



JUDGE LUIS MARÍA SIMÓN, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Priscilla Rosana against Judgment No. UNDT/2011/217, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 29 December 2011 in the case of *Rosana v. Secretary-General of the United Nations*. Ms. Rosana appealed on 27 February 2012, and the Secretary-General answered on 30 April 2012.

Synopsis

2. The Tribunal holds that an appellant may not set a date arbitrarily for the time limit to start to run for the purpose of requesting management evaluation, by sending an ultimatum to the Administration in respect of her petition and announcing that she would interpret the failure to respond as an administrative decision of refusal.

3. The UNDT can set a date on which the time to file such a request starts to run, provided that it is established that an implied administrative decision was adopted and that the staff member was well aware of it

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management evaluation filed on 3 December 2009 was well outside the time limit, and that it was not empowered to suspend or waive the deadline for management evaluation.

Submissions

Ms. Rosana's Appeal

15. Ms. Rosana submits that the UNDT erred in law when it made her retirement date the conclusive date of an implied decision. The time limit should have started to run from 8 October 2009, when she gave an ultimatum to the UNEP Administration.

16. Ms. Rosana requests that this Tribunal overturn the UNDT Judgment and remand the case to the UNDT for determination on the merits.

Secretary-General's Answer

17. The Secretary-General submits that the UNDT correctly concluded that Ms. Rosana's request for management evaluation was not receivable as it was time-barred, because she did not file her request within two months as set forth in Staff Rule 11.2(c).

18. The Secretary-General also submits that the UNDT properly determined that the time limit for requesting management evaluation started to run from Ms. Rosana's retirement date of 31 August 2009 as, on that date, she was necessarily made aware that the reclassification request that she had filed before retirement had not been given positive consideration.

Considerations

19. The main issue in the present case is the receivability of Ms. Rosana's application. Her request for management evaluation was filed after sixty calendar days from the date of the notification of the impugned administrative decision.

20. Staff Rule 11.2(c) provides:

A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested.

Moreover, the Statute of the UNDT establishes, in Article 8(1)(c), that an application shall be receivable if “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”. On the same line, Article 8(3) of the UNDT’s Statute reads:

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.

21. The above-referenced period of sixty days must be considered to have run from the date of the staff member’s retirement on 31 August 2009. At that time, the staff member certainly knew that her petition for reclassification of her post or extension of her contract beyond retirement age would not be granted, which thus constitutes the implied administrative decision impugned. Ms. Rosana was necessarily aware of the negative result of her petition when she retired, because her retirement made it impossible to extend her contract.

22. The date of 20 October 2009 was established unilaterally by the Appellant in her favour. It cannot stand as the beginning point of the 60-day time limit within which to file a request for management evaluation.

23. This Tribunal holds that the UNDT correctly established that the silence of the UNEP/DEWA management constituted an implied administrative decision, and that this decision was taken on 31 August 2009.

24. An appellant may not unilaterally determine the date of the administrative decision by sending an e-mail to the Administration expressing an ultimatum to adopt a decision. If that were the case, no management review would ever be time-barred because the staff member could always prevent that possibility by simply sending an e-mail to the Administration stating that if his or her request is not analyzed by an arbitrarily chosen date it would be interpreted as an implied decision of refusal.

25. The date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine. On the date of her retirement on 31 August 2009, Ms. Rosana already knew what the administrative decision about her petition was: an implied refusal. As the request for management evaluation was filed on 3 December 2009, well outside the time-frame mentioned, the request had to be

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