



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

BABIKER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
H. Esther Shamash, UNDP

Introduction

1. The Applicant, a former P-4 level staff member with the United Nations Development Programme (“UNDP”) in Haiti, contests the decision not to renew her fixed-term appointment upon its expiry on 9 June 2013. She submits that the contested decision was notified to her on 18 April 2013 and that she filed a timely request for management evaluation of that decision, as well as a timely application with the Tribunal.

2. The Respondent submits that the application is not receivable because the Applicant did not file her request for management evaluation within 60 days of the date of notification of the contested decision, as required by staff rule 11.2. The Respondent submits that the Applicant was notified of the contested decision on 15 March 2013 and was therefore required to submit her request for management evaluation by 14 May 2013 at the latest. However, she first submitted her management evaluation request to the United Nations Secretariat on 28 May 2013, and then resubmitted it to UNDP on 7 June 2013. Both of these dates were well beyond the 60-day period.

Relevant background

3. In June 2011, the Applicant was hired as a program specialist in the Global Fund Project on a one-year fixed-term appointment. Her contract was subsequently renewed for another year.

4. On 4 March 2013, the Applicant had a meeting with her supervisor during which the supervisor verbally informed the Applicant that her contract would not be renewed.

5. On 15 March 2013, the Applicant sent an email to her supervisor, asking for a confirmation that her contract would not be renewed. She stated:

Following our discussion last week Monday, it is my understanding that my position will not be extended beyond this current period. I would highly appreciate it if you could confirm this to me by 19 March 2013, especially that my contract is coming to an end in the beginning of June 2013 and soon after will my [United Nations Laissez-Passer]. In the event I do not hear from you by this time, I will construe a non-response as confirmation of the decision not to extend my contract.

6. The supervisor replied on the same day, 15 March 2013, confirming that the Applicant's position would not be renewed. The email stated:

Yes, I can confirm to you that from my discussions with the senior management and the GF [Global Fund], it was decided that your position will not be renewed. This is due to the resource constraints and the exigency of the GF and the CCM [Country Coordinating Mechanisms] that we should reduce HR [Human Resources] cost by promoting national staff to take some high profile positions. You will be notified in due course by the CO [Country Office], as per the normal procedures. However, as I explained to you a new P4 position will be opened combining most likely the Program, Capacity Development and may be M&E [Monitoring and Evaluation] specialist. We are still working o[n] the Job description. When the position will be opened, you may apply if you are interested.

7. Approximately one month later, on 18 April 2013, the Senior Country Director, UNDP/Haiti, sent a letter to the Applicant stating that in view of UNDP/Haiti restructuring of the staffing of the Global Fund program management unit, “[her] assignment with UNDP Haiti will reach completion upon expiration of [her] fixed-term appointment on 9 June 2013”.

8. On 8 May 2013, the Applicant submitted a complaint to the UNDP Ethics Office alleging that “[d]espite successful performance, [her] contract

[was] being terminated because [she] reported fraud within the [O]rganization”.

9. On 28 May 2013, the Applicant filed a management evaluation request with the Management Evaluation Unit (“MEU”) of the United Nations Secretariat, requesting management evaluation of the decision not to renew her fixed-term appointment. She stated in her request that the contested decision “was announced via an email to [her] on 15 March 2013” and that “[she] received the email the same day”.

10. The MEU forwarded the request to UNDP and, on 31 May 2013, informed the Applicant that since the decision being contested concerned UNDP, which carries out its own review of requests for management evaluation, the MEU did not have the authority to review her request.

11. On 5 June 2013, the Ethics Office notified the Applicant that their initial assessment was that there was insufficient evidence to support her claim that the non-renewal of her contract was influenced by her earlier reports of alleged improprieties. The Ethics Office requested the Applicant to provide it with additional information and pertinent documents.

12. On 7 June 2013, the Applicant submitted an amended request for management evaluation to the UNDP Bureau of Management.

13. By email of 11 June 2013, the UNDP Bureau of Management acknowledged receipt of the Applicant’s amended request for management evaluation and advised her that she should expect a reply by 22 July 2013.

