



Introduction

1. The Applicant was a Logistics Assistant serving with the United Nations Organization Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO).

2. On 28 February 2019, he filed the current motion for extension of time to file an application pursuant to articles 7 and 35 of the Rules of Procedure of the United Nations Dispute Tribunal (UNDT).

Background facts

3. The Tribunal has taken these facts from the application and the supporting documentation provided by the Applicant.

4. The Applicant is a former staff members of the International Criminal Tribunal for the former Yugoslavia (ICTY) who entered into service with MONUSCO in 2001.

5. On 24 October 2012, the Applicant left his duty station in Kisangani, Democratic Republic of the Congo, for his Rest & Recuper-318.0 391.0 135.36 393.36 Tm [(O)] T

47 international staff members affected by the retrenchment up to 30 September 2014 only. FPD/DFS directed MONUSCO to explore placement opportunities “within or outside the Mission” for the affected international staff members prior to separation.

8. In a memorandum dated 14 January 2015, Mr. Daniel Thomas Dale, Chief Human Resources Officer (CHRO), MONUSCO, requested that the Applicant submit sick leave certification within ten working days or report for duty after receiving clearance from the United Nations Medical Services Division (MSD). He further informed the Applicant that if he failed to report within the period stipulated or to provide valid justification for his absence, MONUSCO would consider him as having abandoned his post pursuant to staff rule 9.3. The Applicant did not submit any documentation showing that he complied with Mr. Dale’s instructions.

9. On 17 March 2015, the Applicant’s mother sent a letter to Mr. Chadha informing him of the Applicant’s absence from work due to ill health and his inability to return to work.

10. One of the supporting documents the Applicant submitted with his motion is a medical report dated 20 July 2015 from one Dr. Marx Okonji at Nairobi Hospital certifying that he was fit to return to work effective 20 July 2015. The Applicant sent this medical report to MSD and received a response on 13 August 2015 stating: “We are informed by your mission that you left your mission and did not submit any medical reports in support of sick leave accordingly. As such, no sick leave can be certified and your clearance to return to work cannot be processed.”

11. On 24 September 2015, Mr. Tinkamanyire Mugisha, Officer

12. The Applicant sought assistance from OSLA on 26 November 2015. OSLA's response to his email states in relevant part that:

Your matter may be urgent because you need urgent action taken by the Administration, or because you are very close to a deadline to challenge a decision. The most common deadline is 60 days to challenge an "administrative decision", but shorter deadlines may apply: please see [here](#). **Contacting OSLA does not suspend any deadline. Missed deadlines may mean there is nothing that can be done to resolve your case. Prior to OSLA assessing your case and agreeing to represent you, you remain responsible for meeting all deadlines.**

13. OSLA subsequently informed the Applicant that it would not represent him.

14. The Applicant wrote to Mr. Mugisha on 7 December 2015 to contest his separation from service.

15. The Applicant sought legal advice from his current legal representative, Mr. Jomo K. Nyaribo, in October 2016.

16. The Applicant requested management evaluation of the decision to separate him from service effective 30 September 2014 on 11 November 2017. The Management Evaluation Unit (MEU) informed him by letter dated 17 November 2017 that his request was time-barred since he had waited more than two years since the statutory deadline to request management evaluation.

17. The Applicant filed the current motion on 28 February 2019.

Considerations

Did the Applicant submit a timely request for m

Is the Applicant's motion for extension of time to file an application timely?

23. Under article 8.1(d)(i)(a), the Tribunal is competent to hear and pass judgment on an application if the application is filed within 90 calendar days of the applicant's receipt of the response by management to his or her request for management evaluation.

24. Having received the response from MEU on 17 November 2017, the Applicant was required to file his application to the Dispute Tribunal by 15 February 2018. The Applicant filed the current motion for extension of time to file an application on 26 February 2019.

29. In other words, art. 8.3 does not grant an applicant the right to file a motion for suspension, waiver, or extension of time limits whenever it suits him or her. There is a limitation on the time for filing thus a request under art. 8.3 should be filed before the expiry of the 90-day statutory deadline in art. 8.1(d)(i)(a).

30. In the current case, the Applicant's motion has been filed more than a year after the 15 February 2018 statutory deadline thus the Tribunal cannot and will not entertain the current request for extension of time to file his application.

31. Additionally, the Tribunal notes that an extension or waiver of time can be justified under art. 8.3 of the UNDT Statute if the applicant shows that exceptional circumstances beyond his or her control prevented him or her from acting within the statutory time limits.³

32. The Applicant submits that the following "exceptional circumstances" warrant an extension of time: (i) his inability to obtain legal representation from the Office of Staff Legal Assistance (OSLA) in 2015; (ii) his failed attempt to resolve the dispute informally in 2015; (iii) non-payment of his salary by MONUSCO since September 2013, which hampered his ability to retain private legal counsel; and (iv) deterioration of his health.

33. With respect to his assertion regarding OSLA, the Tribunal notes that OSLA promptly and succinctly informed the Applicant that: (i) his matter was under review and that he would be contacted as soon as possible; (ii) he had 60 days to contest an administrative decision; (iii) contacting OSLA would not suspend any deadlines; and (iv) that until OSLA agreed to represent him, he remained responsible for meeting all deadlines. OSLA subsequently declined to represent the Applicant. With this information in hand, it was up to the Applicant to follow up on the deadlines in a timely manner and to make best efforts to find alternative means of representation. The Tribunal finds that OSLA's refusal to represent the Applicant is not an exceptional circumstance.

³ *Bofill* 2014-UNAT-478; *El-Khatib* 2010-UNAT-029.

34. The Applicant claims in his application that he sought assistance from the Office of the Ombudsman to negotiate informal settlement with the Administration. He claims the Office of the Ombudsman informed him that his “case was of too great legal complexity” for them to assist him. The Applicant has not provided the Tribunal

68. [...], the Tribunal needs to reiterate here that it is committed to dealing with genuine applications that come to it

(Signed)

Judge Nkemdilim Izuako

Dated this 11th day of March 2019

Entered in the Register on this 11th day of March 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi