



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/071/
JAB/2006/066
Order No.: 326 (NY/2010)
Date: 10 December 2010
Original: English

Before: Judge Marilyn J. Kaman

Registry: New York

Registrar: Santiago Villalpando

SIMMONS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. On 26 August 2010, the Applicant filed her application before the UN Dispute Tribunal (“UNDT”). In his reply of 18 June 2010, the Respondent submitted that the application is time-barred and therefore not receivable. In Order No. 242 (NY/2010) of 14 September 2010, the Tribunal directed the Applicant to file and serve a submission in response to this contention, which she did on 28 September 2010.

Facts bearing on the issue of receivability

2. On 9 August 2006, the Applicant filed her statement of appeal to the Joint Appeals Board (“JAB”).

3. Following the constitution of a JAB panel on 23 October 2007, on 13 November 2007, the Panel met in executive session and considered the preliminary issues in the matter, resolving to request details of the evaluations of candidates from the Central Review Committee. Between November 2007 and May 2008, the Panel received further material and submissions to assist it in its deliberations.

4. In September 2008, following the retirement of the Panel’s Chairperson and the reassignment of the Secretary of the Panel to another duty station, a new Panel was constituted to consider the case. Due to a heavy workload, one of the Panel Members was unable to attend panel meetings and he was replaced in December 2008. The Panel met in executive session on 15 December 2008 to consider the case.

5. On 28 January 2009, the JAB Report No. 2034 was unanimously adopted and signed by the Secretary of the JAB. By letter dated 13 March 2009, the Applicant was informed that the Secretary-General agreed with the findings and conclusions of the JAB.

6. By letter dated 21 May 2009, the Applicant sought an extension of time for the filing of her application with the former UN Administrative Tribunal. By letter dated 22 May 2009, its former Executive Secretary granted her an extension of time until 30 June 2009, i.e., the last day of existence of the Administrative Tribunal before the UNDT took over its functions.

7. On 23 July 2009, the Applicant forwarded an email to the former Executive Secretary of the Administrative Tribunal stating that she was now ready to submit her appeal to the Tribunal, but the location of the alternate UNDT Registry had not been made available. The Applicant requested “urgent guidance” and procedures for submitting her appeal in the new system.

8. On 29 July 2009, the Applicant was involved in a vehicular accident and she was on sick leave from June 2009 to sometime in December 2009.

9. On 26 August 2009, the Applicant filed a hard copy of the application with the UNDT. The Applicant’s cover letter to the UNDT Registry stated:

1. As you may be aware, since the end of June 2009, I have been seeking advice from various officials at the UN Secretariat on the new procedures for submitting an appeal before the UNDT... .

2. In light of circumstances beyond my control and in the absence of clear guidance from any official on how to proceed with submission of my appeal before the UNDT, I regret that I could not file this appeal earlier ... I would hope that the Registrar would consider my appeal to be in order in hard copy as I am currently on extended sick leave

Respondent's submissions [put first as the moving party]

10. The Respondent makes the following points on the issue of receivability:
 - a. Article 8.3 of the UNDT Statute allows the Tribunal to suspend or waive the deadlines for a limited period of time and only in exceptional circumstances;
 - b. under *Morsy* UNDT/2009/036, the Applicant must establish an exceptional case by setting out exceptional reasons why s/he should be granted an extension of time;
 - c. all relevant factors, as stated in *Samardzic et al.* UNDT/2009/019 must be considered, particularly the considerations stated in paras. 29 and 30 of that judgment; and
 - d. the necessity of timeous pursuit of appeals was observed in *Morsy*, and promotes certainty and expeditious disposal of disputes.

Applicant's submissions

11. The Applicant makes the following points on the issue of receivability:
 - a. This case was filed with the UNDT on 26 August 2009 after the Applicant experienced many difficulties communicating with and locating the correct UNDT office for lodging her appeal;
 - b. the Applicant was attempting to timeously pursue her appeal, even though she was on extended sick leave when the filing deadlines became due;
 - c. a transition from the old internal justice system to the new one was occurring;

- d. at the end of June 2009, the Applicant had in her possession seven completed / bounded files and was ready to submit her case to anyone or office willing and authorised to accept it;
- e. the Applicant advised the UNDT Registry that she was on sick leave and it would not be possible to have the entire file with all attachments scanned and submitted electronically; further, at the time no requirement for electronic filing existed under the filing rules; and
- f. after filing a hard copy of her appeal, the UNDT itself did not respond to the Applicant for a full 10 months, and the UNDT Registry itself has apologised for the delay in processing the Applicant's appeal.

Considerations

12. The UN Appeals Tribunal has in several cases emphasised the importance of adhering to time limits. For instance, in *Ibrahim* 2010-UNAT-069, it stressed “the importance of time limits”. However, in *Mezoui* 2010-UNAT-043, while underlining the importance of time limits, it declared the application receivable, even though it was untimely. The reasoning was the following:

20. Mezoui was caught in the transition between the old and new internal justice systems. In April of 2009 she requested an extension of the time-limit to file an application with the former Administrative Tribunal to 31 July. She contends that she received no answer, though one was surely sent. That letter granted an extension until 30 June, after which date the former Administrative Tribunal ceased to accept new cases. She sent another letter on 16 June. At that point it is questionable if anyone could have granted an extension—the new UNDT had not officially started, and the former Administrative Tribunal was winding down. And there was some understandable confusion because the cases which would have been commenced before the former Administrative Tribunal were to be

commenced before the new UNDT, not the new United Nations Appeals Tribunal.

21. This case is limited to its specific facts, and we emphasize that this court has been strictly enforcing, and will continue to strictly enforce, the various time limits. The old system was perhaps too generous in extending or waiving time—we will not be. But this case was directly in the path of the changeover, and we grant some leeway here. We remand to the UNDT for consideration on the merits.”

13. Thus, the Applicant’s situation in the instant case was very close to that of the Applicant in *Mezoui*—in both cases: 1) the Applicant had requested from the former UN Administrative Tribunal an extension of time to file their applications; and 2) such extension was granted with a time limit of 30 June 2009 (the last day of the functioning of the Administrative Tribunal). Unlike *Mezoui*, the Applicant here, though, did not request for any further time extensions before the expiry of this time limit.

14. The Tribunal also takes note of the following facts of this case: the Applicant’s personal circumstances, including that she was self-represented and on extended sick-leave at the time of the expiry of the time limit; the significant delays of the JAB proceedings (the case was filed in 10 August 2006, but not decided before 28 January 2009) compared to the relatively short delay on part of the Applicant; and the Applicant’s difficulties in finding out where to file her application due to the transition to the new system of internal justice.

15. Pursuant to art. 8.3 of the UNDT Statute and art. 35 of the Rules of Procedure, the Tribunal therefore finds the Applicant’s case to be exceptional and allows her application for that reason and in the interest of justice.

IT IS ORDERED THAT—

1. The application is receivable.

2. The Tribunal will revert with further orders for managing the remainder of the case.

(Signed)

Judge Marilyn J. Kaman

Dated this 10th day of December 2010