



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2013/097

Judgment No.: UNDT/2013/155

Date: 2 December 2013

Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

A-ALI and 45 others

v.

Relevant background

5. By United Nations Publications Board Directive, Section IX of Decision No. 2011/9, issued on 28 April 2011, all Secretariat entities were required to reduce:

a.

9. During the course of 2012, staff representatives and management of DGACM held discussions regarding the future of the Publishing Section in view of its goal to reduce its staffing and budgetary levels as pa

lawfirmshw@yahoo.com. These cases were registered by the MEU under reference nos MEU/192-13/R to MEU/233-13/R.

13. On 25 March 2013, Mr. Saffir, a staff member in

...here is a final staff member who is requesting management evaluation, to be added to the group request of 19 March 2013.

...

Best Regard,

Claire Gilchrist

5:32 PM – From Ms. Silverstein to lawfirmshw@yahoo.com

... the MEU does not have a mass claim process and therefore we cannot add your clients to a “consolidated request”. As you might recall, **the issue at hand was found to be moot and closed accordingly on 9 April 2013.** [emphasis added]

In the event that Messrs Fasanella, McKenzie and Maung wish to submit a separate request for management evaluation, we require that they submit a full request form, detailing which decision they challenge, on what date it was taken, providing legal arguments and so on.

6.19 PM – From lawfirmshw@yahoo.com to Ms. Silverstein

We consider the requests to be duly filed and receivable in conformity with the rules. ...

Best Regard,

Claire Gilchrist

6.50 PM – From Ms. Silverstein to lawfirmshw@yahoo.com

The MEU does not deny that it is in possession of a full management evaluation request form in the case of *A-Ali et al*, which included 42 applicants. However, this request was not submitted on behalf of Messrs. Martinez, Fasanella, McKenzie and Maung.

Since **the case of A-Ali et al has been closed**, we cannot simply add Messrs. Martinez, Fasanella, McKenzie and Maung to that case. [emphasis added]

However, your clients have the right submit a request for management evaluation of their own.

18. The Tribunal observes that there was no difficulty with these email exchanges to the same email address of the Applicants legal representatives. The references to the cases of *A-Ali et al* being closed put Counsel on notice, yet again, that the MEU

had concluded its consideration and closed those cases. In the circumstances, it should have been apparent that if Counsel had not received notification, as they claim, at the very least there was a duty to enquire of the MEU as to why they considered *Ali et al.* closed if no such communication was received by the Applicants' authorized legal representatives.

19. On 17 July 2013, an application was filed with the Dispute Tribunal title *A-Ali et al.* on behalf of 46 Applicants: the 42 Applicants who had contested the 10 February 2013 decision on 19 March 2013, and to whom the 9 April 2013 email was addressed, as well as the four applicants who attempted to add their names to the consolidated MEU requests on 11 April 2013, which requests had been refused by the MEU for reasons which are apparent from the above string of email exchanges.

20. The Judge also has conduct of *Saffir* Case No. UNDT/NY/2013/017 and notes that, with the exception of pages 9 and 10 out of 11 which discuss the receivability of the application, the remainder of the application in *A-Ali and 45 others* appears to be a verbatim rendering of the application filed in *Saffir*. Accordingly, apart from coordinating the personal data of 46 Applicants, there was not a great deal of preparation that remained to be done to file the cases. Further, given the concern expressed by the Applicants about their job security, it is incomprehensible that between 46 staff members and their legal representatives there should have been such a combined lack of due diligence.

Consideration

Applicable law

21. ST/SGB/2013/3 Staff Rules and Staff Regulations of the United Nations dated 1 January 2013 states:

Rule 11.2

Management evaluation

(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 a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

(d) The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York.

22. Article 8 of the Statute of the Dispute Tribunal provides:

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

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

statutory time limits. However, the Tribunal notes that in these cases the Applicants took the view that since they had engaged competent legal representatives their affairs would be taken care of.

27. The Judge shared with the witnesses his view that it was surprising, given

MEU request filed on 11 April 2013

32. With regard to the four Applicants who attempted to attach their request for management evaluation after the 42 earlier cases had been closed, their situation is significantly different. As was stated by the MEU to the legal representatives on 11 April 2013, the MEU did not consider their applications to be properly filed and receivable and requested that, should they so wish, they should file new applications separate from the consolidated one for *A-Ali et al.*. Notwithstanding the clear guidance offered by Ms. Silverstein from the MEU to the Applicant's legal representatives, at no time did these four additional Applicants file new separate requests following the closure of the *A-Ali et al* requests for management evaluation. In the circumstances, they failed to comply with art. 8.1(c) of the Statute of the Tribunal which states that an application shall be receivable if “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”. It was a mandatory requirement for these four staff members to request management evaluation within 60 days of the contested decision. They failed to do so.

33. The claims of Applicants Martinez, Fasanella, McKenzie and Maung are not receivable for failure to comply with the requirements of art. 8.1(c).

34. As much as the Tribunal sympathizes with all the Applicants in relation to their concerns about job security, it must recall that the Dispute and Appeals Tribunals have in several judgments ruled clearly and unequivocally that respect for the applicable time limits is of the utmost importance and that the time limits have to be strictly enforced.

Was there abuse of process

35. 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”.

Case No. UNDT/NY/2013/097

Judgment No. UNDT/2013/155

Conclusion

39. The claims of all 46 staff members identified in the attached schedule are not receivable and are hereby dismissed.

(