
Case No.: UNDT/NY/2009/096
Judgment No. UNDT/2009/051

Introduction

1. The applicant is a language teacher in one of the departments of the Office of Human Resources Management (OHRM). In 2007, the applicant's department decided to test a new system, known as the Continuous Evaluation System (CES), to evaluate the performance of students. The new system required the participation of all teachers working in the applicant's department, including the applicant. After the pilot project was completed in January 2008, the applicant went back to the previous evaluation system, while the other teachers continued with the CES. The applicant subsequently requested compensation for the overtime she had performed while working with the CES. Her request was refused.
2. The applicant subsequently filed an application with the United Nations Dispute Tribunal to appeal that decision, contending that as a result of the implementation of the CES she was forced to work overtime throughout 2007 without any compensation. The applicant requests compensation for 766 additional hours of work, including in connection with the language proficiency exam.
3. The respondent has challenged whether the application is receivable. This preliminary issue of receivability has been dealt with on the papers, as agreed by both parties.

The facts relating to the preliminary issue

4. On 5 February 2008, the applicant sent her first request for compensation for overtime work in 2007 to the chief of the section. Her request was rejected on 26 February 2008.
5. The applicant then requested assistance from the Staff Union, who referred her to the Panel of Counsel. In April 2008, she told the Panel of Counsel that she

wished to appeal the administrative decision but was advised that she was unlikely to succeed.

6. On 24 April 2008, aware that the time limit for taking action on the administrative decision was about to expire, she discussed an extension of time to file her appeal with the Secretary of the Joint Appeals Board (JAB). On the following day, the applicant formally requested an extension of time to file an appeal. In her email to the JAB, the applicant stated:

“I received the decision on 26 February and, as I explained to you, I was unable to find the right information . . . on how to proceed; only yesterday I found out that your office is the proper channel to follow”.

7. The deadline was extended to 9 May 2008 but the applicant took no further steps to file an appeal or otherwise challenge the administrative decision. Instead, she continued to correspond with the Union and with the Department of Management.

8. On 18 July 2008, the applicant sent email to the Department of Management repeating her request for compensation. The administration enquired into the matter again in some detail. After further correspondence and repeated requests by the applicant, rejected the applicant's claim for compensation on 4 February 2009.

9. On 1 April 2009, the applicant requested a review of the administrative decision by the Department of Management to reject her request for compensation for overtime.

10. The administration reviewed the applicant's request and rejected her compensation claim on substantive grounds on 5 May 2009. It also reserved the right to raise the issue of credibility of the applicant's claim in further proceedings.

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time either started to run in January 2007, when the new evaluation system was first implemented and the applicant began working overtime without compensation, or following her initial request for compensation dated 5 February 2008 and the administration's reply on 26 February 2008. On the basis of the February 2008 communications, the applicant's request for administrative review was due 26 April 2008, yet the applicant filed it only on 1 April 2009, almost a year later. It is submitted by the respondent that the applicant failed to demonstrate that this delay was not due to any "objective element beyond the Applicant's control". According to the respondent, this test is consistent with the jurisprudence of the United Nations Administrative Tribunal.

16. The respondent further submits that the applicant's claim for compensation for overtime with regard to the language proficiency exam (which is in addition to the applicant's requests regarding her work with CES) is not receivable as it is a new issue raised by the applicant that was part of the request for administrative review.

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limits for requests for management evaluation or requests for administrative review from the time period prior to 1 July 2009. The application is therefore not receivable under Article 8.3 of the Statute of the Tribunal.

(Signed)

Judge Coral Shaw

Dated this 21st day of October 2009

Entered in the Register on the 29th day of October 2009

(Signed)

Hafida Lahiouel, Registrar, New York