UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2021-UNAT-1092

Olga Mokrova
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Martha Halfeld Judge Dimitrios Raikos
Case No.:	2020-1411
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Shubha Naik, OSLA
Counsel for Respondent:	Rupa Mitra

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. On 27 April 2019, the Appellant requested management evaluation of her unsuccessful application for the post of Chief Security Officer (JO 106382) at the P-5 level (the "job opening") with the United Nations Assistance Mission for Iraq ("UNAMI"). By Judgment No. UNDT/2020/071, the United Nations Dispute Tribunal (the "Dispute Tribunal" or "UNDT") held her request for management evaluation was time-barred as it was filed beyond the 60-day deadline set out in Rule 11.2(c) of the Staff Regulations and Rules of the United Nations ("Staff Rules").[1] The Dispute Tribunal dismissed the application as not receivable. The Appellant appeals and says the Dispute Tribunal erred in finding that her request for management evaluation was time-barred.

2. For reasons set out below, we dismiss the appeal and affirm the Dispute Tribunal's Judgment.

Facts and Procedure

3. At the material time, the Appellant was a Chief Security Advisor (CSA) at the P-5 level for Israel, Occupied Palestinian Territory and Jerusalem (IOPTJ), in East Jerusalem.

4. On 28 December 2018, the Appellant applied for the job opening via Inspira for the "Recruit from Roster".

5. Having not received any notification on her application, she contacted the Under-Secretary-General for Safety and Security (USG/DSS) and others, by way of e-mail dated 11 February 2019. In the e-mail, she stated that it had come to her knowledge that another person had been selected and therefore, wanted to "challenge this process and selection". She sought confirmation of what was happening with the job opening as she had not heard anything further.

6. On 21 February 2019, the USG/DSS replied to the Appellant by e-mail confirming the position had been filled. He stated that he had "enquired with UNAMI and received confirmation" of the selection and that in such instances, "UNDSS HQ endorsement is not required". He encouraged the Appellant to continue applying for suitable positions.

[1] The Secretary-General's Bulletin ST/SGB/2018/1.

7. The Appellant responded on 27 March 2019, thanking the USG/DSS and informing him that she had applied for another position.

8. On 27 April 2019, the Appellant requested management evaluation to "formally contest" the impugned decision, namely, her non-selection for the job opening. In the request she stated that "I became aware of this decision by a message from the USG DSS Drennan, who informed me about this in the e-mail on 27 March 2019".

9. In a letter dated 12 June 2019, the USG for Management Strategy, Policy and Compliance informed the Appellant of the outcome of management evaluation that the Secretary-General had decided to uphold the contested decision.

10. On 9 September 2019, the Appellant applied to the Dispute Tribunal contesting her non-selection for the job opening. In her application, she stated that she was notified of, or first came to know about, the decision on 27 March 2019.

11. In Judgment on Receivability No. UNDT/2020/071 dated 12 May 2020, the Dispute Tribunal dismissed the Appellant's application as irreceivable, because she had become aware of the impugned decision on 21 February 2019, rather than 27 March 2019 as alleged, and she had requested management evaluation on 27 April 2019, five days too late.

Submissions

The Appellant's Appeal

12. The Appellant requests the Appeals Tribunal vacate the Dispute Tribunal's Judgment and remand the case to the Dispute Tribunal for review on the merits.

13. She submits that, by dismissing her application as not receivable, the Dispute Tribunal committed errors, leading to a manifestly unreasonable decision.

14. She maintains that the Dispute Tribunal failed to address the issue of lack of formal notification to convoked but unsuccessful candidates like her as required by Section 10.1 of ST/AI/2010/3 (Staff selection system) and paragraph 13.2 of the Manual for the Applicant on the Staff Selection System (Inspira, 2012) (the "Applicant's Manual"). In her case, no official intimation or information was provided by the UNAMI/Hiring Manager and the response from the USG/DSS could not have been judged by the Appellant as the final

decision. In addition, the job opening continued to be listed on Inspira as "under consideration" as of September 2019.

