



JNITE D NATIONS APPEALS TRIBUNAL
RIBUNAL D'APPEL DES NATIONS UNIES

Judgment

JNAT-520

Eng

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before

Judge Rosalyn Chapman, Presiding
Judge Richard Lussick
Judge Sophia Adinyira

Case No.

2014-597

Date:

26 February 2015

Registrar

Weicheng Lin

Counsel

for the Respondent: Alexandre Tavadian/OSLA

Counsel

for the Applicant: Rupa Mitra

3. On 27 September 2010, Ms. Eng filed a request for management evaluation asserting that her “right to full and fair consideration for lateral movement and/or promotion as a Legal Officer in peacekeeping” had been violated, and referred to an “attached statement for more detail”. The attached four-page statement set forth a chronological account of events commencing on 13 May 2009, and continuing through the date of the request.

4. On 11 November 2010, the Management Evaluation Unit (MEU) began discussions and an exchange of e-mails with Ms. Eng in an attempt to resolve her complaint that the Expert Panel had unlawfully failed to interview her in June 2010 for the generic SLO (P-5) position.²

5. On 2 December 2010, the MEU confirmed with Ms. Eng her “agreement to be subject to an evaluation by an ad hoc interview panel

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17. The UNDT properly considered the nature of the ad hoc Expert Panel interview on 30 March 2011, to determine whether it was an adequate remedy for the failure to interview Ms. Eng in June 2010.

18. The UNDT properly awarded compensatory damages to Ms. Eng based on the failure to give her full and fair consideration for the location-specific MINURCAT vacancy. If the Appeals Tribunal determines that the UNDT did not give sufficiently detailed reasons to award compensatory damages, it should remand the matter to the UNDT. An award of moral damages may be based on a fundamental breach of a staff member's rights. The Appeals Tribunal may infer that the UNDT found a fundamental breach of Ms. Eng's rights as the basis for its award of moral damages, based on the findings in paragraph 74 of the Judgment.

19. Ms. Eng requests that the appeal be dismissed.

Considerations

20. Article 8(1) of the UNDT Statute provides, in relevant part:

An application shall be receivable if:

...

(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[.]

...

(iii) The deadlines provided for in subparagraphs (d)(i) and (ii) of the present paragraph shall be extended to one year if the application is filed by any person making claims in the name of an incapacitated or deceased staff member ...;

(iv) Where the parties have sought mediation of their dispute within the deadlines for the filing of an application under subparagraph (d) of the present paragraph, but did not reach an agreement, the application 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.

Article 7 of the UNDT Rules of Procedure (Rules) reiterates the deadlines for filing an application.

21. Relying on Article 8(1) of the UNDT Statute, the Secretary-General argued before the Dispute Tribunal that Ms. Eng's application was not timely, having been filed more than eight months after the date she requested management evaluation, and was not receivable *ratione temporis*. The Secretary-General argued that under Article 8(1) of the UNDT Statute, Ms. Eng was required to file her application within 90 days from the date the MEU was supposed to respond to her, i.e., 45 days from the date of her request, which was 27 September 2010; thus, the last date for her to file a timely application with the UNDT was 19 February 2011.³ Moreover, the Secretary-General contended that the informal discussions between Ms. Eng and the MEU did not suspend the time for her to file an application because only a formal referral of negotiations to the Ombudsman/Mediation Division could accomplish that. Finally, the Secretary-General called the UNDT's attention to a similar case considered by both Tribunals: *Abu-Hawaila v. Secretary General*, Judgment

to file her application no later than 9 February 2011. She did not. The application was not filed until 6 June 2011; thus, it was untimely.

25. Moreover, the e-mail correspondence between Ms. Eng and the MEU shows that Ms. Eng was well-aware that the MEU had not responded in writing to her request for management evaluation within 45 days and that the deadline for her to file an application before the Dispute Tribunal was rapidly passing. Nothing prevented Ms. Eng from filing an application within the statutory time.¹⁰ When Ms. Eng chose to proceed with the MEU's resolution of her grievance,¹¹ she did so with the full understanding that any application she later filed for judicial review would be untimely.

26. For the foregoing reasons, Ms. Eng's application was not timely and not receivable *ratione temporis*. Thus, the UNDT exceeded its competence or jurisdiction in receiving the application and addressing its merits. The Judgment should be vacated.

Judgment

27. The appeal of the Secretary-General is granted, and Judgment No. UNDT/2014/014 is vacated.

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Original and Authoritative Version: English

Dated this 26th day of February 2015 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Adinyira

Entered in the Register on this 17th day of April 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar