



Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

GHAFOOR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Matthias Schuster, UNICEF
Alister Cumming, UNICEF

Introduction

1. The Applicant is a former Education Officer, at National Officer-A level (“NO-A”), working with the United Nations Children’s Fund (“UNICEF”), based in Erbil, Iraq. She held a temporary appointment, which expired on 30 April 2020.¹

2. On 19 March 2021, she filed an application before the Dispute Tribunal contesting UNICEF’s decision barring her from being re-employed by the Organization for a period of 36 months due to a mutually agreed termination of her temporary appointment contract.²

Facts

3. While her duty station was in Erbil, the Applicant’s family was based in Kirkuk province, in Iraq. Due to family reasons, during her tenure, the Applicant regularly travelled between Erbil and Kirkuk cities.³

4. In March 2020, due to the outbreak of the COVID-19 pandemic and a deteriorating security situation in Kirkuk, it was no longer possible for her to move freely between the two cities.⁴ On one weekend in March 2020, while in Kirkuk with her family, a curfew was announced across the country and checkpoints were established.⁵

5. By way of an email sent on 20 April 2020 to Mr. Paul Edwards, the Chief Field Operations, UNICEF and copied to other colleagues, the Applicant informed them that considering that her appointment was due to expire and she was required to separate from the Organization, she needed to travel from Kirkuk to Erbil so as to hand over UNICEF equipment in her possession and also collect her salary for March and April 2020.⁶

¹ Application, section II, application, section VII.

² Ibid, section V.

³ Ibid, section VII.

⁴ Application, annex 6.

⁵ Application, section VII.

⁶ Reply, annex 1.

6. On the same day, 20 April 2020, Mr. Edwards responded to the Applicant as follows:

Dear....

Thank you for the email. HR will provide you with a letter to help facilitate your movement from Kirkuk to Erbil. However, we stress that while you remain a UNICEF staff member, you must remain in Erbil. This is for your safety and security.⁷

7. Later, on the same day, the Applicant replied to Mr. Edwards and stated as follows:

Dear Paul,

Thank you so much for your kind response and support. I am really sorry to inform you that I have severe family emergency that obliges me to stay in Kirkuk during this time as I have to nurse my elderly mother and disabled sister during the COVID-19 situation, there is nobody else to take care of them during the curfew. Hence, I highly appreciate management's kind support to return back to Kirkuk until my contract ends by end of April.⁸

8. As a result of the Applicant's wish to return to Kirkuk prior to the expiry of her appointment, yet for security reasons, UNICEF could not agree to a staff member returning to Kirkuk, the Applicant and UNICEF mutually agreed to terminate her appointment prior to its scheduled expiration date.⁹

9. On 21 April 2020, the Applicant signed the agreement to terminate her appointment and committed not to contest the separation.¹⁰

10. On 27 September 2020, the Applicant expressed interest in an education position, at the NO-B level, in the Baghdad Office. She corresponded with the Human Resources Specialist in the Erbil Field Office, who indicated that her eligibility to be considered was being discussed with the Regional Office and the Headquarters. On 18 October 2020, the Applicant wrote to the Human Resources Manager, Iraq Country Office and the Human Resources Specialist, Erbil Field Office, noting that she received

⁷ Ibid.

⁸ Ibid.

⁹ Reply, annex 2.

¹⁰ Ibid.

a WhatsApp message from Human Resources, informing her that she was not permitted to apply for any position in UNICEF for 36 months, as a result of the mutually agreed termination of her appointment.¹¹

11. On 2 November 2020, the same message that the Applicant was not permitted to apply for any position, was reiterated, in a meeting she held with the Human Resources Manager, Iraq, and the Human Resources Specialist, Erbil.¹²

12. On 18 January 2021, the Applicant requested management evaluation of the contested decision. On 3 March 2021, UNICEF responded, informing the Applicant that her request was not receivable as it was time barred.¹³

13. On 19 March 2021, the Applicant filed the present application. On 23 March 2021, the application was served on the Respondent with a deadline to file his reply by 26 April 2021.

