



Administrative Tribunal

Distr. Limited
30 September 2009

Original: English

ADMINISTRATIVE TRIBUNAL

Judgement No. 1466

Case No. 1525

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of Ms. Jacqueline R. Scott, First Vice-President, presiding; Mr. Dayendra Sena
Wijewardane, Second Vice-President; Mr. Goh Joon Seng;

Whereas, on 22 February 2007, a former staff member of the United Nations, filed an Application
requesting the Tribunal, inter alia:

“II. PLEAS

7. ... [T]o find:

- a. that it is competent to hear and pass Judgement upon the present application
under Article 2 of its Statute;
- b. that the present application is receivable under Article 7 of its Statute[; and]
- c. that the case is receivable pursuant to Staff Rule 111.2 (p) and (q).

...”

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 8 August 2007, and twice thereafter until 1 October;

Whereas the Respondent filed his Answer on 1 October 2007;

Whereas the Applicant filed Written Observations on 6 November 2007;

Whereas the facts of the case are as follows:

The Applicant, who entered the service of the Organization in November 2000, on a fixed-term contract at the P-3 level, joined UNEP in The Hague on 27 October 2004. On 29 June 2005, the Applicant's supervisor signed-off on the Applicant's performance evaluation but the Applicant refused to sign and rebutted the appraisal of "partially meets performance expectations". For the period 8 August to 17 November 2005, the Applicant was absent from service.

On 23 September 2005, the Applicant requested the JAB in Nairobi to suspend action on the Respondent's decision not to renew her contract claiming harassment and other violations of her due process rights. On 19 October, the JAB submitted its report wherein it found that the decision not to renew the Applicant's contract, which was linked with her work performance, was vitiated by several irregularities in the appraisal process itself. The JAB concluded that the Applicant's due process rights were violated. It recommended suspending the decision not to renew the Applicant's contract, pending the resolution of the PAS rebuttal. On 24 October 2005, the Applicant was notified of the Secretary-General's decision to accept the JAB's recommendation.

Subsequently, the Rebuttal Panel which reviewed the Applicant's PAS upheld the performance appraisal. The Applicant did not appeal this decision, but instead informally requested that a Medical Board be convened to review her sick leave entitlements for the period 8 August to 17 November. On 31 December 2005, the Applicant separated from service upon the expiration of her contract.

On 5 January 2006, the UNEP Chief of Personnel requested that the Applicant submit a written request to convene the Medical Board and informed her regarding the composition guidelines for constituting the same. The Applicant was also notified that the UNEP Chief of Personnel would also serve on the Medical Board. On 7 January, the Applicant submitted the request to convene a Medical Board and named her representative, Dr. H.

On 27 January 2006, the UNEP Chief of Personnel advised the Applicant that she would be contacted regarding the third member of the Medical Board. Subsequently, the Applicant suggested the inclusion of a psychotherapist as the third Medical Board member. The Applicant claims that she did not receive a response to her suggestion. The Respondent claims that the UNEP Chief of Personnel and the Applicant's representative on the Board, Dr. H, selected a third qualified member, Dr. B.

On 25 February 2006, Dr. H informed the Applicant that the Medical Board met with Dr. B as its third member. The Applicant claims that she rejected the inclusion of Dr. B on the Medical Board citing lack of impartiality and conflict of interest. On 23 March, the Applicant was informed that once the Medical Board completed its review of her claim, the Organization would disburse her final payment.

On 27 April 2006, the Applicant was notified that the Medical Board certified the period from 8 August to 7 September 2005, but that the remaining balance of 46 days (8 September to 17 November) was not certified. On 8 June, the Applicant's final payment was paid. On 17 August, the Applicant requested a copy of the Medical Board's report in order to file her appeal.

On 20 September 2006, the Applicant requested administrative review of the decision not to certify the period between 8 September and 17 November 2005 as certified sick leave and to “review the violation of due process and harassment [committed] against [the Applicant]”.

