Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

LEMONNIER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Miles Hastie, OSLA

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant is a former staff member of the United Nations Stabilization Mission in Haiti (“MINUSTAH”). He filed the following five separate cases arising from a restructuring exercise at MINUSTAH:

a. UNDT/NY/2015/011, filed on 6 March 2015, concerning the decision not to select him for the post of Chief, Integrated Support Services (“CISS”), MINUSTAH. The Applicant identified the date of notification of the contested decision as 5 February 2015;

b. UNDT/NY/2015/012, filed on 6 March 2015, concerning the decision dated 29 May 2014 not to renew his contract and to separate him from service;

c. UNDT/NY/2015/027, filed on 4 May 2015 as a separate claim, although it was in fact a motion for an extension of time in relation to Case No. UNDT/NY/2015/011 (on non-selection), to address the Respondent’s contention that the claim was not receivable;

d. UNDT/NY/2015/028, filed on 4 May 2015 as a separate claim, although it was in fact a motion for an extension of time in relation to Case No. UNDT/NY/2015/012 (on separation), to address the Respondent’s contention that the claim was not receivable;

e. UNDT/NY/2015/029, filed on 4 May 2015 as a separate claim in relation to his non-selection for the CISS post, identifying the date of notification of non-selection as 5 February 2015. The Applicant explained in his application that it was almost in all respects identical to case UNDT/NY/2015/011, but was “re-filed, out of abundance of

caution", to address further receivability arguments raised by the Respondent.

2. The Respondent submits that the last three cases should be summarily dismissed as they are in essence identical to the first two claims. The Respondent submits that, in any event, the Applicant's claims in the non-selection case and the separation case are not receivable as the Applicant failed to comply with the relevant time limits. Finally, the Respondent submits that the Applicant's claims are without merit.

Multiple proceedings initiated by the Applicant

3. The Applicant submitted that all five cases concerned "the same sequence of factual events". He justified the filing of the last three separate claims by stating that they were "triggered by receivability arguments of the Administration and UNAT [United Nations Appeals Tribunal] decisions that arguably impose strict filing rules". The Applicant further explained that "acceptance of the re-filing of cases would overcome the technical objections that the Respondent has raised and would permit the parties and the Tribunal to address the cases on the merits".

4. Contrary to the Applicant's view, the filing of voluminous and repetitive applications, the objective of which was to remedy failures to comply with statutory requirements relating to the receivability of the initial claims, raised in the Respondent's replies, is not a proper use of the Tribunal's procedures. Moreover, the addition of multiple cross-references was of little assistance to the Tribunal in disposing of these cases in a just and efficient manner. These are the two substantive claims before the Tribunal: non-selection and separation from service. The Respondent raised credible issues relating to the receivability of these claims.

5. The filing of three additional claims by the Office of Staff Legal Assistance ("OSLA"), on behalf of the Applicant, apparently to "overcome the technical objections" raised by the Respondent is a matter of concern. The repetition of submissions and arguments caused a significant degree of confusion and expenditure of the resources of the Tribunal at the expense of other claims awaiting disposal. Conducting proceedings in such a manner amounts to an abuse of process and cannot be condoned by the Tribunal, as discussed further below.

6. Given the common questions of fact and law raised in these proceedings the Tribunal decided that the most expeditious and cost effective procedure for considering these cases is to order combined proceedings and to issue a single consolidated judgment that will have the added advantage of avoiding further confusion.

Relevant procedural history

7. On 9 May 2015, the Applicant filed a motion to consolidate the present five cases to "ensure efficiency and prevent any possible inconsistency".

8. These cases were assigned to the undersigned Judge on 9 September 2015.

9. By Orders No. 240–244 (NY/2015), dated 22 September 2015, the parties were directed to attend a case management discussion ("CMD") to enable the Tribunal to:

> a. Identify the reasons for concurrent proceedings on matters some of which appear to be substantively similar, if not identical;
>
> b. Identify core issues of fact and law to be determined by the Tribunal in each case;

c. Identify with clarity and precision the remedy being sought by the Applicant;

d. Consider whether there should be an order that any, or all, of the cases should be subject to an order for combined proceedings;

e. Consider whether alternative dispute resolution is appropriate;

f. Address any other matters that may assist the Tribunal in the expeditious and fair determination of this case.

