



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/096

Order No.: 312 (NBI/2015)

Date: 6 October 2015

Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

MCNEILL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S MOTION
FOR EXTENSION OF TIME PURSUANT
TO ART. 8.3 OF THE STATUTE**

Counsel for the Applicant:
Jiries Saadeh, OSLA
Alexandre Tavadian, OSLA

Counsel for the Respondent:

The Application and Procedural History

1. The Applicant is the Chief of the Staff Counselling and Welfare Section at the African Union-United Nations Mission in Darfur (UNAMID). She serves on a fixed-term appointment at the P-5 level in El Fasher.

2. On 23 June 2015, the Applicant filed an application for suspension of action seeking an injunction against the decision not to renew her appointment beyond 30 June 2015.

3. The Respondent filed his Reply to the Application on 25 June 2015.

4. On 25 June 2015, the Tribunal issued Order No. 223 (NBI/2015) granting the application for suspension of action pending management evaluation.

5. The Management Evaluation Unit (MEU) had, on 24 June 2015, however, issued its decision declaring the Applicant's challenge as not receivable because "no decision has been taken" to not renew the Applicant's appointment. MEU also found the Applicant's challenge to be "moot" as her appointment had been extended through 31 July 2015.

6. On 22 July 2015, the Applicant filed her second request for management evaluation challenging the decision to separate her on 31 July 2015; she also moved the court for an injunction against that decision.

7. On 29 July 2015, the Tribunal issued Order No. 247 (NBI/2015) granting the Applicant's motion pending management evaluation.

8. On 15 September 2015, the Applicant filed the subject motion of the present decision seeking extension of time within the terms of art. 8.3 of the Statute of the United Nations Dispute Tribunal.

Submissions

9. The Applicant has 90 days from the date of the *first* management evaluation decision to substantively challenge the decision not to renew her appointment. She also has 90 days from the date of the *second* management evaluation decision to challenge the decision to separate her as of 31 July 2015.

10. The Applicant submits that it would be in the “interests of judicial economy and the expeditious conduct of proceedings” for her to challenge the impugned decision on the merits *once*. In other words, it would be a waste of the Court’s resources if the Applicant were to file two substantive applications on what is essentially the same set of facts.

11. Indeed, the Applicant submits, “it remains possible that the MEU will determine the issue to the Applicant’s satisfaction, thus avoiding litigation” altogether.

Deliberations

12. It is settled law that “[a] n application is only receivable when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines.”¹

13. Article. 8.1(d)(i)(b) of the Statute of the Dispute Tribunal and 7.1(b) of its Rules of Procedure require an applicant to submit his or her application to the Dispute Tribunal within 90 calendar days of the expiry of the relevant response period for management evaluation if no response to the request was provided.

¹ See, for example, *Ajdini* 2011-UNAT-108.

14. The exception to that rule is provided for in art.8.3 of the Statute and art. 7.5 of the Rules of Procedure, which provisions allow for suspension, waiver or extension of that deadline “in exceptional cases.”

15. In this case, Counsel for the Applicant displayed prudence and suitable respect for the Court’s resources in filing this Motion, and in doing so *before* the expiry of the deadline to challenge the first management evaluation decision.

16. The Tribunal notes that the United Nations Appeals Tribunal has, in similar situations, adopted a more “flexible approach” so as not to penalise an applicant who has “made a good faith, diligent and timeous effort...[to] avoid unnecessary litigation.”²

17. The Tribunal appreciates that that is exactly what the Applicant is seeking to do in this case.

18. The Application for Extension of Time is **GRANTED** as prayed for by the Applicant.

² See *Markovic*, Order No. 207 (NY/2011), citing *Molari*, Order No. 15 (UNAT/2010), *Kaddoura*, Order No. 21 (UNAT/2010), *Ishak*, Order No. 22 (UNAT/2010), *Applicant*, Order No. 263 (NY/2011) and *Jaen*, Order No. 331 (NY/2010), *Jaen*, Order No. 331 (NY/2010).

(Signed)

Judge Vinod Boolell

Dated this 6th day of October 2015

Entered in the Register on this 6th day of October 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi