



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

BOUTROUE

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:**

Stéphanie Cochard, UNOG

Simon Buettner, UNOG

## **Introduction**

1. By application filed on 4 April 2014, completed on 22 April 2014, and registered under Case No. UNDT/GVA/2014/012, the Applicant contests the:

- a. “unacceptable length by [the Office for the Coordination of Humanitarian Affairs (“OCHA”)] to finalise [his] early retirement dossier”; and
- b. “level of [his] pension ... much lower ... than information officially provided by [the United Nations Joint Staff Pension Fund (“UNJSPF”)] to [him] on 20 March 2012”.

## **Facts**

2. The Applicant is a former staff member of OCHA, who had been on secondment to the United Nations Development Programme (“UNDP”) and on special leave without pay prior to his separation.

3. On 20 March 2012, the UNJSPF Office in New York provided the Applicant with an estimate of his pension entitlements with 24 June 2012 used as his expected date of separation from service; the estimate also included a notice drawing the Applicant’s attention to the fact that it was “unaudited [and] based on information provided by [his] employing organization” and that “an accurate determination [could] be made only after [his] separation from service [had] actually taken place, at which time all data would be audited”.

4. The Applicant was separated from service on 30 June 2012, at age 55.

5. According to the Applicant, on 15 February 2014, he received his pension entitlement letter advising him about his actual entitlements under the UNJSPF Regulations—including retroactive payments made—upon his separation from service from OCHA on 30 June 2012. The Applicant claims that the amounts of the benefits contained in the pension entitlement letter were considerably lower than those contained in the estimate of 20 March 2012.

6. The same day, that is on 15 February 2014, the Applicant wrote an email apparently to the UNJSPF, inquiring whether “there [was] a way to improve [his] situation, for example by having [him] retroactively pay the [UNJSPF] for the period of [his] leave without pay.” In his application, the Applicant refers to that email as his “request for management evaluation”.

7. By emails of 10 and 13 March 2014, a staff member of the Client Servicing and Records Management Unit of the UNJSPF Geneva Office wrote to the Applicant, confirming that the unaudited estimate of March 2012 was based on the information available to the UNJSFP at that time, and that the amount of his early retirement benefit contained on the pension entitlement letter was correct.

8. On 4 April 2014, the Applicant filed before this Tribunal a “motion for intervention” and, upon the Tribunal’s request, he completed his submission with the relevant form on 22 April 2014.

9. By Order No. 56 (GVA/2014) of 24 April 2014, the Tribunal ordered that the application be split into two and that the case at hand—registered under Case No. UNDT/GVA/2014/016—address exclusively the challenge against the decision of OCHA (decision 1.a above).

10. On 30 April 2014, the Respondent filed a motion for summary judgment, requesting the Tribunal to dismiss the application, mainly on the grounds that the Applicant had failed to submit a request for management evaluation.

11. By Order No. 65 (GVA/2014) of 12 May 2014, the Tribunal ordered that the Applicant file comments on the Respondent’s motion, if any, by Monday, 19 May 2014, which he did on 14 May 2014.

### **Parties’ submissions**

12. The Applicant’s main contentions are:

- a. He repeatedly requested clarifications as to his status, during his two-year leave without pay prior to requesting early retirement;

b. It is unclear at what time he should have filed a request for management evaluation, in view of the fact that he followed his request for early retirement on a very regular basis, as numerous emails between him and OCHA Human Resources show; he even at one occasion wrote to the Under-Secretary-General, OCHA, who responded “by apologizing over the delays and expressing satisfaction over the fact that [his] case was on the point of finalization”; thereafter, it took another six to eight months before his request was finalized;

c. OCHA twenty-month delay to finalise his pension file, despite him having provided all relevant documentation in a timely manner, was unacceptable and he suffered substantial financial losses as a result of such delay;

d. His repeated prior requests to OCHA to clarify his status did not receive satisfactory answers and if OCHA had reviewed his file on time, corrective action might have been taken at the time;

e. He requests to be given compensation for the financial losses incurred as a consequence of the twenty-month delay and of the wrong information supplied to the UNJSPF on his behalf by OCHA.

13. The Respondent’s main contentions are:

a. The Applicant failed to submit a “valid request for management evaluation”; what he submitted as a request for management evaluation, as annex 2 to his application, does not contain any communication addressed to a competent authority for management evaluation under staff rule 11.2; it is unclear to whom the communication is addressed, but it appears to have been addressed to the UNJSPF, which is an entity that is independent from the United Nations Secretariat;

b. The Management Evaluation Unit (“MEU”) confirmed that the Applicant did not file any request for management evaluation with that unit; since the Applicant was clearly aware, no later than 15 February 2014, of

what he notes was the contested decision, any request for management evaluation would now be time-barred;

c. Therefore, the application should be rejected in its entirety.

### **Consideration**

14. The Respondent requested the Tribunal to decide upon the present application by way of summary judgment, particularly on the grounds that the Applicant failed to submit a “valid” request for management evaluation.

15. 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.

16. Since the question whether the application has to be rejected for lack of management evaluation is a question of law, the Tribunal finds it appropriate to decide on the case by summary judgment, in accordance with art. 9 of its Rules of Procedure, referenced above.

17. The Tribunal notes that the application does not include a request for management evaluation, as per the terms set out in staff rule 11.2 which provides (emphasis added):

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), *shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.*

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2

following the completion of a disciplinary process is not required to request a management evaluation.

(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. 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.

18. Likewise, art. 8.1 of the Tribunal's Statute *inter alia* provides:

An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required[.]

19. In addition to the unambiguous terms of these provisions, the requirement of filing a request for management evaluation prior to filing an application with the Tribunal has been invariably upheld by the Appeals Tribunal (e.g., *Rosana* 2012-UNAT-273; *Dzuverovic* 2013-UNAT-338).

20. The Applicant contests the "unacceptable length by OCHA in particular to finalise his early retirement dossier". This decision obviously does not fall under any of the two categories of decisions for which a management evaluation is not required under staff rule 11.2 (b), to wit, decisions taken pursuant to advice from technical bodies and the imposition of measures pursuant to staff rule 10.2 following a disciplinary process.

21. The Applicant did not provide with his initial application or his reply to the Respondent's motion any document showing that he did indeed file a request for management evaluation with the MEU; moreover, he did not question what was stated by the Respondent, namely that the MEU confirmed that the Applicant had not filed such request before it at any point in time. While it is understandable, in view of the nature of the decision the Applicant intends to contest, that he was not sure when he should have filed a request for management evaluation, the fact of

the matter remains that he failed to submit such a request to the relevant authority, at any point in time, even within the 60-day deadline provided for in staff rule 11.2 above, starting from 15 February 2014, when he became aware of his pension entitlement letter.

22. In view of the foregoing, and in the absence of a request for management evaluation, the Tribunal cannot but reject the present application as irreceivable.

### **Conclusion**

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

The application is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 20<sup>th</sup> day of May 2014

Entered in the Register on this 20<sup>th</sup> day of May 2014

*(Signed)*

René M. Vargas M., Registrar, Geneva