadline, as per the above-quoted staff rule.

10. Accordingly, the Tribunal cannot but find that the 90 days deadline for filing an application to the Tribunal, under art. 8.1(d)(i)b., started to run on 2 September 2014. Under that provision, the Applicant therefore would have had until 1 December 2014 to file her application with the Tribunal, with respect to the health insurance coverage.

11. However, in the meantime, as of 28 November 2014, the parties had engaged in settlement negotiations under the auspices of the Office of the Ombudsman. These negotiations, which eventually failed, clearly fell under the above-quoted art. 8.1(d)(iv) of the Statute, in that they were initiated within the 90-day deadline for the filing of an application under subparagraph (d) of said article. The Tribunal notes that the Applicant therefore had 90 days after the mediation broke down to file her application with the Tribunal.

12. From the record in front of it, the Tribunal is satisfied that the mediation broke down on 20 December 2014 and that by filing her application on 12 January 2015, the Applicant respected the statutory time-limits under art. 8.1(d)(iv) of its Statute.

13. In view of the foregoing, the Respondent's motion to strike out the present application as manifestly inadmissible, on the grounds that it is premature for he

still had until 14 March 2015 to file a response to the Applicant's request for management evaluation, has to be rejected.

14. The foregoing is without prejudice to the Tribunal's later determination on the receivability of the application on other grounds.

Conclusion

15. In view of the foregoing, it is ORDERED that:

- a. The Respondent's motion to strike out the application as being manifestly inadmissible be rejected;
- b. The Respondent file his reply, duly covering all the issues raised by the Applicant, by **Thursday, 26 February 2015**.

(Signed)

Judge Thomas Laker

Dated this 20th day of February 2015

Entered in the Register on this 20th day of February 2015

(Signed)

René M. Vargas M., Registrar, Geneva