
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/039
Order No.: 189 (NY/2018)
Date: 25 September 2018
Original: English

Introduction

1. On 21 September 2018, the Applicant filed a motion for extension of time to file an application before the Dispute Tribunal in respect of a decision to find him ineligible for the After . He is seeking an extension of time pending settlement discussions and states that the parties have been engaged in settlement discussions to resolve the dispute with the assistance of the
2. The Applicant requests an extension of time based on the assurance he received from the MEU that there is a very high likelihood of his case being resolved amicably and more time is needed to fully explore such informal resolution. He provides the following background information (references to annexes and footnotes omitted):

On 29 May 2018, [the Applicant] filed a Management Evaluation Request (MER) regarding the decision concerning his eligibility for [ASHI].

[MEU] acknowledged receipt of MER and parties have been engaged in settlement discussions to resolve the dispute with the assistance of the MEU.

The deadline for the MEU decision was due on 28 June 2018. However, the MEU has not yet issued a decision because the MEU has been looking into the possibility of resolving making a settlement proposal agreeable to both parties.

there is a very high degree of probability that the matter will be resolved within the next month (or two, taking into account technical aspects) initalize the settlement

The MEU also undertook to inform the Ap mediation breaks down and the settlement proposal is not accepted.

The deadline for 26 September 2018. The Applicant respectfully requests additional time and to allow the Applicant to file his Application to the UNDT, if necessary, within 90 calendar days after receiving notification that mediation has broken down and the settlement proposal is not accepted, pursuant to Article [7.3] of the UNDT Rules of Procedure.

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is filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

6.

and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the

Article

Procedure reiterates that an applicant may request suspension, waiver, or extension of time limits for filing an application in exceptional cases.

7. In the present case,

ago, and no decision has been rendered. Furthermore, the letter of acknowledgement of receipt of the Applicant

time period is not. If the MEU fails to deliver a management evaluation within the prescribed period, by default, as the time for management evaluation may generally not be extended, the original administrative decision stands as adopted by the Respondent.

9. If the Tribunal were to allow a request for extension of time solely because the MEU failed to render a timely response, an unintended consequence would be that the determination of cases may be prolonged unreasonably and go against the *tute and Rules of Procedure*. In this regard, it is noted that the initial administrative decision was made on 5 April 2018, over five months ago, and that no MEU decision has been made. The only reason proffered for the delay is that there is a possibility of resolving the A so an extension of time to file the application is required until settlement or within 90 days after mediation has broken down.

10.

either party within the deadline for filing an application with the UNDT; such informal dispute resolution is carried out through the Office of the Ombudsman; the time limits may be tolled when the

settlement or mediation discussions; and the staff member may file an application within 90 calendar days of the breakdown of the mediation.

12. Further, in *Eng* 2015-UNAT-520, the Appeals Tribunal specifically held that Article 8.1(d)(iv) of the Dispute Tribunal allows the tolling of the

involved in settlement or mediation discussions, is not applicable when the settlement efforts are made by the MEU, as follows:

Article 8(1) of the Dispute Tribunal Statute governs the deadlines by which applications must be filed. Yet, the Dispute Tribunal did not discuss Article 8(1). Instead, it erroneously concluded that the MEU could extend the deadline for filing an application by holding a case before it in abeyance. There is no legal authority for that proposition in Article 8(1) or any other provision of the Dispute Tribunal Statute. Nevertheless, Article 8(1)(d)(iv) of the Dispute Tribunal Statute does allow for the tolling of the limitations period when the Mediation

mediation discussions. That provision was not applicable to [the applicant], however; she has never claimed involvement of the Ombudsman. If the General Assembly had intended settlement efforts by the MEU to toll the deadline for filing an application for judicial review, the UNDT Statute would clearly provide for that; it does not.

13. In this case, the deadline for the Secretary-management evaluation request expired on 28 June 2018. Unless the parties can -General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary- what basis the discussions are being held and how MEU continues to . Based on the email exchange between the Applicant and the MEU submitted by the Applicant and eptember 2018, it appears that the parties

