
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/048

Judgment No.: UNDT/2015/108

Date: 11 November 2015

Introduction

1. The Applicant, a former P-4 level staff member with the United Nations Development Programme (“UNDP”) in Haiti, contests the decision not to renew her fixed-term appointment upon its expiry on 9 June 2013. She submits that the contested decision was notified to her on 18 April 2013 and that she filed a timely request for management evaluation of that decision, as well as a timely application with the Tribunal.

2. The Respondent submits that the application is not receivable because the Applicant did not file her request for management evaluation within 60 days of the date of notification of the contested decision, as required by staff rule 11.2. The Respondent submits that the Applicant was notified of the contested decision on 15 March 2013 and was therefore required to submit her request for management evaluation by 14 May 2013 at the latest. However, she first submitted her management evaluation request to the United Nations Secretariat on 28 May 2013, and then resubmitted it to UNDP on 7 June 2013. Both of these dates were well beyond the 60-day period.

Relevant background

3. In June 2011, the Applicant was hired as a program specialist in the Global Fund Project on a one-year fixed-term appointment. Her contract was subsequently renewed for another year.

4. On 4 March 2013, the Applicant had a meeting with her supervisor during wsD.dTc0 Tw2D.dTi 1 v715.655 0 TD9.0003 Tc.2901 v conter1(Glyts thali)3.49frogramm

5. On 15 March 2013, the Applicant sent an email to her supervisor, asking for a confirmation that her contract would not be renewed. She stated:

Following our discussion last week Monday, it is my understanding that my position will not be extended beyond this current period. I would highly appreciate it if you could confirm this to me by 19 March 2013, especially that my contract is coming to an end in the beginning of June 2013 and soon after will my [United Nations Laissez-Passer]. In the event I do not hear from you by this time, I will construe a non-response as confirmation of the decision not to extend my contract.

6. The supervisor replied on the same day, 15 March 2013, confirming that the Applicant's position would not be renewed. The email stated:

Yes, I can confirm to you that from my discussions with the senior management and the GF [Global Fund], it was decided that your position will not be renewed. This is due to the resource constraints and the exigency of the GF and the CCM [Country Coordinating Mechanisms] that we should reduce HR [Human Resources] cost by promoting national staff to take some high profile positions. You will be notified in due course by the CO [Country Office], as per the normal procedures. However, as I explained to you a new P4 position will be opened combining most likely the Program, Capacity Development and may be M&E [Monitoring and Evaluation] specialist. We are still working o[n] the Job description. When the position will be opened, you may apply if you are interested.

7. Approximately one month later, on 18 April 2013, the Senior Country Director, UNDP/Haiti, sent a letter to the Applicant stating that in view of UNDP/Haiti restructuring of the staffing of the Global Fund program management unit, “[her] assignment with UNDP Haiti will reach completion upon expiration of [her] fixed-term appointment on 9 June 2013”.

8. On 8 May 2013, the Applicant submitted a complaint to the UNDP Ethics Office alleging that “[d]espite successful performance, [her] contract

[was] being terminated because [she] reported fraud within the [O]rganization”.

9. On 28 May 2013, the Applicant filed a management evaluation request with the Management Evaluation Unit (“MEU”) of the United Nations Secretariat, requesting management evaluation of the decision not to renew her fixed-term appointment. She stated in her request that the contested decision “was announced via an email to [her] on 15 March 2013” and that “[she] received the email the same day”.

10. The MEU forwarded the request to UNDP and, on 31 May 2013, informed the Applicant that since the decision being contested concerned

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Therefore, we have concluded that no *prima facie* case of retaliation has been established.

16. On 22 January 2014, the Deputy Director, Office of Audits and Investigations, wrote to the Applicant in reference to her allegations of harassment. The Deputy Director informed the Applicant that considering that despite reminders she had not filed her full complaint, they were not able to progress any further with the alleged matter and were closing her case.

17. On 20 March 2014, the UNDP Bureau of Management responded to the Applicant's request for management evaluation, dated 7 June 2013. The Bureau of Management stated that the Applicant's request for management evaluation was filed after the expiration of the applicable deadline and, therefore, her claims were not receivable. The Bureau of Management further stated that the Applicant's claims of harassment and abuse were found by the Office of Audits and Investigations to be unsubstantiated; that her claims of retaliation were also found unsubstantiated by the Ethics Office; and that the non-renewal of her contract was proper and supported by valid reasons.

Procedural history

18. The present application was received by the Tribunal on 19 June 2014. On 24 June 2014, the Registry transmitted the application to the Respondent. On 24 July 2014, the Respondent filed a reply to the application.

19. On 22 July 2015, the case was assigned to the undersigned Judge.

20. On 28 August 2015, the Tribunal issued Order No. 200 (NY/2015), directing the Applicant to file, on or before 30 September 2015, a response to the receivability issue raised in the Respondent's reply.

