



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2015/024

Judgment No.: UNDT/2016/019

Date: 10 March 2016

Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

MONARAWILA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Representative for Applicant:

Ibrahima Faye

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, an Administrative Assistant at the G-7 level at the United Nations Joint Staff Pension Fund (“UNJSPF”), filed an application on 16 April 2015. She summarized the contested decision as follows: “I have been exposed to unfriendly working environment that resulted in the gradual deterioration of my health and wellbeing in connection with improper administrative decisions”.

2. The Respondent’s primary contention is that the application is not receivable because the Applicant failed to submit a timely request for management evaluation and has not identified a reviewable administrative decision. In addition, the Applicant challenges alleged decisions and/or conduct which took place more than three years prior to the date of her application. The Respondent submits that the Tribunal does not have jurisdiction to review these matters.

Procedural history and submissions of the parties

Request for management evaluation and response

3. On 23 January 2015, the Applicant submitted a request for management evaluation of the alleged abuse of authority, harassment and discrimination that she stated that she had been subjected to between 2009 and the date of the request. She added that “various decisions” had been taken by the Investment Management Division (“IMD”) of the UNJSPF during the specified time period. Attached to the Applicant’s request was a document titled “Sequence of Events”, which set out her concerns and contentions in further detail.

4. On 20 February 2015, the Management Evaluation Unit responded to the Applicant’s request.

Application and reply

5. On 16 April 2015, the Applicant filed her application. The application did not provide clear information in the section titled, “Details of the contested decision”. In the space for indicating the name and title of the official who made the decision(s), the Applicant wrote “UNJSPF/IMD Management”. In the space for indicating the date on which the decision(s) were made, the Applicant wrote: “Several decisions imposed on me from May 2009 till April 2015”.

6. On 18 May 2015, the Respondent filed a reply submitting that the application is not receivable.

Response to reply

7. By Order No. 90 (NY/2015), dated 19 May 2015, the Tribunal ordered the Applicant to file a response, if any, to the receivability issues raised in the Respondent’s reply.

8. On 26 May 2015, the Applicant filed a response to Order No. 90 (NY/2015). She submitted that she was contesting, among other things, a decision in which she was denied annual leave in 2010 for the full period that she had requested. The Applicant did not identify the exact date of the decision. She further submitted that an unfriendly work environment, coupled with an overwhelming workload, and a lack of rest and recuperation for over one year between 2009 and 2010, had taken a toll on her wellbeing and resulted in serious health problems. She stated that the denial of her request for annual leave contributed to this situation. The Applicant requested that the Tribunal give due consideration to the chain of events described in her submissions and the resulting harm. She submitted that statutory time limits and deadlines should not apply and that, considering the unique nature of the events set forth in the application, the Tribunal should consider the surrounding circumstances of the case and treat the application as a case “out of the ordinary”.

Case management

9. It was evident from the broad formulation of the claims that it would be necessary for the Tribunal to elicit from the Applicant further details of the precise acts and/or omissions which she alleged were in non-compliance with the terms of her appointment or contractual entitlements so that any justiciable claim was clearly identified.

10. The Tribunal held two case management discussions (“CMD”) and issued a number of orders with the purpose of eliciting the necessary details from the Applicant, in order to ascertain whether there had been compliance with the technical requirements for filing a claim under the Dispute Tribunal’s Statute, to explore the underlying workplace issues, and to explore whether alternative dispute resolution offered the parties a constructive outcome.

11. On 23 July 2015, the parties participated in a CMD. Ms. Carolyn Boykin, the Secretary-General’s Special Representative for the UNJSPF, and Mr. Ernest Hunt, a Senior Investment Officer at the UNJSPF who had been involved in supervising the Applicant, were identified by the Tribunal as persons who could assist in resolving some of the underlying issues. Although they were unavailable on this date, the Tribunal decided to proceed with the CMD pending, if necessary, another CMD when they would be able to attend.

12. At the CMD on 23 July 2015, the Applicant was informed that, in accordance with its Statute, the Tribunal cannot review decisions notified to a staff member more than three years prior to the filing of an application. The Judge also drew to the attention of the Applicant the provisions of Appendix D to the Staff Rules (Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations), which is the Organization’s specific procedure and rules to be followed in respect of a claim for service-incurred injury or illness. After a brief discussion on the need for the Applicant to rebut the Respondent’s contentions on receivability of the claim, the

Tribunal suggested that the parties may wish to consider alternative dispute resolution. The Applicant indicated that she was willing to engage in constructive discussions with the aim of achieving a resolution.

13. By Order No. 161 (NY/2015), dated 23 July 2015, the Tribunal granted the Applicant leave to file concise submissions identifying and prioritizing the core issues in her case by 30 July 2015 and ordered the parties to attend a second CMD, on 31 July 2015, at which the Respondent was to be accompanied by Ms. Boykin and Mr. Hunt.

14. The second CMD was rescheduled to take place on 29 July 2015 following a motion filed by the Respondent regarding the availability of Ms. Boykin and Mr. Hunt. At the CMD, which was attended by the Applicant, Counsel for both parties, Ms. Boykin, Mr. Hunt, and Mr. Phillipe David, a Legal Officer from IMD, the Judge noted that although the Respondent raised significant issues regarding the receivability of the claim, a judicial determination would not solve the underlying problems in the workplace. The Judge sought an update on discussions between the parties. Mr. Hunt stated that the only outstanding issue, from the point of view of the Administration, was the classification of the Applicant's post. The Applicant disagreed, stating that the issue of her medical condition had not been satisfactorily addressed. The parties indicated that a stay of proceedings for 30 days would facilitate further discussion towards a possible resolution.

15. By Order No. 171 (NY/2015), dated 30 July 2015, the Tribunal ordered a stay of proceedings for a maximum period of 30 days. The Tribunal further ordered that, should the Applicant seek a judicial determination of her claim, she was to particularize her claims, indicating the date when each decision was taken and identifying the relevant decision-maker.

16. On 26 August 2015, the Applicant filed a submission confirming that she sought a judicial determination of the merits of her claim. She also provided clarification as to the nature of her case. She stated that her application contests

the administrative decisions taken by the Administration that resulted in an increase in her workload on a “continual” basis from 2012 through to 2015 despite her known debilitating health condition. She stated that she informed Mr. Hunt of her health issues in April 2014 and informed the Executive Office of UNJSPF in August and October 2014. The Applicant also noted that she had requested a job description “over one year ago” and it had not, at the time of the submission, been finalized.

17. On 3 September 2015, the Respondent filed a response to the Applicant’s submission stating that the Applicant had not identified any administrative decision that fell within the Tribunal’s competence and reiterating that the application is not receivable.

18. By Order No. 215 (NY/2015), dated 4 September 2015, the Tribunal ordered the Respondent to file a submission stating whether it is the Respondent’s case that the issues raised by the Applicant have, in effect, been settled by reassigning her to new duties and responsibilities and, if so, to state the date of the said reassignment, giving sufficient particulars thereof. The Respondent was also ordered to explain what other steps, if any, were taken prior to the reassignment of the Applicant to deal with her complaints about an excessive workload given her medical condition. This order was issued taking into account the Respondent’s submission that the issues raised in the Applicant’s request for management evaluation had been addressed through an oral agreement regarding the Applicant’s duties and responsibilities and classification of her post.

19. On 11 September 2015, the Respondent filed a response to Order No. 215 (NY/2015) stating that, while he was not aware of the precise administrative decision at issue in the case, he submitted that any dispute with the Applicant regarding her workplace grievances has been settled by reassigning her to new duties and responsibilities.

20. By Order No. 229 (NY/2015), dated 15 September 2015, the Tribunal noted the absence of precise particulars regarding any outstanding issues in relation to

which the Tribunal has jurisdiction, and ordered the Applicant to file a submission identifying the precise dates and particulars of the administrative decision or decisions being challenged, indicating the date when each decision had been the subject of a request for management evaluation.