10. At the CMD on 30 September 2015, Counsel for the Applicant indicated that he was preparing a management evaluation request concerning a new administrative decision, dated 1 September 2015, to terminate his continuing appointment. It was agreed at the CMD that in the event that the Applicant filed a timely request for management evaluation in relation to the ending of his contract, it would be reasonable, sensible and an economic use of resources to consider a stay of proceedings in all cases, pending the outcome of management evaluation or a resolution of the dispute.

11. On 5 October 2015, the Applicant filed a motion for a stay of proceedings in the five pending matters (Cases No. UNDT/NY/2015/011–012 and 027–29).

12. By Order No. 262 (NY/2015), dated 6 October 2015, the Tribunal granted the Applicant's motion and ordered that the proceedings in the five cases be stayed until 10 December 2015.

13. On 10 December 2015, the parties filed a joint submission stating that, while their efforts toward informal resolution were ongoing, they "consent[ed] to the proceedings moving forward" and were not seeking any further stay of proceedings.

14. On 22 December 2015, the Tribunal issued Order No. 309 (NY/2015), directing that all five cases be subject to an order for combined proceedings and indicating that the Tribunal would consider the cases on the documents filed.

Relevant factual background

Employment background

15. The Applicant joined the Organization as a P-2 level staff member in 2001, having previously worked for two years as a United Nations volunteer. As of 2010, he was on four rosters for P-4 and P-5 level positions in the area of information and communication technology resources.

16. In December 2010, the Applicant was appointed to the post of Chief, Telecommunications and Information Technology Officer, MINUSTAH, at the P-4 level. With effect from 1 January 2011, he was promoted to the P-5 level, holding the same title.

Abolition of the Applicant's post in 2012

17. The Respondent submits that, on 1 July 2012, the post financing the Applicant's position was abolished in view of the phasing out of MINUSTAH's operations in response to the 2010 earthquake.

Temporary retention against loaned posts

18. In July 2012, the Applicant accepted an offer with the United Nations African Union Mission in Darfur ("UNAMID"). His release was scheduled for 5 August 2012. However, it became apparent that the Applicant was facing challenges obtaining an entry visa to Sudan. In the circumstances,

MINUSTAH decided not to separate the Applicant from service at that time. However, in order to give him an opportunity of seeking alternative positions within the Organization, the Respondent decided to retain the Applicant's employment for short-term durations assigning him to non-core functions against temporary sources of finance, on posts borrowed from different sections.

2014 retrenchment exercise

19. In January 2014, MINUSTAH announced a retrenchment exercise. The Applicant submits that he should have been processed and retained under that retrenchment exercise. The Respondent submits that the Applicant was not eligible to be considered under the retrenchment exercise as his post had been abolished two years earlier, in July 2012, and thereafter he was being retained temporarily on loaned posts. In view of its factual findings below, regarding the receivability of the claims, the Tribunal will not examine the respective contentions of the parties with regard to this retrenchment exercise.

Advertised position of CISS

20. On 17 April 2014, the job opening for the position of CISS was advertised as a "recruit from roster" selection exercise. It is one of the Applicant claims that, as part of the retrenchment process, this post should have been given to him instead of being advertised.

21. The job opening required a minimum of ten years of relevant experience "*both* in the *field* and at *headquarters*" (emphasis added). The job opening further stated under "Responsibilities" that the incumbent will "manag[e] and coordinat[e] all multifunctional support requirements between the UN Headquarters, mission components and other UN and non-UN entities".

22. The Applicant was on the pre-approved roster and was one of the ten candidates considered for the position. However, he did not meet the mandatory requirement of Headquarters experience indicated in the job opening.

Decision not to renew the Applicant's appointment beyond 30 June 2014

23. On 29 May 2014, the Officer-in-Charge of Human Resources sent an email to the Applicant confirming that, as had been discussed with him previously, his appointment would not be renewed beyond 30 June 2014 due to the non-availability of funding. The email explained that the Applicant was not performing any core functions and was being temporarily placed on the P-5 level post of Chief Finance and Budget Officer, pending it being filled through the roster system.

Retention of OSLA

24. In early June 2014, the Applicant retained the services of OSLA. The "Consent Form for Legal Representation by OSLA" was signed by the Applicant on 5 June 2014. However, it would appear from the documents that their involvement commenced on 2 June 2014, when OSLA submitted the Applicant's request for management evaluation concerning the issue of separation.

Continuing involvement of OSLA

25. Between June 2014 and March 2015, Mr. Hastie, Counsel for the Applicant, engaged in email correspondence with the Management Evaluation Unit and other sections in the Administration in relation to the Applicant's case.

