



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

SCHEEPERS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. In or about June 2009 the Applicant, a Security Officer with the Department of Safety and Security (“DSS”), joined its Canine Unit. All members of the Canine Unit receive an allowance in the amount of USD1,000 per month to compensate them for the additional costs incurred in respect of their official duties as canine handlers, as they are required to keep the dogs with them on a 24-hour basis and to transport them to and from their residence and place of work using their own vehicles. In the present application, filed on 26 May 2010, the Applicant claims that this allowance is insufficient to compensate him for his actual work-related expenses. The Applicant seeks, *inter alia*, retroactive reimbursement of various costs, retroactive payment of daily subsistence allowance, and revision of the monthly allowance amount.

2. The Respondent contends that the present application is time-barred as it was not filed within 90 days from the date of receipt by the Applicant of the management evaluation, and that, in any event, the existing allowance amount was calculated correctly and is sufficient to compensate the Applicant for his work-related costs.

Procedural matters

3. The Respondent’s reply was filed on 28 June 2010. On 29 June 2010 the Applicant filed comments to the reply. On 9 July 2010 the Respondent filed a motion requesting the Tribunal to dismiss the present application as time-barred. On 20 July 2010 the Applicant was directed to submit a reply to the Respondent’s motion. Specifically, the Applicant was directed to “address the Respondent’s arguments in the submission dated 9 July 2010, stating the reasons for the delay in filing his application and explaining any exceptional circumstances that precluded him from exercising his right to appeal within the prescribed time limits”. The Applicant was further directed to include any relevant supporting documentation.

4. The Applicant's submission was filed on 26 July 2010, in response to which the Respondent filed a reply on 28 July 2010.

5. The matter was thereafter scheduled for a case management hearing, which was held on 15 April 2011. The Applicant and Counsel for the Respondent attended the hearing in person. At the hearing, the Tribunal sought to clarify the scope of the case as well as a number of factual issues. By Order No. 113 (NY/2011), the parties were directed to file final submissions on receivability. The parties were also informed by the same Order that the Tribunal would first consider the issue of receivability and, should the application be deemed receivable, further orders would be issued directing the parties to file further submissions.

6. The Applicant's final submission on receivability was filed on 20 April 2011, and the Respondent's final submission on the same issue was filed on 21 April 2011.

Facts

7. Effective late 2004, the Organisation adopted a lump-sum approach for the payment of additional allowance to the canine handlers. The reasons for that decision were explained in a note from the Assistant Secretary-General for Human Resources Management to the Controller, dated 29 September 2004. The note stated:

Discussions took place between OHRM [i.e., the Office of Human Resources Management], the Security Service and the Executive Office regarding the compensation to be paid to Security Officers of the new Canine Unit, who are required to perform duties above and beyond what is expected of other Security Officers. In particular, they are to look after the dog assigned to them on a permanent basis. ... [I]t is essential for the dog to live in the home of the Security Officer to whom the dog has been assigned and to come to the UN with its handler.

On that basis, and taking into account the experience of the comparator police departments that were retained for the 2000 comprehensive salary survey exercise in respect of their own employees who handle dogs, it was found that the Security Officers

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with the assistance of OSLA. The Applicant contacted OSLA after receiving the management evaluation in October 2009 and OSLA began assisting the Applicant on 23 October 2009. Consultations between OSLA and the Executive Office of DSS were unsuccessful, and attempts to informally resolve the matter ceased on 11 May 2010;

b. It was the Applicant's understanding at the time—on OSLA's advice—that attempts to resolve the matter informally would ordinarily amount to exceptional circumstances within the meaning of art. 8.3 of the Tribunal. Attached to the Applicant's submission dated 26 July 2010 was a copy of an email dated 23 July 2010 to the Applicant from his former OSLA Counsel, stating, *inter alia*:

An informal discussion between myself and [the] Executive Officer, DSS, took place but, albeit positive and amicable, without the desired result. Nonetheless, it was decided to revisit the issue in due course. In the interim I also briefly discussed the issue with a representative from the Management Evaluation Unit and advised you that whereas attempts to informal resolution continued you would retain your right to approach the Tribunal if the attempts would be unsuccessful. Regrettably, as a result of work pressure on both sides, it took longer than anticipated to have a further discussion with [the Executive Officer], which finally took place in May of 2010, where it was ultimately concluded that the outstanding issues could not be resolved informally, following which [OSLA] advised you of same as well as that an agreement had been reached with the Executive Officer that the attempts to an informal resolution had been unsuccessful.

Division, the time limits stipulated in Article 8 of the Statute of the Tribunal would not be suspended. Following this judgement, [OSLA] immediately adjusted its practice and policies in relation to informal *inter partes* discussions to safeguard the procedural rights of staff members whose interests we represent. However, prior to the issuance of aforementioned judgement, [OSLA] assumed, in good faith and in an attempt to obviate potentially unnecessary litigation mindful in particular of the emphasis of the General Assembly on informal dispute resolution, that informal *inter partes* discussions, also without the assistance of the Ombudsman's Office and/or its Mediation Division, would suspend the time limits stipulated in Article 8 of the Tribunal.

Respondent's submissions

18. The Respondent principal contentions may be summarised as follows:

- a. The present application is time-barred as it was filed outside the established time limit. The Applicant had 90 days to file his application with the Dispute Tribunal after receiving the response to his request for management evaluation on 16 October 2009;
- b. Consultations with OSLA, and attempts to resolve an issue through informal channels are ordinary reactions to an adverse finding by the Management Evaluation Unit and cannot be said to fall within the category of exceptional circumstances beyond the control of the Applicant which would prevent him from filing an appeal in a timely manner (see, e.g., *Kita* UNDT/2010/025);
- c. The Tribunal is not empowered to grant the relief requested by the Applicant, namely the revision of guidelines and the establishment of new administrative policies.

informally resolve the matter directly with management, without involvement of the Office of the Ombudsman, generally will not amount to an exceptional circumstance for the purpose of a waiver of the time limits under art. 8.3 of the Statute (see *Kita* UNDT/2010/025, *Bidny* UNDT/2010/031, *Abu-Hawaila* UNDT/2010/102). Otherwise, it would be difficult—if not impossible—for the Tribunal to ascertain whether or not an applicant has complied with the time limits (*Abu-Hawaila*

also *Diagne et al.* 2010-UNAT-067, stating that every staff member is deemed to be aware of the provisions of the Staff Rules).

29. Accordingly, in terms of the existing case law, the explanations offered by the Applicant cannot support a finding that this is an exceptional case warranting a waiver of the relevant time limit.

Conclusion

30. This present application is time-barred as it was filed outside the prescribed time limit and there are no exceptional circumstances in law that justify the delay. In light of the Tribunal's finding that this case is not receivable, the Tribunal will not consider whether the Applicant would have succeeded in his substantive claims.

31. The application is not receivable and is rejected without determination of its merits.

(Signed)

Judge Ebrahim-Carstens

Dated this 26th day of April 2011

Entered in the Register on this 26th day of April 2011

(Signed)

Santiago Villalpando, Registrar, New York