Judgment No. 2021-UNAT-1094

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JUDGE SABINE KNIERIM, PRESIDING.

1. Mr. Khalid Younis contested the decision to deny him certain daily subsistence allowance (DSA) and additional terminal expenses in respect of his official travel from Sudan to Italy and back to Sudan. The United Nations Dispute Tribunal dismissed his application as irreceivable *ratione temporis*. For reasons set out below, we affirm.

Facts and Procedure

2. Mr. Younis is Chief Transport Officer at the United Nations Mission in Darfur (UNAMID) on a continuing appointment based in El Fasher.

3. On 23 May 2019, Mr. Younis went on an official travel to attend a training session at the Global Service Centre in Brindisi, Italy.

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UNDT Statute to file an application with the UNDT within 90 calendar days of 16 December 2019, i.e., by 16 March 2020. As Mr. Younis filed his UNDT application only on 1 July 2020, the UNDT was correct in finding that it had not been filed by the statutory deadline and rejecting it as not receivable *ratione temporis*.

14. The Secretary-General also submits that there is no evidence on record of Mr. Younis having filed a request for suspension or waiver of the statutory time limits, nor was there any showing of exceptional circumstances.

15. The Secretary-General further submits that Mr. Younis has failed to show that the Dispute Tribunal erred in law or fact or reached a clearly unreasonable decision when it concluded that his application was irreceivable *ratione temporis*. Mr. Younis' arguments about him waiting for a decision by the MEU and receiving assurances from the MEU that his case was still under consideration have no merit. The UNDT Statute specifically contemplates circumstances where the MEU fails to provide a response to a management evaluation request within the 30- or 45-day response period and dictates that the 90-day time limit for filing an UNDT application runs from the expiry date of the relevant response period. In the present case, the USG for Management responded to Mr. Younis' management evaluation request on 23 June 2020, long after the expiry of the 90-day period for filing an UNDT application. Consequently, the receipt of the response on 23 June 2020 did not reset the clock for filing an UNDT application.

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(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

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3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

18. We cannot detect any errors in the UNDT Judgment, which is in accord with the consistent jurisprudence of the Appeals Tribunal.

19. In Dieng, we held:¹

... In the present case, Mr. Dieng submitted his request for management evaluation on 1 June 2018. The MEU's response should have been made within 45 calendar days or no later than 16 July 2018. However, the MEU responded to his request on 17 October 2018, which was more than 45 calendar days from the date of his request. Mr. Dieng filed his application with the UNDT on 7 November 2018, which is within 90 calendar days of the MEU's response but more than 90 calendar days from the date by which the MEU should have responded, that is 16 July 2018, and therefore was well beyond the deadline by which he should have filed his application, i.e. 15 October 2018.

.. Therefore, this Tribunal

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