



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

BOFILL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**SUMMARY JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Karen M. Farkas, UNHCR

## **Introduction**

1. The Applicant, a retired staff member (P-5) of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), challenges the decision not to promote her to the D-1 level during the 2010 and 2011 Annual Promotions Sessions, as well as the lack of reply to her request for management evaluation in relation to that decision.

## **Facts**

2. In her application, the Applicant sustains that she was informed on 13 February 2013 about the decision—taken by the High Commissioner for Refugees on 28 January 2013—not to promote her to the D-1 level during the 2010 and 2011 Annual Promotions Sessions.

3. The Applicant also maintains that following notification of the above decision, she first sought informal resolution of her case within UNHCR and, subsequently, formally requested management evaluation of the contested decision on 1 April 2013.

4. Additionally, the Applicant asserts that she received an e-mail from the Office of the Deputy High Commissioner on 1 May 2013, conveying the following to her:

Please be informed that your request for management evaluation is currently under consideration. This message is without prejudice to your rights to file an appeal with UNDT and we draw your attention to the time limits for such filing in accordance with Article 8 of the UNDT Statute.

5. On 1 October 2013, having received no further information on her request for management evaluation, she apparently enquired about its status and, on 21 October 2013, received an e-mail from the Deputy High Commissioner referring to the above-quoted email of 1 May 2013 and reading in part as follows:

Since no decision was taken on your request for management evaluation and given that the time limit for filing an application with the UNDT has now expired, I consider that the question of a response to your request is moot.

6. On 31 October 2013, the Applicant hand-delivered the present application to the Geneva Registry of the Dispute Tribunal, and subsequently filed it via the e-Filing portal on 5 November 2013.

### **Applicant's submissions**

7. The Applicant's principal contentions are:

a. She was not duly considered for promotion during the 2010 and 2011 Annual Promotions Sessions due to discriminatory treatment of staff members on expert positions at UNHCR or recruited at P-4, P-5 and D-1 level, such as her;

b. By not formally replying to her request for management evaluation, UNHCR Administration was acting strategically in order to escape due response to her well-founded contentions;

c. Having had previous experience in filing requests for management evaluation with UNHCR, she was not worried by the lack of answer within the normally prescribed timeframe;

d. She had no access to her UNHCR mail box and UNHCR "administrative matters" since the end of May 2013; moreover, she spent "extended periods of time travelling with limited access to Internet facilities";

e. The encountered delays from the UNHCR Administration have seriously affected her health; she always acted in good faith and the reason why she did not lodge her application "before 1 August 2013" was not negligence but because she was "[misled] by UNHCR Administration";

f. Her application should be accepted by the Tribunal as a case of “force majeure”, and UNHCR Administration should be requested to respond to the substance of her request for management evaluation; based on such response regarding her non-promotion she would then decide on the “next steps”.

### **Consideration**

8. Article 9 of the Tribunal’s Rules of Procedure provides:

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

9. In the instant case, the chronology of facts as set forth in the Applicant’s submission cannot be disputed; however, it raises questions about her application’s receivability *ratione temporis*. The Applicant is aware of this situation and requests the Tribunal to find that exceptional circumstances in her case would render her application receivable. Since the only issue to be addressed is that of the application’s receivability—which may be assessed as a matter of law even without serving the application to the Respondent and even if not raised by the parties (see *Gehr* 2013-UNAT-313, and *Christensen* 2013-UNAT-335)—the Tribunal determines that summary judgment is appropriate.

10. The Tribunal recalls that an application is receivable only if it is filed within the statutory time limits provided for in its Statute. It is well established jurisprudence that the Tribunals strictly enforce those time limits (see *Roman* 2013-UNAT-308 and therein quoted jurisprudence). Article 8 of the Dispute Tribunal’s Statute sets forth the requirements for an application to be deemed receivable *ratione temporis*; in particular, art. 8.1 (d) (i) provides that, “in cases where a management evaluation of the contested decision is required”, the application must be filed within the following deadlines:

- a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or
- b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices.

11. The Applicant is a former UNHCR staff member and contests a decision emanating from UNHCR. The Tribunal recalls that the authority to conduct the management evaluation in such cases has been delegated to the High Commissioner. Moreover, pursuant to Inter-Office Memorandum/Field Office Memorandum No. 034/2009 of 1 July 2009, the High Commissioner established that within UNHCR the management evaluation would be carried out by the Executive Office under the responsibility of the Deputy High Commissioner, and that the decision of the Deputy High Commissioner “[would] constitute the management evaluation and [would] be communicated to a staff member in Geneva within 30 calendar days, and to a staff member in the field within 45 calendar days, of receipt of the request” (see sec. 1.1 of IOM/FOM/034/2009). Furthermore, sec. 2.1.1. of IOM/FOM/034/2009 provides that:

Where the result of a management evaluation is not to the satisfaction of the staff member, the staff member may file an application to the UNDT. The application needs to be submitted to the UNDT within 90 calendar days of receiving notification of the management evaluation or from the expiration of the deadline for receiving the management evaluation.

12. In the instant case, the Applicant affirms having been notified of the contested decision on 13 February 2013, following which she requested management evaluation on 1 April 2013. She explicitly admits having received a notification on 1 May 2013 from the Office of the Deputy High Commissioner, informing her that her request was under consideration and that said notification was without prejudice to her rights to file an appeal with the UNDT. It was also expressly stated in the notification: “we draw your attention to the time limits for such filing in accordance with Article 8 of the UNDT Statute”.

13. Subsequently, the Applicant did not receive any reply from the Deputy High Commissioner to her request for management evaluation.

14. Based on the above and on the applicable law, the Applicant, who was in Geneva at the material time, should have received a reply to her request for management evaluation on or around 1 May 2013. Therefore, the 90-day statutory time limit to file her application with the Tribunal started to run in any case at the beginning of May 2013. By filing her application before this Tribunal only on 31 October 2013, the application is by far time-barred. The same would apply even if the Applicant would be considered as being outside Geneva, *i.e.* “in the field” in the sense of sec. 1.1 of IOM/FOM/034/2009.

15. Even if the Tribunal were to consider, in favour of the Applicant, that her request for management evaluation was received only on 1 May 2013, when she received the above-mentioned notification from the Office of the Deputy High Commissioner, her 31 October 2013 submission would still be beyond all applicable statutory deadlines.

16. Regarding the Applicant’s explanations for having filed her application only on 31 October 2013, the Tribunal notes that art. 8.3 of the Tribunal’s Statute provides:

The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

17. According to established jurisprudence of the Appeals Tribunal “a delay can generally be excused only because of circumstances beyond an applicant’s control” (*Diagne et al.* 2010-UNAT-067).

18. The Tribunal observes that in the present case, the Applicant seems to put forward three reasons for which a case of “force majeure”, or exceptional circumstances, should be accepted by the Tribunal, namely: the fact that the e-mail she received on 1 May 2013 from the Office of the Deputy High Commissioner was misleading; the fact that she was travelling and had limited access to an internet connection; and the fact that she was seriously affected in her health due to the delays endured. In the Tribunal’s view, none of these reasons can be considered as circumstances beyond the Applicant’s control that would warrant a waiver or extension of the applicable time limits in her case.

19. Firstly, the e-mail of 1 May 2013 was certainly not misleading regarding the requirement to file an application in due time. On the contrary, it explicitly drew the Applicant’s attention to the timelines for submitting an application to the Dispute Tribunal.

20. Secondly, any difficulties accessing her e-mails due to the fact that her UNHCR e-mail account was deleted in June 2013 and to her frequent travels had no effects in the present case. Since the Applicant did not receive a response to her request for management evaluation, the 90-day deadline for filing an application before the UNDT started to run upon the expiration of the 30-day deadline following the receipt of her request for management evaluation by the Executive Office of the UNHCR Deputy High Commissioner. As no reply or communication with respect to her request for management evaluation was sent to the Applicant, apart from the email of 1 May 2013 informing her that the request for management evaluation was currently under review and informing her about the applicable timelines to submit her application to the Dispute Tribunal, she could not and, in fact, did not “miss” any communications in this regard by lack of access to her email account.

21. Finally, in order to support the argument of her health condition, the Applicant refers to medical certificates of “September 2011 to November 2011”, which obviously bear no relation with the material time in the present case.

22. With respect to the Applicant's complaint about the "absence of response" to her request for management evaluation, the Tribunal emphasizes that pursuant to the provisions on the management evaluation process, the Administration's obligation to reply within certain time limits does not correspond to an individual right to a response to a request for management evaluation. Indeed, the only effect of a lack of response is a direct access to the Tribunal by submitting an application within the statutory timeframe. Unfortunately, the Applicant failed to do so.

23. Since the application is not receivable, the Tribunal is not in a position to assess its merits (see *Servas* 2013-UNAT-349).

### **Conclusion**

24. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 13<sup>th</sup> day of November 2013

Entered in the Register on this 13<sup>th</sup> day of November 2013

(Signed)

René M. Vargas M., Registrar, Geneva