



Introduction

1. The Applicant was a former staff member of the then United Nations Development Fund for Women (UNIFEM) whose appointment was administered by the United Nations Development Programme (UNDP). He filed the current Application on 9 October 2013 to challenge a “termination process in August 2012” that was initiated by UNIFEM/UNDP.

2. The Applicant is seeking payment of accrued salaries, pension contributions and interest on the pension contributions. He is also seeking a clear definition as to his contractual status vis-à-vis the Organization.

Procedural history

3. The Application, which was filed on 9 October 2013¹, was served on the Respondent the same day with a response date of 12 November 2013. This deadline was subsequently extended to 4 December 2013 to provide the Applicant with an opportunity to submit additional supporting documents.

4. In his Reply, the Respondent raised the issue of receivability and moved the Tribunal to reject the Application in its entirety on the basis that it was not receivable.

5. By an email dated 14 December 2013, the Applicant sought leave to respond to the Respondent’s Reply.

6. By Order No. 263 dated 18 December 2013, the Tribunal granted the Applicant’s motion to respond to the Respondent’s Reply. He complied on 31 December 2013.

¹ The Applicant initially filed an incomplete application on 8 August 2013. On 9 October 2013, he finally filed an application that complied with the requirements of article 8 of the UNDT Rules of Procedure.

Chief of the Africa Division, UN Women, in New York and the Country Representative in Abuja, Nigeria.

13. On 18 July 2012, he forwarded his 30 April 2012 letter to the Chief of the Africa Division, UN Women, in New York. She responded to the Applicant on 13 August 2012 as follows:

To the best of my knowledge your entitlements were paid at the time of your resignation through the local UNDP country office – who are responsible for processing such payments to staff upon their separation from the UN.

I am however continuing to find out from our Senegal Office to confirm and will let you know if I get further information.

14. On 18 August 2012, a UNDP staff member informed the Applicant that:

I am not aware of any outstanding cheque for you. UNDP just received instruction for termination & action taken in August 2012 in ATLAS effective May 21, 2008 which has created serious administrative challenge for us. Recall that you have received May, 2008 salary in full that means you have some amount to return to the organization.

As UNDP did not receive clear instructions from UNWOMEN whether to terminate or otherwise until now, the system continued to calculate salary for you until you were put on non-payment group. All the drafts after May 2008 were deposited & credited to UNWOMEN COA before they became stale.

15. Between August and October 2012, the Applicant wrote persistently to the Chief of the Africa Division demanding payment of his salary that had not been paid from May 2008 “up to date because [he] was instructed to handover [his] ID card and Security pass when [he] was still on duty [...]”.

16. By letters dated 26 October and 21 December 2012, addressed to the Secretary-General, the Applicant complained of UN Women’s refusal to accept his resignation and the violation of his rights by the issuance of a termination notice. He requested payment of his accrued salaries, interest on his accrued pension fund contributions and a salary advance. The Applicant asserts that he sent these 2 letters

to the Secretary-General by FedEx² but did not receive any response. He submitted delivery notices from the FedEx website indicating that 2 envelopes had been delivered to an address in New York on 5 November 2012 and 11 February 2013. The delivery notices do not however indicate the name of the sender nor the specific addresses to which the deliveries were made.

17. The Applicant filed the current Application on 9 October 2013.

Issues

18. The Tribunal has to decide whether the current Application is receivable. To make this determination, the Tribunal will look at: (i) whether there was an administrative decision³; (ii) whether the Applicant complied with the timeline for administrative review; and (iii) whether he complied with the timeline for filing an application to the Tribunal.

Considerations

Administrative decision

19. The issue here is whether the Applicant's claim is an appealable administrative decision within the meaning of article 2.1 of the UNDT Statute.

administrative issuances in force at the time of alleged non-compliance.

21. In Judgment No. 1157, *Andronov* (2003), the former United Nations Administrative Tribunal defined an administrative decision as follows:

A unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules and regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences [...]

22. The record shows that on 20 May 2008, the Applicant submitted a letter to UNIFEM, which stated the following:

I wish to submit the resignation of my appointment from the United Nations service, as UNIFEM Finance Assistant, UNIFEM Regional Anglophone West Africa office, Abuja. My decision to resign from my appointment is to further my education and to also focus on my professional development.

My resignation takes effect from Wednesday 21 May, 2008 and will run for the 30 days period which will elapse on 1 July, 2008 to

2008, UNIFEM office requests that you come to the office at your earliest convenience and hand over officially to the office before embarking on your leave.

The office wishes to have in a written handover note the status of our

submission of an Application to the Dispute Tribunal and it is not open to the Tribunal to waive this requirement or make any exception to it.⁴

35. The Tribunal in *Costa* UNDT/2009/051 determined that it has no power to suspend or waive any deadlines for requesting or completing management evaluation, or administrative review, while it may decide to suspend or waive deadlines for filing an application with the UNDT. This reasoning was upheld by UNAT in *Costa* 2010-UNAT-036. In the present matter, this Tribunal sees no need to depart from this *stare decisis*.

36. Although the Applicant is now alleging that the administrative decision he is contesting is UNIFEM's decision in August 2012 to finally record his separation from service, the Tribunal does not accept this as this as a contestable administrative decision as discussed earlier. Further, even though the Applicant seems to have submitted a request for management evaluation of UNIFEM's 2012 decision, this request was sent after the 60 day delay set out in staff rule 11.2(c) and is therefore time-barred.

UNDT Application

37. Did the Applicant file his Application to the Dispute Tribunal in accordance with the timeline set out in the UNDT Statute?

38. Article 8.4 of the UNDT Statute stipulates that:

Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

39. This Application has been filed more than five years after the Applicant's receipt of the contested administrative decision. The provisions of article 8.4 of the UNDT Statute clearly place a bar on the Tribunal's ability to consider the Application.

⁴ *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, *Ajdini* 2011-UNAT-108.

Conduct of the Applicant

43. The Applicant has been writing repeated

Entered in the Register on this 25th day of June 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi