

UNITED NATIONS DISPUTE TRIBUNAL

## **Introduction**

1. This judgment concerns an application, filed by a former staff member of the United Nations, who had been convicted and imprisoned in the United States for having committed fraud against the Organization from 1993 to 2005 during his service as a Procurement Officer. The Applicant is now requesting the Tribunal to rescind the decision of the Administration to dismiss his belated request (made six years after the expiry of the applicable time limit) to proceed, on an exceptional basis, with payments of a number of entitlements due to him upon separation.

2. The Applicant asserts that there were exceptional circumstances beyond his control that made it impossible for him to claim all of his entitlements within the two-year time limit. These exceptional circumstances are fully set out below in the press release issued by the United States Attorney for the Southern District of New York on 8 August 2005:

Thereafter, YAKOVLEV received wire transfers sent to bank accounts

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responded to OHRM stating that he had no option but to bring a case before the Tribunal.

9. The Tribunal notes that the Applicant did have a clear option if he was genuinely seeking an exception to be made, at least in relation to return travel to Russia, and that was by providing the information requested by OHRM.

10. On 23 July 2013, the Applicant requested management evaluation of OHRM's refusal to grant his request for repatriation, benefits and allowances. On 27 August 2013, the Management Evaluation Unit ("MEU"), on behalf of the Secretary-General, upheld the decision of 21 June 2013 not to grant the Applicant repatriation and return travel entitlements.

11. The Applicant indicated in his application that he sought assistance from the Office of Staff Legal Assistance who declined, on 21 October 2013, to represent him as it fully supported the Administration's decision.

12. On 7 November 2013, the Applicant filed this application, requesting the payments of entitlements he submits he is "entitled to after serving the Organization for 20 years" on grounds that "the circumstances which precluded [him] from filing his application on time were beyond [his] control and fall under *force major (sic)*

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presented a frivolous or outrageous claim before the Tribunal (*Ishak* 2011-UNAT-152).

### **Consideration**

*Does the Applicant have personal standing to bring the claim before the Tribunal?*

22. The Respondent submits that the Applicant's entitlements automatically expired in June 2007, thus no longer existed when the Applicant contacted the Organization nearly six years later to claim those entitlements. As those entitlements no longer exist under the terms of his appointment, the Applicant has no standing as a former staff member to challenge the denial of those entitlements before the Dispute Tribunal.

23. The Tribunal finds the Respondent's claim of non-receivability based on the Applicant's lack of personal standing unconvincing. Article 3.1 of the Statute of the Dispute Tribunal states that an application under the Statute may be filed by "any former staff member of the United Nations". There are no provisions in the Tribunal's Statute that limit the personal standing of an applicant to rights or entitlements under the Staff Rules that are not "extinguished". Further, to argue non-receivability on the basis of lack of standing is to confuse



contemplated under Staff rule 12.3(b) that a right or entitlement can be revived if the Administration opts to do so, but will also be contrary to the facts of the case which demonstrate that the Administration conceded that an exception could be made on humanitarian grounds if the Applicant proved his impecuniosity, which may equate to an exceptional circumstance justifying waiver of the time limit.

25. The Tribunal finds that Staff rule 12.3(b) encompasses exceptions that allow waiver of time limits provided for in the Staff Rules. The Respondent's contention that the Applicant does not have *locus standi* is without merit.

*Was the Administration's discretion in denying the request for an exception under Staff rule 12.3(b) properly exercised?*

26. The Tribunal notes that, by considering payment of the Applicant and his wife's travel to Russia for humanitarian reasons, the Administration conceded that an exception could be made in the Applicant's case although limited to their travel to Russia.

27. The Applicant asserts that there were exceptional circumstances in his case that were beyond his control and that made it impossible for him to claim all of his entitlements within the two-year time limit, namely his arrest and subsequent sentence.

28. The principle "*nemo auditur propriam turpitudinem allegans*" (which may be translated as "no one can be heard to invoke his own wrongdoing")



*Is the application an abuse of process?*

33. On the basis of the above mentioned facts and evidence, the Tribunal finds that the Applicant has clearly abused the proceedings before the Tribunal. His application before the Tribunal amounts to an abuse of process.

34. The Applicant completely misled the Tribunal. He omitted, rather conveniently, to provide the Tribunal with relevant facts for it to make a determination as to whether the payments of his entitlement should have been granted by the Administration on an exceptional basis. The information was omitted by the Applicant in his application but was provided by the Respondent in his reply and further evidenced by documents annexed to it.

35. The Applicant chose deliberately to omit disclosing information with respect to the very same factors that led the Administration to exercise its discretion in dismissing his belated request for payment. Those factors include:

- a. His knowledge, as evidenced by his resignation letter of 21 June 2005, that there were allegations against him of violation of the Organization's Staff Rules. There were neither exceptional circumstances, nor *force majeure*, at the time that prevented him from complying with the Rules as he was fully aware that it was only a matter of time before he may have been arrested and possibly convicted;
- b. His communication with OHRM in April 2006 (whilst he argued before the Tribunal that he was absolutely not in the position, due to "circumstances beyond [his] control and *force major (sic)* circumstances") to contact OHRM to request either a waiver of the time limit applicable to the payment of his entitlements upon separation or the payment of those entitlements before June 2007;
- c. His criminal activity against the same Organization he was to serve with the highest standards of efficiency and integrity, as requested by the Charter of





**Conclusion**

42. The application is rejected;

43. The Applicant is ordered to pay costs in the sum of USD 5,000 for abuse of process.

*(Signed)*

Judge Goolam Meeran

Dated this 14<sup>th</sup> day of April 2014

Entered in the Register on this 14<sup>th</sup> day of April 2014

*(Signed)*

Hafida Lahiouel, Registrar, New York