14. However, on 17 June 2013, the UNDP Bureau of Management amended its acknowledgment of the Applicant’s management evaluation request and informed the Applicant as follows:

In your request, you raise a number of allegations. Those allegations concerning your claim of being subject to retaliation must be assessed by the UNDP Ethics Office, which is the office competent to review such claims in accordance with the UNDP Policy on Protection Against Retaliation. Additionally, you also claim to being the victim of harassment. Such allegations must be investigated by the Office of Audit and Investigations (“OAI”), which has the exclusive mandate to conduct investigations into allegations of misconduct in UNDP. As a consequence, your request has been referred to OAI for its appropriate assessment.

Without such assessments, the Organization will be unable to respond to those aspects of your request that are based on such allegations. The review of your request will therefore be suspended pending the determination by these respective offices.

Please be assured that your right to request a management evaluation is preserved during the course of the assessment of your allegations and subsequent investigation as applicable. We will revert to you following the determination by the respective offices and proceed with a review of your request.

15. On 26 June 2013, UNDP’s Ethics Office provided the Applicant with its assessment report of her complaint of retaliation, finding that no *prima facie* case of retaliation could be established in her case. The assessment report concluded as follows (emphasis in original):

Conclusion

From the totality of the information you provided, we have not seen where events you have complained of, including the non-extension of your [fixed-term appointment] in June 2013, bear a causal connection to allegations of forgery you reported to your supervisor in March 2012. Further, as the Ethics Office’[s] relevant role is to provide protection of whistleblowers against retaliation, you effectively prevented us from offering you protection if we had found otherwise; on 2nd June, in an email to the Ethics Office, you instructed us *not to conduct “any investigation/communication with any party until my departure from Haiti on June 10th 2013”*.

Therefore, we have concluded that no *prima facie* case of retaliation has been established.

16. On 22 January 2014, the Deputy Director, Office of Audits and Investigations, wrote to the Applicant in reference to her allegations of harassment. The Deputy Director informed the Applicant that considering that despite reminders she had not filed her full complaint, they were not able to progress any further with the alleged matter and were closing her case.

17. On 20 March 2014, the UNDP Bureau of Management responded to the Applicant's request for management evaluation, dated 7 June 2013. The Bureau of Management stated that the Applicant's request for management evaluation was filed after the expiration of the applicable deadline and, therefore, her claims were not receivable. The Bureau of Management further stated that the Applicant's claims of harassment and abuse were found by the Office of Audits and Investigations to be unsubstantiated; that her claims of retaliation were also found unsubstantiated by the Ethics Office; and that the non-renewal of her contract was proper and supported by valid reasons.

Procedural history

18. The present application was received by the Tribunal on 19 June 2014. On 24 June 2014, the Registry transmitted the application to the Respondent. On 24 July 2014, the Respondent filed a reply to the application.

19. On 22 July 2015, the case was assigned to the undersigned Judge.

20. On 28 August 2015, the Tribunal issued Order No. 200 (NY/2015), directing the Applicant to file, on or before 30 September 2015, a response to the receivability issue raised in the Respondent's reply.

21. On 30 September 2015, the Applicant filed a motion for extension of time to file her submission in response to Order No. 200 (NY/2015). The Applicant provided several reasons for her request, including that she was self-represented and was dealing with personal family and health issues.

22. On 1 October 2015, the Registry, at the direction of the undersigned Judge, instructed the Respondent to file a response, if any, to the Applicant's motion. The Respondent replied on the same day, stating that "[i]n the circumstances, we have no objection to the extension of time".

23. On 1 October 2015, the Tribunal issued Order No. 255 (NY/2015), granting the Applicant's motion for an extension of time and directing the Applicant to file a submission addressing the issue of receivability *ratione materiae*, raised in the Respondent's reply, as well as the issue of receivability *ratione temporis* of the application. The Respondent was also directed to file a submission on the issue of receivability *ratione temporis* of the application.

24. On 30 October 2015, the Respondent filed his response to Order No. 255 (NY/2015). The Applicant filed her response on 2 November 2015.

Applicant's submissions on receivability

25. The Applicant submits, with respect to the issue of receivability *ratione materiae*, that the date of 15 March 2013 should not be considered as the date on which she was notified of the contested decision. She submits that the email that she received on that day "dealt with the future of the Applicant's post". She states that, although the email stated that "it was decided that [her] position will not be renewed", it also stated that she "will be notified in due course by the CO [Country Office], as per the normal procedures". The Applicant submits that, therefore, the email of 15 March 2013 was merely a notification of an intent regarding her post. The Applicant further submits

that her supervisor did not have the authority to make the decision on the non-renewal of her contract.

26. The Applicant submits, with regard to the issue of receivability *ratione temporis*, that UNDP indicated to her on 17 June 2013 that it would investigate her claims of harassment before considering her request for management evaluation. It was not until eight months later, on 21 March 2014, following the closure of the investigation, that she received a response from UNDP containing its management evaluation. The Applicant submits that the Respondent should not benefit from his own advice if that advice was misplaced. The Respondent's own action resulted in postponement of the entire management evaluation process and in a tacit agreement to waive the deadlines, thus postponing the deadline for the Applicant's request and for UNDP's response. Moreover, the Tribunal has the authority to suspend or waive the deadlines for filing an application for a limited period of time and in exceptional cases under art. 8.3 of its Statute. The Applicant therefore requests the Tribunal to consider such a request in light of the advice provided by the Respondent, as there was no suggestion in UNDP's communications that the Applicant should proceed in the absence of a response within 45 days.

Respondent's submissions on receivability

27. The Respondent submits, with respect to the issue of receivability *ratione materiae*, that the Applicant failed to request management evaluation within the 60-day deadline set forth by staff rule 11.2(c). The Applicant was notified of the non-renewal of her contract on 15 March 2013, therefore, she was required to submit her request for management evaluation by 14 May 2013. The Applicant's request for management evaluation was submitted on 29 May 2013, and was therefore time-barred. The Respondent submits that the Applicant's claim that the notification of 15 March 2013 was

“informal” and therefore could not be relied upon for the purposes of time limits is incorrect. The email of 15 March 2013 was unequivocal, contained the reasons for the non-renewal of her contract, and was in fact sent in follow-up to an earlier verbal discussion on the same subject with the Applicant. In her own management evaluation request, the Applicant identified 15 March 2013 as the date of the contested decision. The letter of 19 April 2013 did not constitute a new administrative decision as it contained no new information and merely reiterated the earlier notification. Reiterations or confirmations of an already conveyed decision do not re-start the time limits for the filing of a request for management evaluation.

28. The Respondent did not file any submissions on the issue of receivability *ratione temporis* of the application filed before the Tribunal.

Consideration

Applicable law

29. Articles 2 and 8 of the Statute of the Dispute Tribunal state:

Article 2

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

...

Article 8

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

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;

...

3. 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.

30. Articles 7 and 35 of the Tribunal's Rules of Procedure state:

Article 7 Time limits for filing applications

1. Applications shall be submitted to the Dispute Tribunal through the Registrar within:

(a) 90 calendar days of the receipt by the applicant of the management evaluation, as appropriate;

(b) 90 calendar days of the relevant deadline for the communication of a response to a management evaluation, namely, 30 calendar days for disputes arising at Headquarters and 45 calendar days for disputes arising at other offices; or

(c) 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required.

2. Any person making claims on behalf of an incapacitated or deceased staff member of the United Nations, including the Secretariat and separately administered funds and programmes, shall have one calendar year to submit an application.

3. Where the parties have sought mediation of their dispute, the application shall be receivable if filed within 90 calendar days after mediation has broken down.

...

5. In exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1 above. Such request shall succinctly set out the exceptional circumstances that, in the view of the applicant, justify the request. The request shall not exceed two pages in length.

...

Article 35 Waiver of time limits

Subject to article 8.3 of the statute of the Dispute Tribunal, the President, or the judge or panel hearing a case, may shorten or extend a time limit fixed by the rules of procedure or waive any rule when the interests of justice so require.

31. Staff rules 11.2 and 11.4 state:

Rule 11.2

Management evaluation

(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.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty 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.

(d) The Secretary-General's response, reflecting the outcome of the management evaluation, shall be communicated in writing to the staff member within 30 calendar days of receipt of the request for management evaluation if the staff member is stationed in New York, and within 45 calendar days of receipt of the request for management evaluation if the staff member is stationed outside of New York. The deadline may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General.

...

Rule 11.4

United Nations Dispute Tribunal

(a) A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within 90 calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2 (d), whichever is earlier.

Receivability framework

32. As established by the United Nations Appeals Tribunal, the Dispute Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* (*Pellet* 2010-UNAT-

073; *O'Neill* 2011-UNAT-182; *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335). This competence can be exercised even if the parties do not raise the issue, because it constitutes a matter of law and the Statute prevents the Dispute Tribunal from considering cases that are not receivable.

33. In the present case the Respondent states that the application is not receivable *ratione temporis* because the Applicant did not request management evaluation within 60 days from the date of notification of the contested decision.

34. The Dispute Tribunal's Statute and the Rules of Procedure clearly distinguish between the receivability requirements as follows:

a. The application is receivable *ratione personae* if it is filed by a current or a former staff member of the United Nations, including the United Nations Secretariat or separately administered funds (arts. 3.1(a)–(b) and 8.1(b) of the Statute) or by any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered funds and programmes (arts. 3.1(c) and 8.1(b) of the Statute);

b. The application is receivable *ratione materiae* if the applicant is contesting “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment” (art. 2.1 of the Statute) and if the applicant previously submitted the contested administrative decision for management evaluation, where required (art. 8.1(c) of the Statute);

c. The application is receivable *ratione temporis* if it was filed before the Tribunal within the deadlines established in art. 8.1(d)(i)–(iv) of the Statute and art. 7.1–7.3 of the Rules of Procedure.

35. It results that for being considered receivable by the Tribunal, an application must fulfil all the mandatory and cumulative requirements mentioned above.

36. In the present case, as follows from Order No. 255 (NY/2015), the Tribunal qualified the receivability issue raised by the Respondent as receivability *ratione materiae* of the application and invoked *ex officio* receivability *ratione temporis*.

Receivability ratione personae

37. The application was filed by a former UNDP staff member and is receivable *ratione personae*. The Tribunal will therefore consider whether the application is also receivable *ratione materiae* and *ratione temporis*.

Receivability ratione materiae

38. The United Nations Appeals Tribunal has consistently held that the Dispute Tribunal does not have jurisdiction, pursuant to art. 8.3 of its Statute, to waive or extend the deadlines for management evaluation requests (see *Costa* 2010-UNAT-036; *Trajanovska* 2010-UNAT-074; *Sethia* 2010-UNAT-079; *Ajdini et al.* 2011-UNAT-108). Reiterations or repetitions of the same administrative decision in response to the Applicant's communications do not reset the clock with respect to the applicable time limits in which the original decision is to be contested (*Sethia* 2010-UNAT-079; *Bernadel* 2011-UNAT-180; *Cremades* 2012-UNAT-271; *Aliko* 2015-UNAT-539).

39. As follows from the facts before the Tribunal, on 4 March 2013, the Applicant had a meeting with her supervisor during which she was verbally informed that her contract would not be renewed. On 15 March 2013, the Applicant sent an email to her supervisor, asking for a confirmation of the non-renewal of her contract. Her email stated:

Following our discussion last week Monday, it is my understanding that my position will not be extended beyond this current period. I would highly appreciate it if you could confirm this to me by 19 March 2013, especially that my contract is coming to an end in the beginning of June 2013 and soon after will my [United Nations Laissez-Passer]. In the event I do not hear from you by this time, I will construe a non-response as confirmation of the decision not to extend my contract.

40. The supervisor replied on the same day, 15 March 2013, confirming the non-renewal of her contract. She stated:

Yes, I can confirm to you that from my discussions with the senior management and the GF [Global Fund], it was decided that your position will not be renewed. This is due to the resource constraints and the exigency of the GF and the CCM [Country Coordinating Mechanisms] that we should reduce HR cost by promoting national staff to take some high profile positions. You will be notified in due course by the CO [Country Office], as per the normal procedures. However, as I explained to you a new P4 position will be opened combining most likely the Program, Capacity Development and may be M&E [Monitoring and Evaluation] specialist. We are still working on the Job description. When the position will be opened, you may apply if you are interested.

41. Thus, the evidence before the Tribunal confirms that the Applicant was notified in writing on 15 March 2013 that her contract would not be renewed and that she clearly understood on that date the nature and the legal effect of the non-renewal decision.

42. Having established that the contested decision in this case is an administrative decision within the meaning of art. 2.1 of the Statute, the Tribunal will now examine whether the requirement of a timely management evaluation request has been fulfilled.

43. In her request for management evaluation, the Applicant, who at the time was represented by Counsel, expressly stated that the contested decision “was announced via email to [her] on 15 March 2013” and that “[she] received the email the same day”, which contradicts her statement in the application before the Tribunal that the date of notification was 18 April 2013. Accordingly, pursuant to staff rule 11.2(c), the Applicant was required to request management evaluation of the decision not to renew her contract within 60 calendar days of 15 March 2013—that is, by 14 May 2013 at the latest. However, she filed her management evaluation request on 28 May 2013, two weeks after the expiration of the deadline.

44. The letter dated 18 April 2013 from the Senior Country Director, UNDP/Haiti, stating that in view of UNDP/Haiti restructuring of the staffing of the Global Fund program management unit, “[her] assignment with UNDP Haiti will reach completion upon expiration of [her] fixed-term appointment on 9 June 2013” was a reiteration of the decision communicated on 15 March 2013 not to renew her contract. Thus, the letter of 18 April 2013 did not reset the time limits for the filing of her management evaluation request (*Sethia; Aliko*).

45. Moreover, the Tribunal underlines that an application can be filed before the Tribunal only with regard to the administrative decision for which a management evaluation was requested. In the present case, the Applicant’s request for management evaluation identified the contested decision as being the one notified to her on 15 March 2013, and not the one dated 18 April 2013,

as indicated in the application. Even if the communication of 18 April 2013 was not a reiteration of the decision of 15 March 2013 but a separate administrative decision, the application would still not be receivable because the Applicant failed to file a management evaluation request regarding the decision of 18 April 2013.

46. As explained above, the Tribunal does not have jurisdiction, pursuant to art. 8.3 of its Statute, to waive or extend the deadlines for management evaluation requests (*Costa; Trajanovska; Sethia; Ajdini et al.*).

47. Accordingly, the Applicant failed to submit a timely request for management evaluation of the decision notified to her on 15 March 2013, and, as a result, one of the mandatory and cumulative conditions of art. 8.1 of the Statute has not been met. The application before the Tribunal is therefore not receivable *ratione materiae*.

Receivability ratione temporis

48. The Dispute Tribunal and the United Nations Appeals Tribunal have consistently stressed the importance of complying with statutory deadlines (*Mezzoui* 2010-UNAT-043).

49. As results from the mandatory provisions of art. 8.1(d)(i)(a)–(b) of the Tribunal’s Statute and art. 7 of the Rules of Procedure, as well as staff rules 11.2(d) and 11.4(a), an application before the Tribunal must (“shall”) be filed within 90 days either from the date of notification of the outcome of management evaluation or the date of expiry of the 45-day deadline (for staff stationed outside of New York) for management evaluation, whichever is earlier.