Motion for recusal

21. On 16 September 2015, the Applicant filed a motion for recusal of the undersigned Judge.

22. By Order No. 231 (NY/2015), dated 16 September 2015, the Tribunal ordered a stay of proceedings pending the outcome of the Applicant's motion for recusal.

23. By Order No. 33 (NBI/2016), dated 26 February 2016, the President of the Dispute Tribunal, acting in accordance with art. 28.2 of the Tribunal's Rules of Procedure, rejected the Applicant's motion for recusal.

Consideration

Scope of the case

24. An application before the Dispute Tribunal must identify, in a clear and concise manner, each and every administrative decision that a staff member wishes to contest before the Tribunal (see, for instance: *Planas* 2010-UNAT-049; *Appellant* 2011-UNAT-143).

25. In *Massabni* 2012-UNAT-238, the Appeals Tribunal held:

25. The duties of a Judge prior to taking a decision include the adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.

26. Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

26. The Tribunal expended considerable effort in clarifying the nature and scope of the Applicant's case, the precise decisions that she contests, and the dates when they occurred, while also attempting to assist the parties in their efforts to resolve the underlying workplace issues. Proactive case management in this case was directed towards achieving the best possible outcome for the parties whether by an amicable resolution or, failing that, by achieving clarity as to the issues to be considered by the Tribunal. By Orders No. 161 (NY/2015), 171 (NY/2015) and 229 (NY/2015), the Tribunal sought further clarification from the Applicant regarding the precise nature of her claim. The Tribunal also held two CMDs at which two of the Applicant's managers were ordered to appear with a view to possibly resolving some of the underlying workplace issues. Despite the efforts of the Tribunal, the case has not been resolved to the satisfaction of the Applicant, and the Tribunal must therefore proceed to a judicial determination.

27. Having given careful consideration to the application and annexes, and the subsequent submissions of the Applicant, the Tribunal considers that the Applicant has identified the following decisions and issues for consideration by the Tribunal:

- a. A decision, taken in 2010, in which she was denied the full period of annual leave that she had requested;
- b. An implied decision or decisions not to provide her with a job description in a timely manner;
- c. An implied decision or decisions not to reduce her workload despite awareness on the part of management that she was suffering from health issues; and

- d. Whether she should be awarded compensation for the effect of the above decisions on her health.

Are any of the decisions or issues identified by the Applicant reviewable by the Tribunal?

28. Article 2.1(a) of the Dispute Tribunal's Statute provides:

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

29. Article 8 of the Dispute Tribunal's Statute provides, insofar as it is relevant:

Article 8

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;

...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

...

Decision on annual leave request

30. The record shows that on 2 August 2010, the Applicant submitted a request via email for a period of annual leave in August and September 2010. On 6 August 2010, an Administrative Officer in IMD responded to her email stating that given the requirements of the office, “it would be most suitable to agree for you to take half days until [another staff member returns from vacation]”. On 9 and 10 August 2010, the Applicant submitted via email a revised request for annual leave. The Applicant submits that she received no response to her revised request and there is no evidence of such a response on record.

31. The Applicant did not file her application until April 2015, more than four years after the discussions regarding annual leave took place. Given that the requests for annual leave concerned dates in August and September 2010, the Applicant knew or reasonably should have known of the contested decision in September 2010 at the latest (*Awan* 2015-UNAT-588, para. 19; *Chahrour* 2014-UNAT-406, para. 31).

32. In accordance with art. 8.4 of the Dispute Tribunal’s Statute, which provides that “an application shall not be receivable if it is filed more than three years after the applicant’s receipt of the contested administrative decision”, the element of the application concerning the denial of the request for annual leave is not receivable.

Implied decisions relating to job description and workload

33. The Applicant did not clearly identify the implied decisions regarding her job description and workload as contested decisions in her request for management evaluation dated 23 January 2015. Rather, these issues were alluded to as part of a chronology of events occurring over a number of years as set out in the seven-page “Sequence of Events” attached to her management evaluation request.