14. On 30 March 2021, the Respondent filed a motion where it is argued that the application is not receivable *ratione materiae*. In the motion, the Respondent requested that the Tribunal determine the receivability of the application as a preliminary matter. The Respondent also sought suspension of the 26 April 2021 deadline for the filing of the reply pending the Tribunal's determination of the motion.

15. By Order No. 072 (NBI/2021), issued on 1 April 2021, the Tribunal granted the Respondent's motion. The Tribunal also directed the Applicant to file a response to the Respondent's motion specifically on the issue of receivability as argued by the Respondent.

16. On 6 April 2021, the Applicant filed a document which she described as a "motion" and where she attempted to respond to the issue of receivability as raised by the Respondent.

¹¹ Reply, annex 4.

¹² Application, section VIII.

¹³ Application, annexes 5 and 6.

SUBMISSIONS

17. The Respondent contends that the application is not receivable *ratione materiae* because the Applicant did not request management evaluation within the 60-day statutory period of staff rule 11.2(c). The 60-day period commenced on 21 April 2020, when the Applicant signed and agreed to the termination of her appointment. Therefore, if she wished to contest the circumstances of her termination agreement, including the notice period and the provision of written notice, she ought to have requested management evaluation by 20 June 2021. Instead, she submitted her request on 18 January 2021, almost six months later.¹⁴

18. The Respondent further argues that this deadline also applies to the Applicant's challenge to the rule preventing her appointment within 36 months of her separation. The Applicant knew on 21 April 2020 that her appointment had been terminated. The deadline to request management evaluation therefore, started to run from that date, and not on the date she became aware of the legal consequences of the termination.¹⁵

19. The Respondent maintains that even if the deadline started to run from the date the Applicant became aware of the restriction on her appointment, i.e. on 18 October 2020, then the request for management evaluation was still out of time. In that case, the Applicant ought to have requested management evaluation by 17 December 2020. She failed to do so, and accordingly, the Application is not receivable *ratione materiae*.

20. The Applicant submits that the time limit for the submission of her application to the Tribunal has not passed. Should it be considered that the time limit has passed, she requests the Tribunal to exercise its powers and waive the time limit in the interest of fairness and justice pursuant to art. 35 of the Dispute Tribunal's Rules of Procedure and art. 8.3 of its Statute.

21. The Applicant, further avers that where the parties have sought mediation of their dispute within the deadlines for the filing of an application, but the parties did not

¹⁴ Reply, para. 14.

¹⁵ Ibid, para. 15.

reach an agreement, the application shall be filed within 90 days after mediation has broken down. The Applicant did not however, substantiate this averment, nor did she provide any proof that the parties are/were involved in mediation and whether the mediation has broken down.

CONSIDERATION

22. The question before the Tribunal is whether or not the Applicant sought management evaluation within the stipulated timelines.

23. Staff rule 11.2(c) provides that “a request for management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.” Article 8.3 of the Dispute Tribunal’s Statute provides that the Tribunal shall not waive or suspend the deadlines for management evaluation.

24. That the Applicant signed and agreed to the termination of her appointment on 21 April 2020 is not contested. This makes 21 April 2020 the relevant date for purposes of computation of the 60-day period, meaning that if the Applicant wished to contest the circumstances of her termination agreement including the notice period and the provision of written notice, she ought to have requested management evaluation by 20 June 2020. She does not contest the fact that she submitted her request on 18 January 2021, almost seven months later, and outside the 60 day period.

25. The Tribunal finds that the request for management evaluation was time-barred and that this application is not receivable.

26. The Applicant’s request that the Tribunal waives the prescribed timelines “in the interest of justice,” is similarly disallowed on the basis that the Tribunal is barred by the UNDT Statute from waiving time limits for management evaluation.¹⁶ The Appeals Tribunal has moreover affirmed that an untimely request for management

¹⁶ *Rosana* 2012-UNAT-273.

evaluation bars applications before the Tribunal even if management evaluation was actually received.¹⁷

JUDGMENT

27. The application is not receivable *ratione materiae*. It is dismissed.

(Signed)

Judge Margaret Tibulya

Dated this 23rd day of April 2021

Entered in the Register on this 23rd day of April 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

¹⁷ *Awan* 2015-UNAT-588 para 13-14.