

UNDT/2014/040, Yakovlev

UNAT Held or UNDT Pronouncements

The UNDT found that the Applicant had personal standing to bring his claim before the Tribunal but he failed to establish that the Administration's decision to refuse to grant him an exception under Staff rule 12.3(b) and to proceed with the payment of his entitlement was unlawful. The Tribunal further found that the Applicant has manifestly abused the proceedings before it and an award of costs (\$5,000) was appropriate under art. 10.6 of the Statute. The Respondent's contention that the Applicant does not have locus standi was considered without merit. Exceptions under staff rule 12.3: the Applicant has failed to persuade the Tribunal that the circumstances of his case were such as to warrant a waiver or exception to the time limitations for claiming his separation entitlements. Further, the Applicant cannot on the one hand request payment of extinguished separation entitlements and, at the same time, refuse to meet the condition for a possible consideration of an exception, namely proof of impecuniosity. The Applicant has not established that the Respondent's decision to refuse to grant him an exception under Staff rule 12.3(b) was unlawful. Abuse of process: The Tribunal considered that the Applicant completely misled the court by omitting to communicate relevant facts for it to make a determination as to whether the payments of his entitlement should have been granted by the Administration on an exceptional basis. Further, by choosing to bring the matter before the Tribunal, instead of complying with the administration's request for proof that the Applicant was impecunious, the Applicant used up valuable resources and time that would otherwise have been devoted to other more urgent matters pending before the Tribunal. The Applicant's reliance on his incarceration as force majeure was not accepted and the invocation of such argument with respect to his particular situation was considered not only disingenuous but above all frivolous and wholly unreasonable. There were no unpredictable or uncontrollable events that would have prevented the Applicant from filing his claim with OHRM. It was highly foreseeable that his fraudulent activities would have resulted in his arrest and conviction for financial crimes he committed for over a decade against the same Organization he now submits should

grant him financial entitlements. The Tribunal considered that this was not only a frivolous claim, that took up time and resources to judicially address, but arguably vexatious. The Applicant engaged in criminal activity against the Organization voluntarily and his arrest, conviction and sentence were the direct and predictable result of his acts and misconduct. The only element of unpredictability was whether he would be caught, when he would be arrested and possibly the length of his sentence. None of these factors prevented him from making the necessary application to the Organization, within the time limit of two years, seeking a deferment of any entitlements, which the United Nations may possibly have considered under the circumstances, pending completion of his sentence. Lastly, requesting the Tribunal in those circumstances to grant a request the Applicant argued he is entitled to after serving the Organization for 20 years on grounds that he has no financial means, was found outrageous and vexatious. The Applicant had defrauded the United Nations and had accumulated several hundreds of thousands of US dollars. How much of those ill-gotten gains are still under his control is not known. The Tribunal indicated that the United Nations is entitled to seek evidence of the Applicant's impecuniosity before exercising a discretion which, in the circumstances of this case, would be wholly exceptional and arguably lead to public concern. The Tribunal found that the Applicant had manifestly abused the proceedings before it and that an award of costs in the sum of USD 5,000 was appropriate under art. 10.6 of the Statute.

Decision Contested or Judgment/Order Appealed

The Applicant appealed the Administration to dismiss his belated request (made six years after the expiry of the applicable time limit) to proceed, on an exceptional basis, with payments of a number of entitlements due to him upon separation on grounds that exceptional circumstances beyond his control made it impossible for him to claim all of his entitlements within the two-year time limit.

Legal Principle(s)

Former staff member's standing to bring claim before the Tribunal: Article 3.1 of the Statute of the Dispute Tribunal states that an application under the Statute may be filed by "any former staff member of the United Nations". There are no provisions in the Tribunal's Statute that limit the personal standing of an applicant to rights or

entitlements under the Staff Rules that are not “extinguished”. Staff rule 12.3(b) (as former Staff rule 112.2(b)), does not contain any language that limits the application of the rule to current staff members or former staff members in respect of entitlements that have not expired. An interpretation that would result in the unlawful distinction between current and former staff members is not tenable, as the rule clearly intends to cover valid and legitimate exceptional circumstances that precluded all staff from exercising a right arising from their contract of employment.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Yakovlev

Entity

DM

Case Number(s)

UNDT/NY/2013/114

Tribunal

UNDT

Registry

New York

Date of Judgement

14 Apr 2014

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Abusive conduct

Costs

TEST -Rename- Benefits and entitlements-45

Applicable Law

Administrative Instructions

- ST/AI/2000/5

Former Staff Rules

- Rule 107.28(c)
- Rule 107.4(b)
- Rule 109.5(h)
- Rule 112.2(b)

Secretary-General's bulletins

- ST/SGB/2002/1
- ST/SGB/2002/13

UNDT Statute

- Article 10.6

Related Judgments and Orders

2011-UNAT-152