15. The Appellant says that until notification is made under section 10.1 of ST/AI/2010/3, a staff member legitimately may consider that the recruitment process has not been finalized to agree or disagree with its outcome. She argues that the 21 February 2019 response from the USG/DSS could not be judged to be the final decision as selection of the candidate may be reviewed by the Head of the Mission or OHRM and even reversed.

16. She submits that "notification" as used in Staff Rule 11.2(c) should be defined as the "formal intimation of the administrative decision made to the applicant by the authorities/entity involved in the recruitment" and in this instance, the Appellant received no formal notification from the UNAMI/Hiring Manager nor via Inspira where the status was reflected as "under consideration".

17. The Appellant stresses that the Dispute Tribunal failed to consider *Babiker*,[2] which has facts similar to those of her case. Per *Babiker*, the Appeals Tribunal emphasized that a staff member's "knowledge" of a decision is not necessarily the same as a staff member receiving "notification" of a decision. She submits that the e-mail responses from the USG/DSS in answer to her query cannot be considered as "notification of the administrative decision to be contested" within the meaning of Section 10.1 of ST/AI/2010/3.

The Secretary-General's Answer

18. The Secretary-General requests that the Appeals Tribunal dismiss the Appellant's appeal and affirm the Dispute Tribunal's Judgment on the basis that the Dispute Tribunal correctly dismissed the application as not receivable *ratione materiae*.

19. First, the Secretary-General maintains that the Appellant has failed to identify the alleged defects in the Judgment but repeats the arguments that she made to the Dispute Tribunal, and is essentially rearguing her case before the Appeals Tribunal.

[2] *Babiker v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-672.

20. Second, the e-mail communication of 21 February 2019 to the Appellant satisfies the notification requirement of Staff Rule 11.2(c). The Appeals Tribunal has held that this rule applies to both explicit and implied administrative decisions.[3] With the latter, the Dispute Tribunal must determine the date on which the staff member knew or reasonably should have known of the decision he or she contests based on objective elements that both parties can accurately determine.[4]

21. In the present case, there are several objective elements relating to the communications of 21 February 2019 that can be accurately determined and that show the Appellant knew or can be reasonably deemed to have known of her non-selection. The notification was made directly to the Appellant from the highest ranking official in her department (the USG/DSS). The notification was in writing and sent in response to the Appellant's complaint about the non-selection decision. The response from the USG/DSS was clear and unambiguous and specified the name of the selected individual. In her subsequent response to this e-mail, the Appellant did not indicate that she took the information regarding her non-selection as anything but final.

22. It is notable that, in her appeal brief, the Appellant indicates that she was informed by the USG/DSS on 21 February 2019 that another candidate had been selected for the job opening. In both her request for management evaluation and her UNDT application, she made the same presentation that the USG/DSS had confirmed the selection of another candidate for the job opening. It was only when asked by the Dispute Tribunal to present arguments in response to the receivability challenge that she suddenly asserted that she did not consider the e-mail from the USG/DSS on 21 February 2019 as constituting notification of the final non-selection decision.

23. The Secretary-General further submits that, contrary to her assertion, the relevant facts of *Babiker* are clearly distinguishable from the present case, and the circumstances of the present case are not comparable.

[3] Citing *Awan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-588, para. 18.
[4] Citing *Monarawila v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-694, para. 32.

Considerations

Legal Framework

24. Staff Rule 11.2(c) requires that "[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*. This 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."[5]

25. Further, Article 8(3) of the Statute of the Dispute Tribunal provides that the Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

26. The established jurisprudence is that if a request for management evaluation is made beyond the deadline set out in Staff Rule 11.2(c), an application to the Dispute Tribunal cannot be receivable.[6]

27. The question of receivability in this instance, therefore, turns on when the Appellant received "notification" of the contested administrative decision, namely, her non-selection for the job opening.

When did the Appellant receive notification pursuant to Staff Rule 11.2(c)?

28. The Dispute Tribunal held that the 21 February 2019 e-mail from the USG/DSS informed the Appellant of her non-selection and she became aware of this contested administrative decision on that date. This resulted in her request for management evaluation being five days late.

Previous jurisprudence of the Appeals Tribunal provides that the decisive moment of notification for purposes of Staff Rule 11.2(c) is when "all relevant facts … were known, or should have reasonably been known".[7] This clearly occurred by way of the 21 February 2019 e-mail in which the USG/DSS (the head of the department in which the Appellant was

[5] Emphasis added.
[6] See *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.
[7] *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-691, para. 21.

working) decisively conveyed to the Appellant the confirmation he had received from UNAMI that another candidate had been selected for the job opening. There was no ambiguity or interpretation required of this e-mail to determine that the Appellant was not selected for the post. In fact, in that same e-mail, the Appellant was advised of the name of the individual who was selected. We find the non-selection decision was communicated to the Appellant "clear[ly] and unambiguous[ly]" and with "sufficient gravitas" by the USG/DSS after he had received confirmation from the appointing body.[8]

29. The procedures outlined in ST/AI/2010/3 and the Applicant's Manual set out the process for providing notification and implementation of selection decisions, but not for determining "notification" under Staff Rule 11.2(c). Otherwise, the established jurisprudence on "notification" which includes verbal notification and implied notification would be largely irrelevant. ST/AI/2010/3 and the Applicant's Manual do not invalidate the jurisprudence that the decisive moment of notification under Staff Rule 11.2(c) is when "all relevant facts … were known, or should have reasonably been known". The Appellant is arguing that she was legally unaware of her non-selection, despite the fact that she had actual knowledge of her non-selection as of 21 February 2019. This would be absurd and an unreasonable result.

30. The Appellant further says that *Babiker* has similar facts and the Dispute Tribunal erred by not taking cognizance of this decision. However, we disagree and find that the facts of *Babiker* are distinguishable. In *Babiker*, the Appeals Tribunal found an earlier e-mail that informed the appellant of the non-renewal of her fixed-term appointment was not notification because of the "nature" of the contested administrative decision (i.e., non-renewal), which is a "significant administrative decision affecting a staff member and is not a decision casually communicated".[9] First, the administrative decision before us is not a non-renewal, but a non-selection for a post. Second, the earlier e-mail in *Babiker* that communicated the non-renewal went on to say that "[y)ou will be notified in due course by the [Country Office (CO)], as per the normal procedures", which the Appeals Tribunal held showed the e-mail was not the "official notification" of the administrative decision. That is not the situation here. The 21 February 2019 e-mail did not contain such language and was "clear" and "unambiguous" in notifying the Appellant of her non-selection.

[8] See *Auda v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-746, para. 31.
[9] *Babiker*, *supra*, para. 38.

31. We find the Appellant knew or should have reasonably known, by 21 February 2019, of the contested administrative decision (i.e., the non-selection) and the running of time for a request for management evaluation started as of that date. As a result, her 27 April 2019 request for management evaluation was filed beyond the required 60 days and time barred.

32. As the submission for management evaluation was time-barred, the Dispute Tribunal correctly found the Appellant's application was not receivable.

33. In view of the foregoing, the Dispute Tribunal did not err within the meaning of Article 2(c) of the Statute of the Appeals Tribunal in dismissing the application as irreceivable.

Judgment

34. We affirm Judgment No. UNDT/2020/071 and dismiss the appeal.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)	*(Signed)*	*(Signed)*
Judge Sandhu, Presiding Vancouver, Canada	Judge Halfeld Juiz de Fora, Brazil	Judge Raikos Athens, Greece

Entered in the Register on this 21st day of April 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar