



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: René M. Vargas M., Officer-in-Charge

KAMDEN SOUOP

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Emmanuel Simh

Counsel for Respondent:

Elizabeth Gall, BMS/OLS, UNDP

Introduction

1. The Applicant is a Communication and Advocacy Assistant at the G-5 level with the Regional Office for Central Africa of the Office of the United Nations High Commissioner for Human Rights (“OHCHR-CARO”) in Yaoundé, Cameroon. He served under a fixed-term appointment (“FTA”), which was administered by the United Nations Development Programme (“UNDP”).

2. On 26 May 2023, the Applicant filed an application challenging the Respondent’s decision to reject his request for medical evacuation (“MEDEVAC”) and the request for reimbursement of his MEDEVAC costs.

3. On 27 June 2023, the Respondent filed his reply in which he submits that the application is not receivable *ratione temporis* as the Applicant failed to submit his request for management evaluation in accordance with staff rule 11.2(c).

4. On 28 August 2023, the Tribunal issued Order No. 134 (NBI/2023) inviting the Applicant to file further submissions in response to the Respondent’s reply.

Facts and Submissions

5. On 29 March 2022, Dr. Francis Abega, of the UN Medical Clinic, sent an email to the then Regional Representative (“RR”) of OHCHR-CARO recommending that the Applicant be medically evacuated to Casablanca, Morocco. The RR approved the recommendation.

6. On 22 April 2022, the UN Secretariat’s Division for Healthcare Management and Occupational Safety and Health (“DHMOSH”) informed Dr. Abega that it disagreed with his recommendation. DHMOSH took the view that MEDEVAC was not supported given the specifics of the Applicant’s circumstances. Instead, DHMOSH approved travel to the Regional Area of Care (“RAC”) for a period of four days.

7. On 26 April 2022, Dr. Abega wrote to DHMOSH saying “following your approval ... for KAMDEM’s MEDEVAC ... the OHCHR human resources services in Geneva are seeking ... approval from DHMOSH for family escort”.

8. On 27 April 2022, DHMOSH reiterated its position (emphasis in the original):

DHMOSH has supported a RAC to Morocco for a period of 4 calendar days. Kindly note that under RAC, escort is not covered for travel expenses or DSA. **MEDEVAC has not been supported.**

9. Copies of airline tickets submitted by the Applicant as part of his application suggest that he travelled to Casablanca, Morocco with his wife on 28 April 2022.

10. On 3 June 2022, the Applicant requested that DHMOSH reconsider its decision that the facts supported RAC travel and not a MEDEVAC. DHMOSH responded on 7 June 2022 making it clear that the Applicant's medical condition did not qualify for MEDEVAC and that the final approval rests with the Head of Office/entity. The response of DHMOSH also said that "[b]ased on the updated medical information received from your doctor, your sick leave was extended until 14 July 2022".

11. Between 22 July and 20 September 2022, there was substantial correspondence between the Applicant's Counsel and the Respondent for reconsideration of the decision to not support the Applicant's request for MEDEVAC and for payment of some expenses that the Applicant may have been entitled to had MEDEVAC been approved.

12. On 3 November 2022, the Applicant submitted a request for management evaluation to the Management Evaluation Unit of the United Nations Secretariat.

13. On 18 November 2022, the Applicant was advised to submit his request to the Management Evaluation Unit of UNDP, which he did on 23 January 2023.

14. On 13 March 2023, UNDP informed the Applicant that his request for management evaluation was out of time. The Respondent nevertheless went on to consider the merits of the Applicant's grievance and found no basis to set aside or revise the decision made by DHMOSH. Specifically, the management evaluation review said:

Following a review of the medical information submitted by Dr. Abega, DHMOSH determined that your medical condition did not constitute an acute life-threatening medical emergency. Accordingly, your medical condition did not fulfill the criteria under [p]aragraph 4 of the Policy for medical evacuation travel. You have not produced any evidence demonstrating that DHMOSH's medical determination is incorrect.

DHMOSH did support medical treatment for you in Morocco for the purpose of the Medical Insurance Plan (MIP) for UNDP staff members. In accordance with Section 3.1 of the MIP, medical treatment in neighbouring countries (without medical evacuation) may be permitted, with MIP claims reimbursed at actual cost. Transportation costs and DSA are not covered under the MIP. After considering the care required for your medical condition and an assessment of the local facilities in Yaoundé, DHMOSH made a clinical determination that treatment in Morocco was warranted. As a consequence, your claims to Cigna for reimbursement for the cost of medical treatment in Morocco were to be reimbursed at actual cost, rather than the prevailing reasonable and customary costs for such treatment in Yaoundé.

15. On 26 May 2023, the Applicant filed the application that is the subject of this judgment.

Consideration

16. Having reviewed the application, the Tribunal considers that the primary issue to be determined is its receivability. The issue of receivability is one which in appropriate cases, such as this one, the Tribunal may determine on a priority basis with or without the Respondent's reply.¹

17. In this case, the Applicant was given the opportunity to respond to the Respondent's reply, and he did.

18. Staff rules 11.2(a) and (c), on management evaluation, provide that:

(a) Staff members wishing to formally contest an administrative decision alleging non-compliance with their contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a

¹ *Morales* UNDT/2019/158; *Cherneva* UNDT/2021/101.

first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(c) A request for a 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. The deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

19. These provisions and art.8(1)(c) of the Tribunal's Statute require the Applicant to challenge, in a timely manner, the impugned decision and any alleged effects it had on him. A timely challenge had to be initiated by a request for management evaluation within 60 days of the date of the impugned decision. In this case, time began to run on 28 April 2022 or, at the latest, on 7 June 2022. Consequently, the 60-day deadline in question expired, at the latest, on 6 August 2022.

20. Repeated requests to reconsider the original decision do not reset the clock for filing a management evaluation request. See, e.g., *Salah*, 2022-UNAT-1299, para. 19 (citing *Newland*, 2018-UNAT-820, para. 34); *Staedtler* 2015-UNAT-546, para. 46; *Mazzen* 2021-UNAT-1132.

21. In *Gehr* 2013-UNAT-293, the United Nations Appeals Tribunal ("UNAT") held:

The overarching intention of Article 8(1)(c) is that management evaluation is a mandatory first step, prior to invoking the jurisdiction of the Dispute Tribunal to receive an application under its competency.

22. The jurisprudence of UNAT, including *Babiker* 2016-UNAT-672, clearly directs the Dispute Tribunal to only review decisions that have been the subject of a proper and timely request for management evaluation.

23. In all the circumstances, the response to the Applicant's management evaluation request, informing him that it was not receivable due to being filed out of time was, in the undersigned Judge's view, correct. Even if the Tribunal were to

give the Applicant the benefit of the doubt and consider the 3 November 2022 request for management evaluation to be the operative one, it is far after the deadline and, of course, the 27 January 2023 request that Applicant claims was the operative one is even more out of time.

24. The Tribunal has no jurisdiction to determine this application on the merits as it challenges a decision that was not submitted for management evaluation in a timely manner.

25. The Tribunal's determination, in the circumstances, is that the application was filed without being preceded by a timely request for management evaluation.

26. The application is therefore not receivable *ratione materiae* (see *Eggesfield* 2014-UNAT-402).

27. The Tribunal has also considered the merits of the Applicant's submissions in respect of the propriety of the impugned decision. The Applicant incurred expenses that were clearly communicated to him as unauthorised prior to his travel. There is nothing on the record to show that the decision was tainted, improperly made or otherwise unlawful. In other words, even if the application had been found to be receivable, it would have failed on the merits.

Conclusion

28. In view of the foregoing, the Tribunal DECIDES to dismiss the application.

(Signed)

Judge Sean Wallace

Dated this 22nd day of April 2024

Entered in the Register on this 22nd day of April 2024

(Signed)

René M. Vargas M., Officer-in-Charge, Nairobi