50. In the present case the Applicant’s management evaluation request filed on 28 May 2013 with the MEU of the United Nations Secretariat was correctly

forwarded to UNDP and the Applicant was informed accordingly on 31 May 2013. On 7 June 2013, she submitted an amended management evaluation request to the UNDP Bureau of Management. UNDP acknowledged receipt on 11 June 2013 and advised the Applicant that she should expect a reply by 22 July 2013. However, on 17 June 2013, the Applicant was informed that the allegations of retaliation and harassment raised in her request for management evaluation must be assessed by the UNDP Ethics Office and the Office of Audit and Investigations, respectively, and that “the review of [her] request will therefore be suspended pending the determination by these respective offices”, that “[her] right to request a management evaluation will be preserved during the course of the assessment of [her] allegations and subsequent investigation as applicable “and that the Bureau of Management “will revert to [her] following the determination by the respective offices and proceed with a review of [her] request”.

51. The Tribunal notes that in its 17 June 2013 communication, the UNDP Bureau of Management informed the Applicant that the management evaluation of her case would be “suspended” pending determination of her allegations. The Tribunal underlines that the only legal provision regarding the possibility to suspend the deadline for completion of management evaluation is the one from staff rule 11.2(d) which provides that this deadline “may be extended by the Secretary-General pending efforts for informal resolution by the Office of the Ombudsman, under conditions specified by the Secretary-General”. It results that, as an exception, the deadline can be extended only during pending efforts for mediation conducted by the Ombudsman. This exception obviously did not apply in this case, and there was no legal basis for UNDP to “suspend” the applicable deadlines.

52. On 26 June 2013, the UNDP Ethics Office provided the Applicant with its report on her complaint of retaliation, finding that no *prima facie* case of retaliation could be established.

53. On 26 August 2013, the Appeals Tribunal published *Neault* 2013-UNAT-345, in which it decided as follows (emphasis added):

34. ... [I]t is both reasonable and practical for Article 8(1) of the Statute to provide for two different dates from which the limitations period commences to run. After all, the MEU response might partially or fully resolve the staff member's concerns and give the staff member a reason to reconsider the filing of an application challenging the administrative decision. *When the management evaluation is received after the deadline of 45 calendar days but before the expiration of 90 days for seeking judicial review, the receipt of the management evaluation will result in setting a new deadline for seeking judicial review before the UNDT.* This affords the staff member an opportunity to fully consider the MEU response in deciding whether to proceed before the UNDT. Nevertheless, the staff member must be aware of the deadline for filing an application before the UNDT and make sure that he or she does not miss that deadline while waiting for the MEU response.

54. The decisions of the Appeals Tribunal are binding (*Zeid* 2014-UNAT-401). Pursuant to *Neault*, if at any point during that 90-day time period for the filing of her application with the Tribunal the Applicant received a belated management evaluation, it would have resulted in resetting the 90-day deadline for the filing of her application.

55. The deadline for the Applicant to file her application before the Tribunal expired on 22 October 2013, or 90 days from 22 July 2013. *Neault* was published on 26 August 2013, or approximately two months before the expiration of the deadline for the filing of application in this case. Had the Applicant received UNDP's management evaluation between 22 July

and 22 October 2013, it would have reset the deadline for the filing of her application with the Tribunal.

56. However, UNDP's management evaluation was sent to the Applicant approximately five months later, on 20 March 2014, stating that the Applicant could appeal the decision "by filing an application [with the Dispute Tribunal] within ninety (90) days from the date of receipt of this letter". This representation was made by UNDP months after the deadline for the filing of an application before the Tribunal had expired. UNDP's representation was therefore incorrect as UNDP has no legal authority to suspend or extend the deadline for the filing of an application with the Dispute Tribunal. The time limits for filing before the Tribunal are stipulated in the Statute of the Tribunal, and the authority to suspend or waive them rests solely with the Dispute Tribunal, as results from art. 8.3 of the Statute and arts. 7.5 and 35 of the Rules of Procedure. Therefore, under *Neault*, the applicable time limit for the filing of her application was not reset.

57. The Tribunal observes that as follows from the management evaluation request filed on 28 May 2013, at the time of filing her retaliation complaint and her management evaluation request, the Applicant was represented by Counsel who were presumed to be familiar with the proceedings before the Tribunal and the relevant jurisprudence. The Applicant, assisted by her Counsel, was expected to diligently file, before or on 22 October 2013, either her application on the merits or at the very least a request for an extension of time to file her application on the merits.

58. The application on the merits was filed by the Applicant (who was by that time self-represented) on 19 June 2014. The application did not contain any express requests for waiver or suspension of the deadline to file her application. Her application contained Addendum A, which consisted of

31 pages of extensive submissions on the merits, including claims, facts, observations on and reports of fraud, explanations regarding the origins of retaliation, non-renewal of contract, work place harassment, mobbing in general, and denial of access to her personnel file. Addendum A also includes a section titled “The submission of this application to the Tribunal should be found receivable”, in which the Applicant stated:

89. In the present case, I submitted the [request for management evaluation] on 7 June [2013], yet the MEU decision was not rendered until 21 March 2014, over ten months later.

90. While the submission would otherwise appear to be irreceivable on this basis, there are circumstances in the present case which demand my Application be found receivable. As opposed to the Tribunal’s Judgment in *Enan* UNDT/2014/049, where the Tribunal concluded that the MEU’s delayed decision did not extend the receivability timeframes at the UNDT, in the present case, the UNDP decision expressly stated that I could submit an application within 90 days of the receipt of their decision (Annex 29).

91. This express statement reopened the door and allows this Application to [be] found receivable. Furthermore, in submitting this Application I acted on this statement, and the denial of receivability would be to my detriment, in violation of the principle of promissory estoppel.

92. As such, I would respectfully request that the Tribunal find this otherwise delayed submission to be receivable, as it was submitted within 90 days of the deadline as indicated.

59. It results that the Applicant was aware of the deadline to file the application. However, the arguments invoked by the Applicant cannot waive the time limit for the filing of her application.

60. As stated by the United Nations Appeals Tribunals, ignorance of the law cannot be invoked as an excuse and staff members are deemed to be aware of the rules governing their employment, including those relating to the administration of justice (*Diagne et al.* 2010-UNAT-067; *Jennings* 2011-

UNAT-184; *Muratore* 2012-UNAT-191; *Christensen* 2012-UNAT-218; *Rahman* 2012-UNAT-260).

61. The fact that the Applicant may have relied on erroneous advice cannot bring the case within the ambit of an “exceptional case” as provided for by art. 8.3 of the Dispute Tribunal’s Statute (*Scheepers* 2012-UNAT-211). Therefore, her application to the Tribunal is not receivable *ratione temporis*.

62. Since the case is not receivable *ratione materiae* and *ratione temporis*, the Tribunal is not competent to assess the merits of the case (*Servas* 2013-UNAT-349).

Observation

63. The Tribunal observes that the communications sent by UNDP in response to the Applicant’s request for management evaluation indicate a certain lack of familiarity on the part of UNDP with the language of staff rule 11.2 as well as with the binding jurisprudence of the United Nations Appeals Tribunal, specifically with the pronouncements in *Neault*.

64. Although it is the Applicant’s responsibility to consult with the relevant statutory provisions and comply with them, it is equally incumbent upon the Respondent to be familiar with the applicable legal provisions, act in good faith, and not make representations that may mislead its staff or former staff with regard to the deadlines for filing an appeal, if any, before the Dispute Tribunal.

65. The Tribunal expresses its trust that an identical issue will not arise in cases that may be filed before the Tribunal, and recommends that in the future the Organization use a standardized acknowledgment of a management evaluation request, including a paragraph unequivocally stating the deadline

for completion of management evaluation and the deadline for the filing of an application before the Dispute Tribunal as explained by the Appeals Tribunal in *Neault*.

Conclusion

66. In the light of the foregoing, the Tribunal DECIDES:

67. The application is not receivable and is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 11th day of November 2015

Entered in the Register on this 11th day of November 2015

(Signed)

Hafida Lahiouel, Registrar, New York