Management evaluation request of 2 June 2014

26. On 2 June 2014, OSLA, on behalf of the Applicant, requested management evaluation of the decision "to separate [him] from service". He stated in his request for management evaluation that he was notified of the contested decision on 29 May 2014.

Granting of a continuing appointment

27. The Applicant's appointment was renewed beyond 30 June 2014 pending the outcome of management evaluation and, on 1 October 2014, the Applicant was granted a continuing appointment in the context of the then ongoing review.

Finalisation of the selection process for the CISS post

28. On 1 December 2014, the selection exercise for the position of CISS was finalized.

MEU response of 11 December 2014

29. By letter dated 11 December 2014, the Applicant was informed of the outcome of his management evaluation request of 2 June 2014 in that the Secretary-General decided to accept the recommendation of the MEU to uphold the decision not to renew his contract.

MEU letter dated 5 February 2015

30. By letter dated 5 February 2015, the MEU notified the Applicant of the outcome of management evaluation of his request "dated 2 December 2014". No copy of a management evaluation request of 2 December 2014 has been made available to the Tribunal. It appears that the reference to

"2 December 2014" was to a series of email exchanges of that date between Counsel for the Applicant and a Legal Officer at the MEU. The letter of 5 February 2015 informed the Applicant of the Secretary-General's decision to uphold the decision not to select him for the post of CISS. The Applicant submits that this was the first time he was formally notified of that decision.

Consideration

Cases concerning separation from service (UNDT/NY/2015/012, 028)

31. With regard to the decision not to retain the Applicant beyond 30 June 2014, the relevant timeline is as follows:

a. On 29 May 2014, the Applicant was notified of the decision to separate him from service;

b. On 2 June 2014, the Applicant, represented by OSLA, filed a request for management evaluation of the contested decision;

c. The deadline for the response to the request for management evaluation was 17 July 2014 (staff rule 11.2(d) and art. 8.1(d)(i) of the Tribunal's Statute);

d. Since the Administration's response to his management evaluation request was not received by 17 July 2014, the Applicant had 90 days from that date to file his application. Accordingly, the deadline for filing his application was 15 October 2014 (staff rule 11.4(a)) and art. 8.1(d)(i) of the Tribunal's Statute);

e. The application was filed on 6 March 2015, more than four months after the deadline for filing had expired.

32. The Respondent submits that, in accordance with the United Nations Appeals Tribunal's holding in *Neault* 2013-UNAT-345, the belated management evaluation response of 11 December 2014 did not re-set the time limit for the filing of an application. The Appeals Tribunal stated in para. 34 of *Neault* (emphasis added):

> *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.

33. The Applicant submits that the Administration misreads *Neault* in that the correct interpretation of *Neault* is that, even if the management evaluation response is received *after* the expiration of the 90-day period for the filing of an application, the 90-day period starts running afresh. The Applicant further submits that, in any event, it was reasonable of him to rely upon his reading of *Neault* and upon the protracted dialogue with the Administration to believe that the delays would not bar his claims.

34. The Applicant's submissions concerning the ruling in *Neault* are misconceived and inconsistent with current jurisprudence. The Appeals Tribunal has stated that 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). The Tribunal may understand and even sympathize with a staff member who may have had

no opportunity or need to acquire a knowledge of the applicable law but such understanding cannot be extended to OSLA whose *raison d'être* is to provide specialist assistance to staff members and who have dealt with hundreds of claims in the past six years. They simply have no excuse for misapplying basic rules on receivability and disregarding the settled jurisprudence of the Appeals Tribunal.

35. The Appeals Tribunal's ruling in *Neault* 2013-UNAT-345 was published more than a year-and-a-half prior to the filing of the present cases. Pursuant to *Neault*, if at any point during that 90-day time period for the filing of his application with the Tribunal the Applicant received a belated management evaluation response, it would have re-set the 90-day deadline for the filing of his application. However, receipt of a management evaluation *after* the expiration of the 90-day period for the filing of an application does not have the same effect.

