



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1295

Case No. 1377

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Ms. Jacqueline R. Scott, Vice-President, presiding; Mr. Julio Barboza;
Mr. Goh Joon Seng;

Whereas, on 7 October 2004, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP) filed an Application containing pleas which read, in part, as follows:

“II. PLEAS

- (1) ...
- (2) Hearing of ... witnesses ...
- (3) Contested decisions

...

UNDP's decision of 22 December 2000 to invite [the Applicant] to re-apply for his own post despite a satisfactory performance. [The] Applicant believes that such a decision is a disguised termination ...

UNDP's decision of 18 September 2000 to extend for three months [the Applicant's] expired one-year renewable [(appointment of limited duration (ALD))].

UNDP's decision to qualify [the Applicant's] ALD appointment as a 'Reimbursable Loan'.

UNDP's decision to recruit [the Applicant] for P-4 level duties while paying him an A3 Band salary.

[The Joint Appeals Board's (JAB's)] failure to expeditiously convene a panel after the Applicant filed a request for suspension of action.

[The] JAB's failure to review the merits of the ... plea of exceptional circumstances.

[(4)] Amount of compensation claimed ...

- salary differential between A3 Band and P-4 level
- [two] years of salary
- US\$ 500,000."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 4 February 2005 and twice thereafter until 31 March;

Whereas the Respondent filed his Answer on 24 March 2005;

Whereas, on 30 June 2006, the Tribunal decided not to hold oral proceedings in the case;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

"Employment History

... The [Applicant] joined UNDP on an ... ALD under the 300 series of the Staff Rules on 12 October 1999 as a Legal Specialist at the A3 level under a 12-month contract. On 12 October 2000, the [Applicant's] appointment was extended until 31 December 2000. On 1 January 2001, the [Applicant's] contract was extended until 11 January 2001. The [Applicant] was separated from service on 11 January 2001.

Summary of facts

...

... The [Applicant] states that he applied to a Legal Specialist Post at the P-4 level in April 2000.

...

... On 9 August 2000 ... [the] Officer-in-Charge, Office of Human Resources, Bureau of Management, wrote a letter to the [Applicant] informing him that his contract [might] not be renewed because of budgetary constraints and the Office of Legal and Procurement Services' [(OLPS')] reorganization.

... On 6 September 2000, the [Applicant] ... [received his] Performance Appraisal Review (PAR). ... [The Applicant was given] a '3', meaning that [he] fully

met expectations. The [Applicant] commented that he felt he should have received a '1' (...) or a '2' (...) ... The [Applicant] states that ... the PAR [was transmitted] to the Management Review Group [(MRG)] in May 2001, six months after [he] had left.

...

... On 18 September 2000 ... the [Applicant was informed] that his contract would be extended for three months.

...

... On 12 October 2000, a Personnel Action was issued which extended the [Applicant's] appointment until 31 December ... The description of the post was listed as: 'Reimbursable Loan'.

...

... On 21 December 2000, the [Applicant] e-mailed [the Director, OLPS, referring to a conversation earlier that day when the Director, OLPS, had informed him] ... that his 'ALD contract with UNDP [would] expire on 31 December 2000, even though it had been extended for three months after expiration on 10 October 2000, pending the creation of a regular post' ... [and that] his contract would not be renewed and instead his post would be opened to external competition. [The Applicant] ... asked [the Director, OLPS] that his PAR rebuttal ... be submitted to the [MRG].

... On 22 December 2000 ... [the Director, OLPS, confirmed that the Applicant's post] would be opened for competition at the expiration of his contract. [He added] that he had told the [Applicant] that he could apply ... [and] advised the [Applicant] that his contract would be expiring on 11 January 2001. ... UNDP would not be able to extend his contract beyond that date.

...

... On 10 January 2001, the [Applicant] wrote an e-mail to ... [the] Associate Administrator, UNDP, telling him that his contract expired the next day. The [Applicant] also stated that he had not submitted his suspension of action to give him time.

... On the same day, [the Associate Administrator] responded to the [Applicant] and said that he had not forgotten [and that] ... a meeting was planned with [the Director, OLPS,] either the next day or the day after.

... On 11 January 2001, the [Applicant] was separated from UNDP.

... On 17 January 2001, the [Applicant] e-mailed [the Associate Administrator] to ask him when he would be having the meeting with [the Director, OLPS]. The [Applicant] also reminded [the Associate Administrator] that the [one] month deadline for beginning his appeals process was on 22 January ...

... On the same day, [the Associate Administrator] informed the [Applicant] that he was continuing to follow-up on the [Applicant's] case.

... On 25 January 2001, the [Applicant] sent ... a request for administrative review of the decision made on 22 December 2000 [to the Administrator, UNDP]. In addition, the [Applicant] questioned why his PAR rebuttal had not been forwarded to a

review panel. He also questioned the legality of his contract extension and his post having been opened to external competition.

... On 29 January 2001, [the Director, OLPS,] asked the [Applicant] to confirm his interview on 31 January ... for the ALD Legal Specialist position.

... On 30 January 2001, the [Applicant] sent a request for suspension of action to ... [the] Secretary, JAB[, in New York].

... [In an e-mail to the Director, OLPS, the Applicant] ... declined the interview offer.

... On 31 January 2001 ... [the Director, OLPS,] repeated his offer that the [Applicant] interview for the position ... [but on] the same date, the [Applicant again] declined ... [the] offer ...

... On 5 February 2001 ... [the Applicant was advised that] since the decision not to extend his contract had been implemented on 11 January ..., it could no longer be suspended. As for the decision to open his post to competition, that decision had already been implemented, and therefore could not be suspended.

... On 12 February 2001, the [Applicant] wrote to ... [the] JAB, to ask that a panel be convened to review his request for suspension of action.

... On 14 February 2001 ... [the Director, OLPS, again] repeated his invitation to the [Applicant] to interview for the post.

...

... On 21 February 2001 ... [the] Assistant Administrator and Director, Bureau of Management, replied to the [Applicant's] request for administrative review and ... concluded that he was 'unable to find grounds on which to rescind the decision ...'

... On 22 February 2001, the [Applicant declined for the third time the] invitation to interview for the post.

...

[Following a lengthy exchange of correspondence between the [Applicant], the JAB and the Administration, the [Applicant] wrote to the Secretary-General, on 27 April 2001, requesting that his case be submitted directly to the Tribunal. This request was denied on 8 June ...]

...

... On 20 March 2002, the [Applicant] indicated ... that he would suspend his proceedings before the JAB and the ... Tribunal pending [UNDP's] decision.

..."

On 7 May 2002, the Applicant lodged an appeal on the merits with the JAB. The JAB adopted its report on 13 May 2004. Its conclusions read as follows:

“Conclusions

66. The Panel unanimously found that the present appeal was not receivable because it was filed 12 months too late and there were no exceptional circumstances warranting the waiver of the time limits set forth in ... staff rule 111.2 (a) (ii).”

On 7 October 2004, the Applicant, having not received any decision from the Secretary-General regarding his appeal to the JAB, filed the above-referenced Application with the Tribunal.

On 9 November 2004, the Under-Secretary-General for Management informed the Applicant that the Secretary-General accepted the findings and conclusions of the JAB and had accordingly decided to take no further action on this appeal.

Whereas the Applicant’s principal contentions are:

1. The Applicant has amply described a series of facts and events that should be regarded as exceptional circumstances warranting the extension of the time limit.
2. The JAB ignored all the Applicant’s pleas. None of the pleas for receivability were addressed by the JAB and its opinion to declare the appeal non-receivable was unsubstantiated.

Whereas the Respondent’s principal contention is:

The Application is time-barred and thus not receivable.

The Tribunal, having deliberated from 30 June to 28 July 2006, now pronounces the following Judgement:

I. Under staff rule 111.2 (a) (i), an applicant is required to file an appeal to the JAB within one month after receiving a reply to his or her request for administrative review from the Secretary-General. Staff rule 111.2 (f) states that “an appeal shall not be receivable unless the time limits ... have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal”.

II. In the present case, the time limits for the appeal to the JAB commenced to run from the date of rejection by the Assistant Administrator and Director, Bureau of Management, UNDP, of the Applicant’s request for administrative review by letter of 21 February 2001, as he was “unable to find grounds on which to rescind the decision communicated to [the Applicant]”.

III. The appeal to the JAB was filed on 7 May 2002. In its report, the JAB was of the view that, as a legal specialist for UNDP, the Applicant knew the time limits for filing an appeal. The Panel noted that the reply to the Applicant's request for administrative review was dated 21 February 2001; that the Applicant thus had until 21 March 2001 to file an appeal; but, that he did not file his appeal until 12 months later. The JAB found no reason to waive the time limits, as it did not find any circumstances that were beyond the Applicant's control.

IV. Recalling its jurisprudence that

“‘exceptional circumstances’ justifying waiver of the time limits must consist of events beyond the Applicant's control that prevent the Applicant from timely pursuing his or her appeal (see Judgement No. 913, *Midaya* (1999) referring to Judgements No. 372, *Kayigamba* (1986) and No. 713, *Piquilloud* (1995))”,

the Tribunal finds, as it did in Judgement No. 1106, *Iqbal* (2003), that

“[t]he circumstances described by the Applicant are, at best, subjective reasons upon which he had made the choice of not requesting administrative review within the prescribed time limits. They do not conform with the concept of ‘exceptional circumstances’ as has been interpreted by the Tribunal throughout its jurisprudence, as recently stated in Judgement No. 1046, *Diaz de Wessely* (2002):

‘The delay in submitting the request is the result of a choice freely made by the Applicant, on the basis of her own assessment of the situation and her chances of making a successful appeal, and can in no way be attributed to exceptional circumstances beyond her control. The Applicant is solely responsible for the delay in submitting her appeal.’”

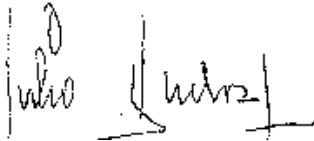
Thus, the Tribunal finds that the Application is time-barred and that, therefore, the Applicant's claims are not receivable.

V. Accordingly, the Application is rejected in its entirety.

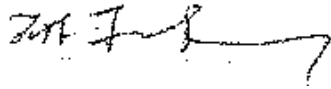
(Signatures)



Jacqueline R. **Scott**
Vice-President, presiding



Julio Barboza
Member



Goh Joon Seng
Member

Geneva, 28 July 2006



Maritza Struyvenberg
Executive Secretary