



Judgme

Before

Case N

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JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2015/032, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 2 April 2015, in the matter of *Pavicic v. Secretary-General of the United Nations*. Mr. Alexander Pavicic filed his appeal on 29 May 2015, and the Secretary-General filed his answer on 3 August 2015.

Facts and Procedure

2. The following facts are uncontested:¹

... In 2009, the Organization undertook a one-time comprehensive exercise by which eligible staff members under the Staff Rules in force until 30 June 2009 were considered for conversion of their contracts to permanent appointments. By memorandum dated 20 September 2011, the Assistant Secretary-General for Human

... The new conversion exercise was completed in June 2014, at which time the Applicant was informed [by letter dated 17 June 2014, which he claimed he received on 19 June 2014] of the decision to [again] deny him the conversion of his appointment to a permanent one.

... On 1 August 2014, the Applicant sent the documents required to formally contest the [second] decision to the ICTY Staff Union, which, anew, was assisting a large number of staff in the same situation in collecting, administering and archiving materials. However, these documents were not transmitted to Counsel for the Applicant.

... Between 8 and 13 August 2014, Counsel for the Applicant requested management evaluation of the June 2014 decisions on behalf of 247 other ICTY staff members. According to the Applicant, he only realised that his management evaluation had not be[en] requested at that time when his colleagues received management evaluation replies a few weeks later [varying between 29 September and 1 October 2014], while he did not. He then contacted the Staff Union to query about the lack of a management evaluation in his case.

... After a number of exchanges among the Applicant, his Counsel and the Staff Union, the President of the ICTY Staff Union clarified, on 17 February 2015, that the documents pertaining to the Applicant had “slipped through the cracks”.

... On 18 February 2015, the Applicant requested management evaluation of the contested decision [in which he explained, amongst other things, the circumstances giving rise to his late submission]. The Management Evaluation Unit (“MEU”), on behalf of the Secretary-General, upheld the decision, as per reply letter of 19 February 2015.

3.

time limits.² While acknowledging that in extremely rare cases certain procedural failures have been set aside in the interest of justice on the grounds that they resulted from clerical mistakes, the UNDT nonetheless considered Mr. Pavicic's was not such a case, all the more so because even after Mr. Pavicic learned in mid-October 2014 that the mandatory step of requesting management evaluation had not been taken in his case, it took him until mid-February 2015 to submit his request to the MEU. Applying the equitable doctrine of laches, the UNDT considered that Mr. Pavici

7. The UNDT erred in finding a lack of due diligence on the part of Mr. Pavicic by relying on the time elapsed between October 2014 and February 2015. Upon learning that his MEU request had not been filed, Mr. Pavicic could not simply file the pre-prepared

time limit for requesting management evaluation. Mr. Pavicic has not explained why the “nature and history” of the *Ademagic et al.* case should qualify as a factor justifying a

who were well aware of the applicable time limits “is only relevant to the relationship between the client and his counsel, and does not affect the case before the UNDT”.⁵

13. Insofar as Mr. Pavicic requests the Appeals Tribunal to find that the UNDT misapplied the interests of justice analysis and should have found exceptional circumstances in the present case, such relief would be tantamount to waiving the deadline to submit a request for management evaluation, and runs counter to Appeals Tribunal jurisprudence which has consistently held that the UNDT does not have the authority or jurisdiction to make such a waiver. The UNDT thus correctly held that Mr. Pavicic’s application was not receivable and that the interests of justice required no exception in this case.

14. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety and affirm the Judgment.

Considerations

15. The arguments presented by Mr. Pavicic in support of his appeal presuppose that the Dispute Tribunal had a discretion to grant his application. This is not the case. In accordance with its own statutory framework, the Dispute Tribunal had no option but to reject Mr. Pavicic’s application as not receivable.

16. Under Article 8(1) of the Dispute Tribunal’s Statute, the Dispute Tribunal has jurisdiction to receive applications appealing administrative decisions only “when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines”.⁶

17. The relevant parts of Staff Rule 11.2 provide:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for management evaluation of the administrative decision. as2482c(82c5 0 7.02.)]0557 -1.73627.34 Cit(o)-51 TD-. 0 TDO T98

THE UNITED NATIONS APPEALS TRIBUNAL

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar