



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

WESTBERG

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT AND ORDER STRIKING  
OUT**

---

**Counsel for applicant:**

Duke Danquah, Office of Staff Legal Assistance

**Counsel for respondent:**

Marcus Joyce, ALS/OHRM, UN Secretariat

## **Introduction**

1. In 2002, while the Applicant was serving with the Department of Peacekeeping Operations (DPKO), he applied for the post of Field Security Coordination Officer (FSCO) at the L-3 level with the United Nations Development Programme (UNDP)/United Nations Security Coordinator (UNSECOORD) in Quetta, Pakistan. The Applicant was informed of the decision to select him by means of a letter of interest sent on 17 October 2002, to which he accepted the offer therein in writing. In November 2002, UNSECOORD communicated its decision to the Applicant to retract its offer upon receiving information of an incident in 1995 involving him which raised its concern.

2. Thereafter, upon the creation of the United Nations Department of Safety and Security (UNDSS) in 2005, the Applicant was interviewed on 2 September 2005 by the United Nations Office for Project Services (UNOPS) with respect to professional posts classified at the L-4 level. UNOPS had been contracted to process applications for the posts and to recommend potential candidates for the UNDSS roster, and had recommended that the Applicant be placed on the roster.

3. On 26 January 2007, the Applicant was advised by a Human Resources Officer at UNDSS that the recommendation to place his name on the roster of approved candidates had been rejected on account of the retracted offer of appointment by UNSECOORD in 2002. This information was reiterated to the Applicant on 31 August 2007. As a corollary, on 30 December 2007, he requested administrative review of the decisions not to recruit him as a Field Security Coordination Officer and the decision not to place him on the UNDSS roster. On 5 December 2007, the Administrative Law Unit of the Office of Human Resource Management (OHRM) advised the Applicant that his requests for review were time barred and not receivable but nevertheless reviewed the impugned decisions and drew the conclusion that the Administration had acted appropriately in the circumstances.

4. The Applicant consequently filed a Statement of Appeal with the now defunct Joint Appeals Board (JAB) on 4 February 2008, contesting the decisions to withdraw his offer of appointment and to reject the recommendation to place him on the UNDSS roster communicated to him on November 2002 and 26 January 2007 respectively. The Respondent filed a reply to the appeal on 19 May 2008, and submitted that the appeal was not receivable as it was time-barred owing to the Applicant's failure to submit requests for administrative review of the contested decisions within the stipulated time limits under the Staff Rules.

5. This case was transferred to the Nairobi Registry of the United Nations Dispute Tribunal on 17 August 2009 pursuant to the provisions of United Nations General Assembly Resolution 63/253 and section 2 of ST/SGB/2009/11 on Transitional Measures Related to the Introduction of the New System of Administration of Justice.

6. By means of an order dated 30 July 2010, parties were invited to a case management hearing on 14 September 2010 to address all issues bearing on the readiness of the case for consideration and determination by the Tribunal. The date for the said hearing was revised to 5 October 2010, on which date the Respondent indicated his intention to file a motion on the receivability of the application. The presiding Judge decided to hear submissions from both parties on the issue of receivability during the said case management hearing. Following from that hearing, the Applicant was directed to file a formal response to the issue of receivability by 12 October 2010, to which the Respondent filed a reply on 29 October 2010.

7. A hearing on the merits was held on 2 December 2010 during which the parties canvassed the matter of receivability before the Tribunal. The Applicant was granted an additional two weeks to furnish evidence to support his contention that exceptional circumstances barred him from filing requests for administrative review of the contested decisions within the prescribed time limits.

8. On 14 December 2010, the Applicant filed a motion conceding that the circumstances that occasioned his delay in requesting review did not come under the ambit of exceptional circumstances as to warrant a waiver of the time limits prescribed under the Staff Rules. He accordingly notified the Tribunal of the withdrawal of his application.

9. In view of the Applicant's Notice of Withdrawal, the Tribunal hereby ORDERS that the matter of *Westberg v. Secretary-General of the United Nations* registered as UNDT/NBI/2009/046, be and is hereby struck out.



Judge Nkemdilim Izuako

Dated this 20<sup>th</sup> day of January 2011

Entered in the Register on this 20<sup>th</sup> day of January 2011



Jean-Pelé Fomété, Registrar, UNDT, Nairobi