



Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Jean-Pelé Fomété

SHETTO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Self Represented

Counsel for respondent:

Sarahi Lim Baró, Legal Officer, ALS/OHRM

Christine Graham, Chief, Appeals Unit, ALS/OHRM

Introduction

1. The applicant has appealed to the Tribunal against the administrative decision by the respondent not to renew her fixed-term appointment with the General Services Section of the United Nations International Criminal Tribunal for Rwanda (UNICTR) in Arusha, Tanzania. She seeks a review of the decision to separate her.

2. She alleges violation of the rules governing termination or abolition of posts, and reduction of staff members under fixed-term contracts; lack of transparency in that she was not advised of the downsizing exercise or the abolition of her post before seeing her notice of separation; harassment for having been a whistle blower. The Applicant also complains that neither her long service nor her retirement age was considered.

3. The respondent raised a preliminary objection to the application on grounds of receivability of the application on the basis that the applicant had not filed a request for management evaluation within the time frames specified in the Staff Rules.

4. The Tribunal afforded the applicant the opportunity to respond to the respondent's objection.

Applicant's Submissions on Receivability

5. The applicant submits that it was her efforts to have the matter resolved internally which delayed her filing a request for Management Evaluation. She says that in trying to do so she ran out of time for the appeal because it took quite a long time before a meeting could be arranged between all concerned parties. She also had difficulties in receiving information she requested.

6. The applicant cites Article 6(3) of UNDT Rules of Procedure encouraging internal resolution of disputes in support of her course of action.

7. Article 6(3) stipulates that where the parties have sought mediation of the dispute but did not reach agreement, the application shall be filed within 90 days of the date upon which the mediator certifies that the mediation has failed.

8. In support of her submissions she appended documents which showed the course of her discussions with various people at UNICTR. There is no evidence of a submission of the matter to formal mediation.

Facts relating to receivability

9. The applicant's appeal records that the decision about the non renewal of her contract was issued on 30 June 2009. She was advised of it on 2 July 2009. Between then and 20 July 2009 she corresponded and met with the president of the UNICTR Staff Association and her supervisor and a legal officer to discuss and query the decision.

10. She requested management evaluation of the 30 June 2009 decision on 30 October 2009 and received a response from the Management Evaluation Unit on 2 November 2009.

11. The MEU advised her that a request for management evaluation should be received within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. In her case, her request should have been received by 30 August 2009.

12. On the basis of the applicant's submission that she was notified of the decision on 2 July, the last date for requesting management evaluation would have been 1 September 2009. Her request was not received until approximately two months after the expiry of that time.

The Law on Receivability

13. The time for requesting a management evaluation in this case is specified in Staff Rule 111.2(c). This rule provides that a request for management evaluation should not be receivable by the Secretary-General unless it was sent within 60 days of notification of the contested administrative decision. The Secretary-General is able to extend this time limit pending efforts for informal resolution by the office of the Ombudsman.

14. In this case there is no evidence that the parties submitted the matter to the office of the Ombudsman for mediation within the deadlines for filing a management evaluation. There was no request of the Secretary-General to extend the time limit for this purpose. The applicant was therefore bound by the 60 day limit.

15. Article 8(3) of the UNDT Statute states:

The Dispute Tribunal shall not suspend or waive the dead lines for management evaluation.

16. The UNDT has previously held, pursuant to Article 8(3), that the Tribunal has no power to suspend or waive time limits for management evaluation. This judgment was upheld by the Appeals Tribunal.¹

17. The Tribunal is bound by Article 8 of its Statute which stipulates when an application is receivable. Article 8(1)(c) provides that an application shall be receivable if

an applicant has previously submitted the contested administrative decision for management evaluation, where required and the application was filed within the specified deadlines.

¹ *Costa*, UNDT/2009/051; *Costa*, 2010-UNAT-036.

Decision

18. This application does not comply with Article 8(1) (c). It was not filed within the specified deadlines and is therefore not receivable by the Tribunal.

19. The application is dismissed.



Judge Coral Shaw

Dated this 11th day of October 2010

Entered in the Register on this 11th day of October 2010



Jean-Pelé Fomété, Registrar, UNDT, Nairobi