34. The purpose of management evaluation is to afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the decision is not necessary. For this goal to be met it is essential that the

staff member clearly identifies the decision that he or she is contesting (*Pirnea* 2013-UNAT-311, para. 42; *Applicant* 2013-UNAT-381, para. 37).

35. The Administration cannot be expected to review a chronology of events occurring over a number of years and guess every decision, explicit or implied, that a staff member wishes to contest. As held by the Appeals Tribunal, it is essential for a staff member to clearly identify the decision or decisions that he or she is contesting when submitting a request for management evaluation. The Applicant did not do so. The Tribunal finds that the Applicant did not request management evaluation of these decisions and these elements of the application are therefore not receivable in accordance with art. 8.1(c) of the Dispute Tribunal's Statute.

Request for compensation for service-incurred injury or illness

36. The Tribunal notes that the Applicant did not submit a request for compensation under Appendix D to the Staff Rules (Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations). Furthermore, the Applicant did not contest any specific administrative decision relating to compensation for service-incurred injury or illness as she was required to do in order to invoke the jurisdiction of the Tribunal under art. 2.1(a) of the Dispute Tribunal's Statute. This issue is therefore not properly before the Tribunal.

Summary

37. Despite the guidance provided to the Applicant at the CMDs and in Orders No. 161 (NY/2015), 171 (NY/2015) and 229 (NY/2015), the Applicant has not identified any receivable administrative decisions.

Costs

38. Article 10.6 of the Dispute Tribunal's Statute states that "[w]here the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party".

39. In *Bi Bea* 2013-UNAT-370, the Appeals Tribunal stated that in order to award costs against a party, it is necessary for the Dispute Tribunal to be satisfied on the evidence that there was clearly and unmistakably a wrong or improper use of the proceedings of the court. The Appeals Tribunal noted that frivolous or vexatious conduct would satisfy this requirement (para. 30).

40. In *Machanguana* 2014-UNAT-476, the Appeals Tribunal stated that it is incumbent on a Tribunal awarding costs to state the reasoning upon which its award of costs is based (para. 12).

41. In *Terragnolo* 2015-UNAT-566, the Appeals Tribunal upheld a costs award against the applicant in the sum of USD1,500 for abuse of proceedings, noting that the filing of a frivolous application that was clearly not receivable by a staff member who has prior experience before the tribunals of the United Nations' internal justice system is a manifest abuse of the Dispute Tribunal's process (para. 40).

42. At the CMDs on 23 and 29 July 2015, the Tribunal provided guidance to the Applicant and her representative in order to make them aware of the factual and legal hurdles that had to be overcome to rebut the contentions and arguments advanced by the Respondent. The Tribunal finds that the Applicant has manifestly abused the proceedings by her persistence in advancing legally unsustainable contentions, despite guidance offered at the CMDs on the applicable legal principles settled by UNAT.

43. In determining the sum to be ordered as costs for manifest abuse of proceedings in the present case, the Tribunal has considered other cases involving manifest abuse of proceedings and the sums involved, including: *Ishak* 2011-UNAT-

152 (affirming the award of CHF2,000 in costs); *Mosha* 2014-UNAT-446 (affirming costs in the amount of USD600); and *Terragnolo* (affirming costs in the amount of USD1,500). In *Faye* UNDT/2015/076 and *Faye* UNDT/2015/077, the Tribunal ordered costs of USD500 against an applicant, having found that the staff member abused proceedings by his persistence in advancing legally unsustainable contentions, despite guidance offered at CMDs on the applicable legal principles settled by UNAT. The Tribunal considers that the circumstances in this case are similar. In all the circumstances, and given the range of sums ordered as costs in similar cases, the Tribunal finds that the sum of USD500 constitutes an appropriate award for the manifest abuse of proceedings in this case.

Conclusion

44. The application is dismissed.

45. In exercise of power under art. 10.6 of its Statute, the Tribunal orders costs against the Applicant in the sum of USD500.

(Signed)

Judge Goolam Meeran

Dated this 10th day of March 2016

Entered in the Register on this 10th day of March 2016

(Signed)

Hafida Lahiouel, Registrar, New York