



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:

Original: English

Before: Judge Memooda Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

GABRIEL

v.

Introduction

1. By letter dated 4 July 2009, the applicant filed her application with the United Nations Dispute Tribunal contesting the decision of the Secretary-General of 19 November 2008 to take no further action on her appeal against decisions to reassign her and to advertise her former post, thus abiding the recommendation of the Joint Appeals Board.

- f. the application was stamped as received by the Disput

November 2008 which the applicant states she received on 21 November 2008.

- d. Furthermore, the waiver of time limit granted by the Administrative Tribunal, having expired on 30 June 2009, does not render the waiver of time limit to run anew before the Dispute Tribunal. The applicant failed to explain why the time limit of 30 June 2009 was not met and also to show why the Dispute Tribunal should accept her application despite the clear provision of the rules on time limits. The applicant failed to disclose any exceptional circumstances beyond her control that prevented her from the timely pursuit of her appeal.

Applicant submissions

9. The applicant's response to the motion of 28 August 2009 states that the respondent's motion to dismiss is:

“misinformed and without substance. It appears as a dilatory tactic by the Respondent to postpone its reply in this case, as seen through the Joint Appeals Board proceedings. During the JAB proceedings, it took the Respondent more than three months for an initial Respondent's Reply...The Respondent's substantive reply was produced only seven months later, on the 11th October 2007. It took 12 more months for the case to be heard by a JAB Panel, in September 2008, without inviting the applicant and her witnesses to depose.”

10. The applicant's response does not directly address the points raised by the respondent and apart from further argumenta

Tribunal “consider the application receivable”, there is no formal application for an extension of time currently before me.

The applicable law

12. In a recent judgment of this Tribunal, *Morsy* UNDT/2009/036, I set out the applicable law and its interpretation regarding time limits in great detail. I therefore do not intend to repeat it here suffice to say that in terms of its Statute, the Dispute Tribunal “may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases” (article 8.3). Furthermore, article 7.5 of the Rules of Procedure provides that in exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of time limits and that “[s]uch written request shall succinctly set out the exceptional circumstances that in the view of the applicant, justify the request”.

13. Therefore, the Dispute Tribunal may suspend, extend or waive time limits in an exceptional case—see the *Morsy* judgment, *supra*. The rules provide that in exceptional cases the applicant “may”, (not *shall*), submit a written request setting out

4.3 The United Nations Dispute Tribunal shall be operational as of 1 July 2009. Decisions made by the Secretary-General between 2 April 2009 and 30 June 2009 on appeals or disciplinary cases with or without consulting a Joint Disciplinary Committee may be challenged before the Tribunal.”

15. The Administrative Tribunal’s power to accept cases until 30 June 2009 includes the power to grant the necessary extensions of time upon application. The applicant was so granted an extension until 30 June 2009. In my view, section 4.3 merely states that decisions of the Secretary-General after 2 April 2009 “may” be challenged before the Dispute Tribunal; it does not exclude any decisions made prior to 2 April 2009 from being challenged before the Tribunal. It is also noted that the work of the Tribunal is regulated by the Statute, adopted by the General Assembly and while the Secretary-General’s bulletin is useful, it is not a superior instrument.

16. I am satisfied on the papers before me that the Administrative Tribunal granted the applicant an extension of time to file by 30 June 2009. There is no specific request to the Dispute Tribunal for the additional period from 1 to 16 July 2009 setting out reasons for the delay in terms of that envisaged by article 7.5 of the Rules of Procedure.

17. However, the respondent did not oppose the “Applicant’s comments on the Motion to Dismiss” of 28 August 2009 and consented that the matter be decided on the papers. In this respect, I must assume that the respondent does not deny the averments set out by applicant’s counsel in said comments. Furthermore, I take it that counsel for the applicant would not be misleading the Dispute Tribunal when he states that several extensions for time were requested and granted by the Administrative Tribunal prior to the final one expiring on 30 June 2009. It is also a matter of record that the applicant’s counsel was advised by the Administrative Tribunal in May 2009 that the contact information for the new Dispute Tribunal would be made available in due course which was clearly not done by end-June 2009. This necessitated counsel for the applicant having to contact Geneva without success, and eventually dispatching the application by post on 4 July 2009 to the newly atwauy

appointed Registrar of the Dispute Tribunal. The application was, at most, 16 days out of time as the application was date-stamped by the Dispute Tribunal on 16 July 2009.

18. As the applicant has, in any event, set out the circumstances surrounding her failure to apply for a waiver or extension in “Applicant’s comments on the Motion to Dismiss” of 28 August 2009, I do not find that in the peculiar circumstances of this particular case, the failure to file a formal application at the outset is fatally defective to the application.

19. Therefore, taking into account that the averments regarding previous extensions of time and the advice given by the Administrative Tribunal regarding the filing of the appeal are unchallenged, I find that on the facts of this specific case, particularly during the transition period when some confusion appears to have risen, this is an exceptional case deserving of the waiver and extension of the time limits. The Dispute Tribunal finds that this case is therefore receivable and the motion to dismiss is denied.

Additional matter of note

a statement of issues in a useful manner. Furthermore, the applicant does not provide a clear list of witnesses to be called and instead requests the Tribunal “to designate one of its members or a neutral third party to receive depositions from the following key witnesses on the harassment”. It is not the role of the Tribunal to do this.

23. I find it appropriate in this case to issue such directions as may be necessary for a fair and just disposal of this case

- b. a list of the documents upon which the respondent relies (annexed as appropriate);
- c. a response to the statement of the issues of law provided by the applicant, and a statement of the issues of law raised by the respondent, if any; and
- d. a list of witnesses on which it proposes to rely, if any, together with a brief statement of the evidence to be adduced from said witnesses.

27. The Registry shall inform both parties of the date of a directions hearing following compliance with the orders set out above.

(Signed)

Judge Memooda Ebrahim-Carstens

Dated this 18th day of November 2009

Entered in the Register on this 18th day of November 2009

(Signed)

Hafida Lahiouel, Registrar, New York