



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2016/035

Judgment No.: UNDT/2016/118

Date: 30 August 2016

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

REID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Didier Sepho

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. By application filed on 21 July 2016, the Applicant contests the failure of his former Counsel from the Office of Staff Legal Assistance (“OSLA”) to file a timeous application on the merits in proceedings that resulted in Judgment No. UNDT/2016/011 (*Reid*), rendered on 18 February 2016 in relation to Cases No. UNDT/NY/2015/023 and UNDT/NY/2015/030.

2.

This is because OSLA is operationally independent of the Secretary-General in the provision of legal assistance to staff members.

4. On 22 August 2016, the Respondent filed his reply to the application. The Respondent reiterates that the application is not receivable as the actions of OSLA do not constitute an administrative decision of the Secretary-General, and, therefore, pursuant to art. 2 of its Statute, the Tribunal is not competent to consider the application. The Respondent further submits that the application is time-barred as the Applicant did not submit a request for management evaluation of the contested actions of his OSLA Counsel within the 60-day time limit established by staff rule 11.2(c). The Respondent further submits that, should the Tribunal find the application receivable, it has no merit. The Applicant is responsible for ensuring that he is aware of the applicable filing procedures, and the retention of counsel does not absolve the Applicant from his responsibilities. Secondly, the Guiding Principles of Conduct for OLSA Affiliated Counsel in the United Nations are not part of the Applicant's terms of appointment. Thirdly, the Applicant's claim for compensation is baseless. He has not discharged his burden of proving that the Tribunal would have granted his application in the previous case on its merits, had it not been for the alleged unlawful decision.

5. On 29 August 2016, the Applicant filed a response to the Respondent's motion for summary judgment. He submits that, while decisions made by OSLA counsel following the exercise of professional judgment are not administrative decisions, in the present case OSLA did not exercise professional judgment because there was no conflicting rule with regard to the timeous filing of the application on the merits. Thus, OSLA's failure to file a timeous application on the merits was a "strict administrative decision" that is "attributable to the Secretary-General". The Applicant further submits that he also became aware of OSLA's failure on 18 February 2016, when Judgment No. UNDT/2016/011

was rendered, and therefore his request for management evaluation and subsequent application in the present case were timeous.

Background

6. On 8 March 2013, an incident took place between the Applicant, a Security Officer who was manning a UN security entry point, and another staff member, which resulted in an investigation. The Applicant was found to have “acted in an unwarranted hostile manner towards the staff member”. The matter was referred for subsequent action by the Office of Human Resources Management (“OHRM”).

7. On 14 August 2013, the Applicant retained the services of OSLA and signed the “Consent Form for Legal Representation by OSLA”.

8. By letter dated 23 December 2013, the Assistant Secretary-General, OHRM (“ASG/OHRM”) informed the Applicant that, after her review of the investigation report and the Applicant’s comments, she had decided not to impose a disciplinary sanction on him. The ASG/OHRM stated, however, that the case would be referred back to Department of Safety and Security (“DSS”) for “consideration as to whether administrative measures or other action may be appropriate”.

9. On 30 October 2014, the Chief of DSS issued the Applicant with a written reprimand.

10. On 23 December 2014, OSLA, on behalf of the Applicant, requested management evaluation of the decision “to impose reprimand” on the Applicant.

11. On 13 April 2015, the Applicant, through OSLA Counsel, filed an application contesting the decision to issue the reprimand, which was assigned Case No. UNDT/NY/2015/023.

12. On 22 May 2015, the Applicant filed a motion for a waiver of time and to refile the application, to address the Respondent's contention that the first case was not receivable. It was registered under Case No. UNDT/NY/2015/030.

13. On 18 February 2016, the Tribunal rendered *Reid* UNDT/2016/011, finding that the Applicant's claims were time-barred and dismissing Cases No. UNDT/NY/2015/023 and No. UNDT/NY/2015/030.

14. On 18 April 2016, the Applicant, through his new non-OSLA Counsel, filed a management evaluation request regarding the former OSLA Counsel's failure to file a timeous application.

15. On 21 July 2016, the Applicant filed the present application.

16. On the same day, the New York Registry transmitted the application to the Respondent, informing the Respondent that his reply was due 22 August 2016.

Consideration

Motion for summary judgment

17. Although the Respondent has raised issues of receivability, it is contended that the application may be summarily dismissed under art. 9 of the Rules of Procedure.

18. Article 9 of the Tribunal's Rules of Procedure provides that a party may move for summary judgment when there is no dispute as to the material facts of

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21. Whilst, in fairness to all parties, it is the practice of the Dispute Tribunal to deal with cases in chronological order of filing, the General Assembly has requested in its resolution 66/237, adopted on 24 December 2011, that the Dispute Tribunal and the Appeals Tribunal review their procedures in regard to the dismissal of “manifestly inadmissible cases”. It is a matter of record that the Dispute Tribunal, even prior to the aforesaid resolution 66/237, entertained and continues to deal with matters of admissibility or receivability on a priority basis in appropriate cases, and also renders summary judgments in appropriate cases under art. 9 of the Rules of Procedure. However, any application for

the giving of advice to litigants or the conduct of cases before the [Tribunal]”
(*Onana* UNDT/2011/204 (not appealed)).

28. OSLA counsel enjoy functional or operational independence and, when providing legal advice to staff members or representing their interest

Cases No.