

Case No. UNDT/NY/2010/066

Judgment No. UNDT/2011/023

Safety Services (“SSS”). At the case management hearing, in clarifying the scope of his application and the decisions he was challenging, the Applicant stated words to the effect that “after receiving the ... letter, I automatically went back to the other duties—they needed me back [in DRO]. So, I don’t contest that”. Therefore, the Applicant having effectively withdrawn his claims regarding the Second Decision, the Tribunal needs not consider them further.

5. At the case management hearing, the Applicant confirmed that, as per his pleadings, he also sought recourse for what he said was conduct constituting harassment and retaliation, relating to a restriction placed on his authorisation to carry a weapon for approximately two months in February–March 2010, and his having to undergo a subsequent medical assessment prior to this restriction being lifted (collectively called, “the Alleged Harassment”).

6. The Applicant also raised objections in relation to the process used to select the person currently occupying the Post on a temporary basis, maintaining that that person was unsuitable for the Post, had not

interactions with it are outside the scope of this application and, save to mention

c. The Applicant submitted at the case management hearing that, two weeks after receiving the notification, he contacted the Staff Representative with a view to having him advocate on his behalf for an informal resolution of the matter. The Applicant says that thereafter, through the latter part of May 2010, the Staff Representative attempted to resolve the matter informally with the Executive Office. The Applicant also stated that either he or the Staff Representative had spoken with the Ombudsman's Office via telephone at certain points (the precise dates, occasions and content of which he did not identify).

d. Paragraph 7.5 of ST/AI/2006/3 does not make the ASAT mandatory for any position, since the ASAT is not even mentioned. The ASAT test is a very poor method for identification of skilled and professional Security Operations Assistants for DSS and irrelevant to security operations assignments. Furthermore ASAT test proficiency requirements can tie up the best Security Operations Assistants in less effective roles, creating a critical shortfall of skilled and dedicated Operations Assistants in the Department. Only supervisors with strong knowledge of security operations can successfully assess and determine the most qualified candidate for a Security Operations Assistant post.

Alleged Harassment

e. The Applicant says he did not request management evaluation of the Alleged Harassment since it originated only a few hours after he received the MEU decision dated 24 February 2010. He maintains that the Alleged Harassment was clearly a retaliation and character assassination which greatly inflicted moral and reputation damage and should be compensated financially.

Respondent's submissions

27. The Respondent's main submissions may be summarised as follows.

First Decision

a. The Applicant is time-barred from challenging the First Decision. The First Decision was notified to the Applicant on 30 April 2009 and he did not request management evaluation of that decision until 25 January 2010, i.e. almost seven months after the 60-day period prescribed under staff rule 11.2(c) had expired. As a consequence, the MEU, in its letter of 24 February 2010, correctly considered the Applicant's request for management evaluation of the First Decision time-barred and not receivable under staff rule 11.2(c).

b. In the case of *Costa* UNDT/2009/051, the Dispute Tribunal held that “[t]here is no express power in either the Statute or the Staff Rules for the Tribunal to extend or waive any deadlines or other time constraints set by the Staff Rules. To the contrary, Article 8.3 contains an express prohibition in relation to management evaluation deadlines”. The Dispute Tribunal concluded that, pursuant to this provision, it had “no jurisdiction to extend the deadlines for the filing of requests for either administrative review or management evaluation”. This was confirmed by the Appeals Tribunal in *Costa* UNAT-2010-036.

c. The Applicant in his submissions attempts to cast responsibility for missed deadlines on OSLA; however, in the email of 20 January 2010 which the Applicant tendered, OSLA specifically warned the Applicant of the importance of deadlines, and that he alone was responsible for ensuring those time limits were met. The Applicant claims that he sought assistance of the Staff Representative and that this suspended the deadline for management evaluation. However, the Parties never agreed to resolve the issue that gave rise to the First Decision informally. The Staff Representative and the

Executive Office (“EO/DSS”) spoke on two occasions, but the EO/DSS declined to negotiate this matter.

Alleged Harassment

d. The Applicant does not provide any evidence that he requested management evaluation of the alleged harassment claim, including the weapons restriction and the subsequent evaluation by the Medical Services Division. Furthermore, he fails to justify why these claims are receivable. Accordingly, there are no grounds to find the matter receivable before the Tribunal (see *O’Neill* UNDT/2010/203).

e. The Applicant was advised of the decision relating to the Alleged Harassment on 24 February 2010 and should have submitted a request for management evaluation by 26 April 2010, at the latest. He did not do so, and therefore this claim is not receivable by the Tribunal (see *Andati-Amwayi* UNDT/2010/193).

f. In any event, in making generalised and unsubstantiated claims, the Applicant fails to discharge his burden of showing sufficient evidence of harassment, prejudice or other such kinds of improper motives. The decision to place the Applicant on temporary weapons restriction was properly made by the Officer-in-Charge of the SSS, in accordance with the standard practice of the DSS, and in response to comments made by the Applicant to a legal officer within the MEU.

Consideration

First Decision

28. It is common cause that the Applicant received notification of his selection for the Post on 23 April 2009, followed by a notification a week later on 30 April 2009 that his appointment was subject to his passing the ASAT. Some two months later, the Applicant unsuccessfully sat the ASAT.

32. In light of the fact that the Applicant is self-represented, I wish to note two further matters in order to fully explain the Applicant's position to him. Firstly, even if the Tribunal were not bound by *Costa* to apply the strict 60-day proscription, the Applicant has not proffered any explanation that would satisfy the "exceptional circumstances" test justifying a waiver of these time limits. Secondly, although the Applicant fails on receivability, his chances of success on the merits would not, in any event, appear to be very good. This is because the Applicant was well aware of the requirements of the Post when he applied and must have known that he did not meet these requirements. Furthermore, he was, in any event, subsequently given a chance to re-sit the ASAT, which he did unsuccessfully. Even if his challenge had been timeous, by his conduct, i.e. by acquiescence and submission to the ASAT, the Applicant waived his right to challenge and would have been estopped from challenging the ASAT as a prerequisite criterion.

Alleged Harassment and other challenges

33. In terms of art. 8.1(c) of the Statute of the Dispute Tribunal, an application shall be receivable if an applicant has previously submitted the contested administrative decision for management evaluation. Management evaluation of the Alleged Harassment is also required pursuant to staff rule 11.2(a), but it clearly has not been sought in this case.

34. There is nothing to suggest that the Applicant queried the decision restricting the carrying of his weapon or the requirement that he undertake medical evaluation informally, but it is clear that he did not request management evaluation. The Applicant's contention that he could not request management evaluation of the Alleged Harassment as the conduct originated only a few hours after he received the MEU decision dated 24 February 2010 is immaterial, as there would have been nothing to stop him from subsequently requesting a management evaluation of this decision as a distinct and separate administrative decision.

35. Accordingly, the Tribunal cannot review the Alleged Harassment complaint as management evaluation is a prerequisite to an application before the Tribunal (see *Planas* 2010-UNAT-049, *SyedPlanas*)