On 24 January 2007, the Applicant submitted an unsigned appeal with the JAB in Nairobi. On 30 January, the JAB informed the Applicant’s counsel that it was not competent to review Medical Board decisions and suggested a direct appeal to the Tribunal.

On 22 February, the Applicant submitted her Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The present Application is receivable.
2. A medical board was convened in violation of her due process rights.
3. She should be paid sick leave entitlements for the contested 46 days that were not approved by the medical board.
4. She was the victim of harassment and breach of duty of care and should be compensated for such wrongdoing.

Whereas the Respondent’s principal contentions are:

1. The Applicant’s claim that she should be granted sick leave for the contested 46 days are not receivable.
2. The Applicant’s allegations of harassment and breach of duty of care on the part of the Organization, which involve questions of fact, have never been submitted for administrative review and for consideration by a joint appeals body under Chapter XI of the Staff Rules and therefore, they are also not receivable.

The Tribunal, having deliberated from 8 July to 31 July 2009, now pronounces the following Judgement:

I. On 24 January 2007, the Applicant submitted an unsigned appeal with the JAB in Nairobi against the decision not to certify the period between 8 September and 17 November 2005 as certified sick leave and to “review the violation of due process and harassment [committed]” against her. On 30 January, the JAB informed the Applicant’s counsel that it was not competent to review Medical Board decisions, and on 22 February 2007, the Applicant submitted her Application directly with the Tribunal.

II. The Tribunal finds that the Applicant’s claim must fail because her Application to the Tribunal is not timely and therefore not receivable *ratione temporis*. Under article 7.4 of the Statute of the Tribunal:

“4. An application shall not be receivable unless it is filed within ninety days reckoned from the respective dates and periods referred to in paragraph 2 above, or within ninety days reckoned from the date of the communications of the joint body’s opinion containing recommendations

unfavourable to the applicant. If the circumstance rendering the application receivable by the Tribunal, pursuant to paragraphs 2 and 3 above, is anterior to the date of announcement of the first session of the Tribunal, the time limit of ninety days shall begin to run from that date. Nevertheless, the said time limit on his or her behalf shall be extended to one year if the heirs of a deceased staff member or the trustee of a staff member who is not in a position to manage his or her own affairs files the application in the name of the said staff member.”

III. The Applicant was notified on 27 April 2006 of the ruling of the Medical Board, which decision she appealed against. The Application to the Tribunal was filed on 22 February 2007, well beyond the time limit of article 7.4. Accordingly the Application is time-barred.

IV. The Tribunal also notes that the Applicant failed to seek administrative review in a timely fashion in connection with her appeal on the merits. On this issue the Applicant had been directed by the Secretary-General pursuant to recommendations of the JAB to file her appeal within four weeks of the Secretary-General’s decision on the request for suspension of action. The Secretary-General conveyed his decision by letter of 24 October 2005. Therefore, an appeal with the JAB should have been filed by 25 November 2005, but it was not done until 20 September 2006. The appeal to the JAB for compensation based on alleged harassment is also out of time, and therefore not receivable.

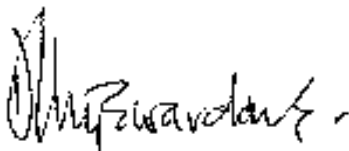
V. The Tribunal has consistently upheld adherence to time lines under its Statute and the Staff Rules, unless the Tribunal finds exceptional circumstances warranting a suspension of the time limits. (See Judgement No. 1325 (2007), Judgement No. 1335 (2007) and Judgement No. 1046, Diaz de Wessely (2002)).

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

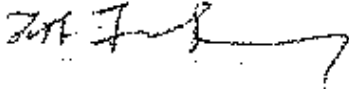
(Signatures)



Jacqueline R. **Scott**
First Vice-President



Dayendra Sena **Wijewardane**
Second Vice-President



Goh Joon Seng
Member

Geneva, 31 July 2009



Tamara Shockley
Executive Secretary