21. On 30 September 2015, the Applicant filed a motion for extension of time to file her submission in response to Order No. 200 (NY/2015). The Applicant provided several reasons for her request, including that she was self-represented and was dealing with personal family and health issues.

22. On 1 October 2015, the Registry, at the direction of the undersigned Judge, instructed the Respondent to file a response, if any, to the Applicant's motion. The Respondent replied on the same day, stating that "[i]n the circumstances, we have no objection to the extension of time".

23. On 1 October 2015, the Tribunal issued Order No. 255 (NY/2015), granting the Applicant's motion for an extension of time and directing the Applicant to file a submission addressing the issue of receivability *ratione materiae*, raised in the Respondent's reply, as well as the issue of receivability *ratione temporis* of the application. The Respondent was also directed to file a submission on the issue of receivability *ratione temporis* of the application.

24. On 30 October 2015, the Respondent filed his response to Order No. 255 (NY/2015). The Applicant filed her response on 2 November 2015.

Applicant's submissions on receivability

25. The Applicant submits, with respect to the issue of receivability *ratione materiae*, that the date of 15 March 2013 should not be considered as the date on which she was notified of the contested decision. She submits that the email that she received on that day "dealt with the future of the Applicant's post". She states that, although the email stated that "it was decided that [her] position will not be renewed", it also stated that she "will be notified in due course by the CO [Country Office], as per the normal procedures". The Applicant submits that, therefore, the email of 15 March 2013 was merely a notification of an intent regarding her post. The Applicant further submits

that her supervisor did not have the authority to make the decision on the non-renewal of her contract.

26. The Applicant submits, with regard to the issue of receivability *ratione temporis*, that UNDP indicated to her on 17 June 2013 that it would investigate her claims of harassment before considering her request for management evaluation. It was not until eight months later, on 21 March 2014, following the closure of the investigation, that she received a response from UNDP containing its management evaluation. The Applicant submits that the Respondent should not benefit from his own advice if that advice was misplaced. The Respondent's own action resulted in postponement of the entire management evaluation process and in a tacit agreement to waive the deadlines, thus postponing the deadline for the Applicant's request and for UNDP's response. Moreover, the Tribunal has the authority to suspend or waive the deadlines for filing an application for a limited period of time and in exceptional cases under art. 8.3 of its Statute. The Applicant therefore requests the Tribunal to consider such a request in light of the advice provided by the Respondent, as there was no suggestion in UNDP's communications that the Applicant should proceed in the absence of a response within 45 days.

Respondent's submissions on receivability

27. The Respondent submits, with respect to the issue of receivability *ratione materiae*, that the Applicant failed to request management evaluation within the 60-day deadline set forth by staff rule 11.2(c). The Applicant was notified of the non-renewal of her contract on 15 March 2013, therefore, she was required to submit her request for management evaluation by 14 May 2013. The Applicant's request for management evaluation was submitted on 29 May 2013, and was therefore time-barred. The Respondent submits that the Applicant's claim that the notification of 15 March 2013 was

- (c) To enforce the implementation of an agreement

(a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;

(b) 90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or

(c) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

2. Any person making claims on behalf of an incapacitated or deceased staff member of the United Nations, including the

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073; *O'Neill* 2011-UNAT-182; *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335). This competence can be exercised even if the parties do not raise the issue, because it constitutes a matter of law and the Statute prevents the Dispute Tribunal from considering cases that are not receivable.

33. In the present case the Respondent states that the application is not receivable *ratione temporis* because the Applicant did not request management evaluation within 60 days from the date of notification of the contested decision.

34. The Dispute Tribunal's Statute and the Rules of Procedure clearly distinguish between the receivability requirements as follows:

a. The application is receivable *ratione personae* if it is filed by a current or a former staff member of the United Nations, including the United Nations Secretariat or separately administered funds (arts. 3.1(a)–(b) and 8.1(b) of the Statute) or by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered funds and programmes (arts. 3.1(c) and 8.1(b) of the Statute);

b. The application is receivable *ratione materiae* if the applicant is contesting “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment” (art. 2.1 of the Statute) and if the applicant previously submitted the contested administrative decision for management evaluation, where required (art. 8.1(c) of the Statute);

c. The application is receivable *ratione temporis* if it was filed before the Tribunal within the deadlines established in art. 8.1(d)(i)–(iv) of the Statute and art. 7.1–7.3 of the Rules of Procedure.

35. It results that for being considered receivable by the Tribunal, an application must fulfil all the mandatory and cumulative requirements

42. Having established that the contested decision in this case is an administrative decision within the meaning of art. 2.1 of the Statute, the Tribunal will now examine whether the requirement of a timely management evaluation request has been fulfilled.

43. In her request for management evaluation, the Applicant, who at the time was represented by Counsel, ex

as indicated in the application. Even if the communication of 18 April 2013 was not a reiteration of the decision of 15 March 2013 but a separate administrative decision, the application would still not be receivable because the Applicant failed to file a management evaluation request regarding the decision of 18 April 2013.

46. As explained above, the Tribunal does not have jurisdiction, pursuant to art. 8.3 of its Statute, to waive or extend the deadlines for management evaluation requests (*Costa; Trajanovska; Sethia; Ajdini et al.*).

47. Accordingly, the Applicant failed to submit a timely request for management evaluation of the decision notified to her on 15 March 2013, and, as a result, one of the mandatory and cumulative conditions of art. 8.1 of the Statute has not been met. The application before the Tribunal is therefore not receivable *ratione materiae*.

Receivability ratione temporis

48. The Dispute Tribunal and the United Nations Appeals Tribunal have consistently stressed the importance of complying with statutory deadlines (*Mezzoui* 2010-UNAT-043).

49. As results from the mandatory provisions of art. 8.1(d)(i)(a)–(b) of the Tribunal’s Statute and art. 7 of the Rules of Procedure, as well as staff rules 11.2(d) and 11.4(a), an application before the Tribunal must (“shall”) be filed within 90 days either from the date of notification of the outcome of management evaluation or the date of expiry of the 45-day deadline (for staff stationed outside of New York) for management evaluation, whichever is earlier.

50. In the present case the Applicant’s management evaluation request filed on 28 May 2013 with the MEU of the United Nations Secretariat was correctly

forwarded to UNDP and the Appli

52.

and 22 October 2013, it would have reset the deadline for the filing of her application with the Tribunal.

56. However, UNDP's management evaluation was sent to the Applicant approximately five months later, on 20 March 2014, stating that the Applicant could appeal the decision "by filing an application [with the Dispute Tribunal] within ninety (90) days from the date of receipt of this letter". This representation was made by UNDP months after the deadline for the filing of an application before the Tribunal had expired. UNDP's representation was therefore incorrect as UNDP has no legal authority to suspend or extend the deadline for the filing of an application with the Dispute Tribunal. The time limits for filing before the Tribunal are stipulated in the Statute of the Tribunal, and the authority to suspend or waive them rests solely with the Dispute Tribunal, as results from art. 8.3 of the Statute and arts. 7.5 and 35 of the Rules of Procedure. Therefore, under *Neault*, the applicable time limit for the filing of her application was not reset.

57. The Tribunal observes that as follows from the management evaluation request filed on 28 May 2013, at the time of filing her retaliation complaint and her management evaluation request, the Applicant was represented by Counsel who were presumed to be familiar with the proceedings before the Tribunal and the relevant jurisprudence. The Applicant, assisted by her Counsel, was expected to diligently file, before or on 22 October 2013, either her application on the merits or at the very least a request for an extension of time to file her application on the merits.

58. The application on the merits was filed by the Applicant (who was by that time self-represented) on 19 June 2014. The application did not contain any express requests for waiver or suspension of the deadline to file her application. Her application contained Addendum A, which consisted of

31 pages of extensive submissions on the merits, including claims, facts,

UNAT-184; *Muratore* 2012-UNAT-191; *Christensen* 2012-UNAT-218; *Rahman* 2012-UNAT-260).

61. The fact that the Applicant may have relied on erroneous advice cannot bring the case within the ambit of an “exceptional case” as provided for by art. 8.3 of the Dispute Tribunal’s Statute (*Scheepers* 2012-UNAT-211). Therefore, her application to the Tribunal is not receivable *ratione temporis*.

62. Since the case is not receivable *ratione materiae* and *ratione temporis*, the Tribunal is not competent to assess the merits of the case (*Servas* 2013-UNAT-349).

Observation

63. The Tribunal observes that the communications sent by UNDP in response to the Applicant’s request for management evaluation indicate a certain lack of familiarity on the part of UNDP with the language of staff rule 11.2 as well as with the binding jurisprudence of the United Nations Appeals Tribunal, specifically with the pronouncements in *Neault*.

64. Although it is the Applicant’s responsibility to consult with the relevant statutory provisions and comply with them, it is equally incumbent upon the Respondent to be familiar with the applicable legal provisions, act in good faith, and not make representations that may mislead its staff or former staff with regard to the deadlines for filing an appeal, if any, before the Dispute Tribunal.

65. The Tribunal expresses its trust that an identical issue will not arise in cases that may be filed before the Tribunal, and recommends that in the future the Organization use a standardized acknowledgment of a management evaluation request, including a paragraph unequivocally stating the deadline

for completion of management evaluation and the deadline for the filing of an application before the Dispute Tribunal as explained by the Appeals Tribunal in *Neault*.

Conclusion

66. In the light of the foregoing, the Tribunal DECIDES:

67. The application is not receivable and is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 11th day of November 2015

Entered in the Register on this 11th day of November 2015

(Signed)

Hafida Lahiouel, Registrar, New York