



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/011

Judgment No.: UNDT/2014/018

Date: 7 February 2014

Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko, Acting Registrar

AMANY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Bernard G. Takoré

Counsel for Respondent:
Stephan Grieb, UNICEF
Tamara Shockley, UNICEF

Introduction

1. The Applicant joined the United Nations Children's Fund (UNICEF) in Abidjan, Côte d'Ivoire, on 1 August 1986, as a Supply Officer, grade 2.
2. On 25 March 2013, he filed the current Application before the United Nations Dispute Tribunal (UNDT) challenging the decision, taken on 27 December 2012 by the UNICEF Designated Representative in Côte d'Ivoire (UNICEF Representative), not to renew his fixed-term contract.

Facts

3. On 21 December 2008, the Applicant went on official mission to Guinea Conakry until 15 May 2010 and then he was on official mission to Benin from 1 June to 30 August 2010.
4. Upon his return to Abidjan from Benin a new organizational chart was in place. An international staff member was occupying the post of Supply Officer and the Applicant was his subordinate.
5. Although the Applicant was shocked, he continued in service without complaint. As he did not have any challenging and/or supervisory tasks he fell into a depressive state and started seeing a UNICEF Stress Management Consultant (Consultant) on 20 October 2010.
6. On 14 December 2011, the Applicant signed a letter of appointment for a fixed-term appointment that would expire on 31 December 2012.
7. Through several correspondences between February 2012 and November 2012, the Administration warned the Applicant that he had taken approximately 205 unjustified days of absence from February 2011 to November 2012. He was informed that unless he provided justification, this situation would be viewed as abandonment of post. The Applicant did not provide justification for the days of absence.

8. On 13 December 2012, the Consultant produced a medical report stating that the Applicant's psychological state did not justify his 205 days of absence.

9. On 28 December 2012, the Applicant acknowledged receipt of a letter dated 27 December 2012 from the UNICEF Representative informing him of the non-renewal of his contract.

10. On 31 January 2013, the Applicant sent a letter to the UNICEF Representative to raise objections against his decision stating that the Administration had not respected Administrative Instruction CF/AI/2010-001 (Separation from service) which requires a 30-day notice period prior to termination of a fixed-term appointment.

11. On 25 March 2013, he filed an Application before the UNDT challenging the decision not to renew his fixed-term contract.

12. On 28 March 2013, he sent a letter on 25 March 2013 to the Executive Director requesting management evaluation of the decision not to renew his contract.

13. On 1 April 2013, the Chief of the Policy and Administrative Law Section (PALS) within the Division of Human Resources (DHR) replied to the Applicant that his request for management evaluation was not receivable on the ground that it was time-barred.

14. On 29 April 2013, the Respondent replied that the Application before the UNDT was not receivable as the Applicant had failed to request management evaluation of the contested decision within the deadline.

Considerations

15. The only issue that the Tribunal has to consider in the present judgment is whether the Application is receivable.

16. Pursuant to article 8.1(c) of the Tribunal's Statute an Application shall be receivable if an Applicant has previously submitted the contested administrative decision for management evaluation where required.

17. This provision should be read together with article 11.2(a) and (c) of the staff rules that state:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

18. In cases such as Syed 2010-UNAT-061, Kovacevic 2010-UNAT-071, Trajanovska 2010-UNAT-074 and Jennings 2011-UNAT-184 the United Nations Appeals Tribunal (UNAT) dismissed appeals due to the Applicants' failure to request management evaluation of the decisions they were contesting.

19. More recently UNAT held in Servas 2013-UNAT-349 that:

A staff member must be familiar with the Staff Rules and understand her obligation to act in conformance with those rules. This means that a request for management evaluation must be submitted prior to bringing an application before the Dispute Tribunal.

20. Further, where the Applicant has failed to request management evaluation, the UNDT has no jurisdiction to consider the Application (see Masyikanova UNDT/2013/033; Giuliano Order No. 204 (NBI/2013)).

21. The Tribunal notes that at the time the Applicant submitted his Application on 25 March 2013, he had not requested management evaluation of the contested decision. In fact, he did not do so until 28 March 2013, which was 3 days after he had submitted his UNDT application. Since the Applicant had not submitted the contested administrative decision for management evaluation prior to the filing of his application in accordance with article 8.1(c) of the Tribunal's Statute, the Application is not receivable.

22. The Tribunal wishes to emphasize that the purpose of the request for management evaluation is to give the Administration an opportunity to set right what would appear to be a wrong decision and

Entered in the Register on this 7th day of February 2014

(Signed)

Abena Kwakye-Berko, Acting Registrar, Nairobi