



Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

LUTTA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON THE RESPONDENT'S
MOTION FOR EXTENSION OF TIME-
LIMIT**

Counsel for Applicant:
Rose Dennis, OSLA

Counsel for Respondent:
ALU/OHRM

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal

1. Background

1.1 By a motion in writing dated 24 October 2009, the Respondent seeks an extension of the time limit to file his action. The background to this motion is summarized below.

(c) that the general charge alleging that the Applicant acted in a manner unbecoming of a UN staff member was not adequately substantiated by the available evidence; and

(d) that based on the foregoing conclusions, that all charges against the Applicant be dropped.

(iv) On 24 June 2009, the Deputy-Secretary-General informed the Applicant that the Secretary-General had considered his case in light of the JDC Report as well as the entire record and totality of circumstances and had accepted the findings and conclusion of the JDC.

(v) The Applicant filed an Application with the Nairobi UNDT on 24 September 2009 in which he requests to be compensated for the substantive and procedural irregularities committed in the conduct of investigations against him, the resulting impact on his career advancement and the professional and moral injury to him caused by his having been negligently and wrongfully charged with drink-driving. The Applicant requests:

(a) that he be reimbursed the amount of \$939.49 deducted from his Mission Subsistence Allowance;

(b) that he be compensated for transportation allowance based on the official ONUCI monthly rate for transportation allowance per

(vi) On 25 September 2009, the Nairobi UNDT Registry transmitted the Application to ALU/OHRM and advised, inter alia, that in accordance with Article 10 of the UNDT Rules of Procedure (“the Rules”), the Respondent had thirty calendar days from the date of receipt of the Application to file a Reply, that is, by or before 25 October 2009.

(vii) On 27 October 2009, the Respondent’s Counsel filed the present Motion seeking an order from the Tribunal for an extension of the time limit to file the Respondent’s Reply on the following grounds:

- (a) that exigencies of service contributed to his inability to comply with the deadline;
- (b) that he did not have sufficient time to prepare a substantive reply due to his extended absence from the office to attend to an urgent family matter at the time the instant application was filed;
- (c) that the two-week extension of time required by the Respondent would not unduly delay the progress of this matter before the Tribunal;
- (d) that the Applicant would not be unduly prejudiced by the grant of the Respondent's motion for extension of time limit; and
- (e) that based on the foregoing, in the interest of justice and under these exceptional circumstances, this Tribunal grant a two-week extension of the time limit, until 6 November 2009.

2. Considerations

2.1 The Applicable Law

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Reply in time is to “seek the permission of the Dispute Tribunal” to take part in the proceedings in accordance with Article 10(1).

2.2 The importance of time limits

2.2.1 The underlying idea for the introduction of the new system of administration of justice is to ensure timely dispensation of cases without delay as expressed in General Assembly Resolution A/RES/61/261 - *Administration of justice at the United Nations*, where it was recognized,

“...that the current system of administration of justice at the United Nations is slow, cumbersome, ineffective and lacking in professionalism, and that the current system of administrative review is flawed.”¹

2.2.2 The Report of the Redesign Panel on the United Nations system of administration of justice emphasized the fact that requests for extension of time limits from management were invariably granted.

“After an appeal has been filed, management has two months in which to file a reply. However, JABs [Joint Appeals Boards] frequently grant an extension for the filing of management’s reply.”²

2.2.3 The absence of any rule to allow the Respondent to file an application for extension of time has no doubt been motivated by the fact that management is in a better position to answer a claim filed by a staff member. Another reason that may have prompted the framers of the Rules is that management was obtaining extensions too frequently as evidenced by the Report of the Redesign Panel.

2.3 Time limits and the Respondent

2.3.1 To have left the Respondent without any other option at all in cases of failure on its part to file a timely response to a claim would have been perceived as denial of fairness and against the equality of arms principle in proceedings before the Tribunal.

2.3.2 Article 10.1 therefore comes to the rescue of a Respondent who has not complied with the procedural delay laid down therein. A Respondent in that predicament is not without a remedy but that remedy is subject to a more stringent condition in that the Respondent guilty of a delay needs the permission of the Tribunal, not to file a reply outside the delay, but to continue participating in the proceedings.

2.4 Interpretation of Article 10(1)

2.4.1 In the Tribunal's view, J12.1 respondent in that predicament should be allowed to participate in the proceedings.

state the reasons why he should be granted such permission and the Tribunal should rule on this.

2.4.5 If the Tribunal grants the Respondent's motion and authorizes him to be part of the proceedings, the next stage is to determine whether the Respondent should be allowed to file a reply. The application by the Respondent for permission to participate in the proceedings may also contain a motion for a belated filing of the reply under Article 19 of the Rules. Such an application should give the reasons why the reply was not filed in a timely manner.

2.4.6 The Respondent may, on the strength of Article 19 of the Rules, request the Tribunal that it would be fair and expeditious that he be allowed to file the reply belatedly. As the Tribunal may also, on its

Entered in the Register on this 3rd day of November 2009

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi