
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/001
Order No.: 15 (NY/2016)
Date: 27 January 2016
Original: English

Before: Judge Ebrahim-

Introduction

1. The Applicant is a Principal Officer at the D-1 level at the Secretariat for the Convention on Biological Diversity (“CBD”), United Nations Environment Program, in Montreal, Canada. On 11 January 2016, the Dispute Tribunal received from the Applicant an incomplete motion for extension of time to file an application together with one annexure uploaded in the eFiling portal of the Dispute Tribunal.

2. On the same day, the Registry of the Dispute Tribunal advised the Applicant by email that his motion was incomplete and requested him to upload in the eFiling portal a completed motion that included the following information:

- a. The Applicant’s name on the cover page of the motion;
- b. The Applicant’s personal information;
- c. The Applicant’s employment information at the time of the contested decision;
- d.

4. On 12 January 2016, the Applicant responded to the Registry by email and attached an updated, unsigned motion for extension of time. The cover page of the motion did not list the Applicant's name or the date of the motion. The Applicant seeks an extension of time until 15 March 2016 to file an application contesting the decision to laterally transfer another staff member to fill the vacant post of Deputy Executive Director at the D-1 level, Secretariat, CBD ("the contested post"). The Applicant states that he applied for the position when it was advertised. The following four annexes

a letter dated 3 September 2015 advising that the Executive Secretary, CBD, had recommended a certain staff member to fill the contested post through a lateral transfer and a letter dated 17 September 2015 informing him that the post had “been cancelled and may be advertised later”. These letters were not attached to the motion and are therefore not before the Tribunal.

6. On 13 January 2016, the Registry advised the Applicant, again by email, that all case filings must be submitted through the Dispute Tribunal’s eFiling portal, that all pleadings must be included in the motion and not in a separate document, and that email correspondence attached as annexes must be copies of originals and not reproduced in Word documents.

7. On 19 January 2016, the Registry followed up with the Applicant via email to check whether he was experiencing technical difficulties. The Applicant did not respond. However, on 20 January 2016, he uploaded to the eFiling portal the documents he had submitted via email on 12 January 2016, as a separate filing to a new case. The documents uploaded by the Applicant were subsequently added manually by the Registry to the case file opened for the current motion.

Issues pertaining to the motion for extension of time

8. The Applicant seeks an extension of time until 15 March 2016 to file an application contesting the decision to laterally transfer another staff member to fill the contested post, for which he had applied. He states in his motion that he was notified or became aware of the decision on 11 November 2015 although he also attaches to his motion an email exchange, dated 10 September 2010, in which he was informed that the lateral transfer of the selected candidate had been approved.

9. The reason provided by the Applicant for his request for an extension of time to file an application is that he has “formally requested informal mediation by the UN Ombudsman on 10th January 2016 and [is] awaiting their services which may hopefully

resolve the problem”. The Applicant further states that he has not requested management evaluation of the decision he seeks to contest.

Applicable law

Filing of motions

10. Article 4 of the Dispute Tribunal’s Practice Direction No. 5 on the Filing of Motions and Responses (adopted by the Tribunal pursuant to art. 36.2 of the Rules of Procedure of the Dispute Tribunal) states that all requests to the Tribunal shall be made by motion stating the grounds relied on for the determination sought.

Extension of time

13. Staff rule 11.4(a) (United Nations Dispute Tribunal) states:

A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within ninety calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2(d), whichever is earlier.

Consideration

Defective motion

14. It goes without saying that there is an obligation on parties to comply with the most basic of requirements to found any application or motion before the Tribunal, and

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No request for management evaluation

16. Furthermore, the Applicant has indicated in his motion that he has not requested management evaluation of the decision he seeks to contest. Pursuant to art. 8.1(c) of the Statute of the Dispute Tribunal and staff rule 11.2(a), an applicant must, as a mandatory first step (other than in cases that fall under staff rule 11.2(b)), request management evaluation of a contested decision before filing an application with the Tribunal. The date that a staff member submits a request for management evaluation, and the date that the Management Evaluation Unit responds to the request, if at all, determines the deadline for filing an application to the Dispute Tribunal (art. 8.1(d) of the Statute).

17. The annexes to the motion show that the Applicant was notified of the approval of the request for the lateral transfer of the selected candidate on 10 September 2015. If this is taken as the date of notification of the contested decision, he was required under staff rule 11.2(c) to submit a request for management evaluation by 9 November 2015, 60 days from the date of notification. Even taking the most favourable date, namely the date of 11 November 2015 when all the staff of the Secretariat of the CBD were notified that the recommended officer had been “officially appointed”, the Applicant would have been required under staff rule 11.2(c) to submit a request for management evaluation by 10 January 2016.

18. The Applicant states that he has not requested management evaluation. Submitting a request for management evaluation is, with a few exceptions,