36. The language of *Neault* is clear and has been applied and reiterated in a number of subsequent judgments, which OSLA would have been aware of. These judgments pre-date the Applicant's submissions on receivability. Notably, in *Eng* 2015-UNAT-520, published on 17 April 2015, the Appeals Tribunal found that the applicant failed to file a timely application with the Tribunal, stating in para. 24 (footnotes omitted):

> Nor is there any authority for the proposition that the UNDT has the inherent power to suspend or waive the statutory time limits for filing an application. The only authority the Dispute Tribunal has to suspend or waive the filing time limits is set forth in Article 8(3) of the UNDT Statute, which requires a prior "written request by the applicant". [The applicant] did not make a written request to the UNDT to suspend or waive the filing deadline for her application; thus, Article 8(3) did not apply. Under Article 8(1) of the UNDT Statute, [the applicant] was required to file her application before the UNDT within 90 days

> of the 45 day-period in which the MEU is required to respond to her request for management evaluation.

37. Further, as the Appeals Tribunal stated in *Eng*, ongoing exchanges with the MEU do not result in the re-setting of the applicable time limits. The Appeals Tribunal stated in para. 23:

> [The Dispute Tribunal] erroneously concluded that the MEU could extend the deadline for filing an application by holding a case before it in abeyance. There is no legal authority for that proposition in Article 8(1) or any other provision of the Dispute Tribunal Statute. Nevertheless, Article 8(1)(d)(iv) of the Dispute Tribunal Statute does allow for the tolling of the limitations period when the Mediation Division of the Ombudsman's Office is involved in settlement or mediation discussions. That provision was not applicable to [the applicant's case], however; [the applicant] has never claimed involvement of the Ombudsman. If the General Assembly had intended settlement efforts by the MEU to toll the deadline for filing an application for judicial review, the UNDT Statute would clearly provide for that; it does not.

38. The Applicant failed to file his application in relation to the decision to separate him from service within the 90-day period following 17 July 2014, the date when the deadline for a response to his management evaluation request expired. His subsequent re-filing of the application under a separate case number (Case No. UNDT/NY/2015/028), after all the relevant deadlines had already expired, explaining his view on the interpretation of *Neault*, is misconceived. The re-filing could not conceivably have cured this fundamental procedural flaw. It was a wholly unjustified action by OSLA and, in the circumstances, constituted a manifest abuse of process.

39. The Tribunal finds that the particular circumstances would not have warranted a waiver or suspension of the time limits set out in the Tribunal's Statute even if the Applicant had filed such a request before the expiration of the relevant time limits (*Eng*). Article 8.3 of the Statute states that the 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". There was nothing exceptional about these cases and the Tribunal sees no good reason why a proper application against the separation decision could not have been filed within the applicable time limits. As the Appeals Tribunal stated in *Scheepers* 2012-UNAT-211, "unfortunate as it is, the fact that [the Applicant] relied on erroneous advice from OSLA cannot bring the case within the ambit of an "exceptional case" as provided for by Article 8(3) of the [Dispute Tribunal's] Statute".

40. In all the circumstances, the applications in Cases No. UNDT/NY/2015/012 and 028 (on separation) are not receivable.

Cases concerning non-selection (Cases No. UNDT/NY/2015/011, 027, 029)

41. Cases No. UNDT/NY/2015/011, 027, and 029 concern the same subject matter, namely the decision not to select the Applicant for the CISS post. It is still unclear to the Tribunal why the Applicant chose to file three substantively identical claims concerning the same subject matter. The manner in which these proceedings have been conducted by OSLA, on behalf of the Applicant, introduced a significant degree of confusion into the proceedings, as in each of these applications the Applicant made conflicting submissions regarding the relevant dates from which time limits were to be counted.

42. Although the Applicant has initiated three separate sets of proceedings on the issue of non-selection for the post of CISS, it is not evident from his filings when exactly he filed a formal request for management evaluation with regard to this issue. The Tribunal is surprised that, at this stage, and notwithstanding the fact that the Applicant was represented by OSLA, there is no clarity on this simple question.

43. Although Counsel act on instructions of their clients, they are also officers of the court and must comply with the basic standards of conduct. Regrettably, at least some of the management evaluation requests in these cases, by the Applicant's Counsel's own admission, were apparently made in the form of email exchanges and "oral submissions" (as stated in the last annex to the application in Case No. UNDT/NY/2015/029, consisting of emails between OSLA and the Administrative Law Section). Counsel for the Applicant acknowledged in the same document that he "cannot locate" correspondence for at least one of the dates offered by him as the date of his management evaluation request. The Tribunal is surprised by OSLA's lack of clarity on the issues of dates, time limits, and management evaluation requests, as those are obviously important and elementary considerations when examining receivability issues.

44. In his three sets of proceedings before the Tribunal, the Applicant refers to at least five different dates—10 June, 13 October, 14 November, and 5 December 2014 and 11 March 2015—as the dates for his management evaluation request. However, he has not provided a copy of any management evaluation request forms for any of those dates. The only form provided to the Tribunal was for the Applicant's management evaluation request, filed on 2 June 2014, in relation to the separation issue in Cases No. UNDT/NY/2015/012 and 028 (as discussed above).

45. It appears that the dates offered by Counsel for the Applicant as the dates for management evaluation were in fact dates of exchanges of emails with a Legal Officer of the MEU to follow-up on the 2 June 2014 management evaluation request concerning his separation. However, in the Tribunal's view, emails spreading over the course of several months and discussing the Applicant's contractual situation do not constitute requests for management evaluation.

46. In his final application on the matter of non-selection—Case No. UNDT/NY/2015/029—the Applicant states that he was notified of the decision not to select him for the CISS post by MEU's letter dated 5 February 2015 and that he requested management evaluation on 11 March 2015.

47. No copy of an actual management evaluation request to the MEU has been included with his application. However, on that date, there was an email exchange between Counsel for the Respondent and Counsel for the Applicant (initiated by the former), on which the MEU was copied.

48. The Tribunal finds that this email exchange of 11 March 2015, in which Counsel discuss various aspects of the Applicant's cases, does not satisfy the prerequisite of a formal request for management evaluation under staff rule 11.2 and art. 8.1(c) of the Tribunal's Statute. The onus is on the Applicant to provide the Tribunal with evidence that he requested a management evaluation within the requisite deadline. He has failed to do so.

49. Given that the Applicant failed to request management evaluation of the contested decision of 5 February 2015, it is settled law that the Tribunal has no jurisdiction to consider his or her application. See, for example, *Planas* 2010-UNAT-049; *Kovacevic* 2010-UNAT-071; *Ajdini et al.* 2011-UNAT-108; *Gehr* 2013-UNAT-293; and *Servas* 2013-UNAT-349.

50. Accordingly, the Tribunal finds that Case No. UNDT/NY/2015/029 is not receivable. Similarly, Cases No. UNDT/NY/2015/011 and 027 are also not receivable.

51. In relation to the Applicant's earlier alternative assertions regarding the relevant dates in Cases No. UNDT/NY/2015/011 and 027 (on non-selection), the Tribunal finds that the Applicant produced neither a copy of any management evaluation request nor any other credible evidence of an actual

evaluation request. Even if the Tribunal were to accept the assertion by Counsel for the Applicant in these two cases that he sought management evaluation by email or "orally" on 10 June 2014 (in contradiction to his own concurrent submission in case 029 that he sought management evaluation on 15 March 2015), his claims would not be receivable under *Neault*, as the Applicant failed to file his application within 90 days of the date of expiration of time for the management evaluation response (which expired 45 days after 10 June 2014) (see the discussion on *Neault*, above).

52. Further, even if the Applicant and OSLA Counsel believe that the email exchange with the MEU of 2 December 2014 (which was referred to in the MEU letter of 5 February 2015) constituted a management evaluation request in relation to the Applicant's claims that the CISS position should have been given to him as part of the retrenchment process, these claims would still not be receivable. The contested position was advertised on 17 April 2014, and any purported request of 2 December 2014 would have been well outside the statutory 60-day period for the filing of a management evaluation request. Accordingly, these claims could not be raised in these proceedings.

53. In all the circumstances, the applications in Cases No. UNDT/NY/2015/011, 027, and 029 (on non-selection) are not receivable.

Costs

54. Article 10.6 of the Statute of the Dispute Tribunal states:

> Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

55. The Tribunal has considered whether it should make an award of costs against the Applicant, taking into account art. 10.6 of the Tribunal Statute and

the Appeals Tribunal's rulings on the issue of costs and manifest abuse of proceedings, including the following:

a. *Ishak* 2011-UNAT-152, in which the Appeals Tribunal affirmed the award of costs in the sum of CHF2,000, against the applicant in *Ishak* UNDT/2010/085 for making unsubstantiated and defamatory allegations against Registry staff and pursuing claims that were clearly not receivable. In affirming the Dispute Tribunal's judgment, the Appeals Tribunal reiterated that frivolous applications would not be tolerated and would be held to be an abuse of process;

b. *Mezoui* 2012-UNAT-220, in which the Appeals Tribunal struck down the award of costs against the applicant in the sum of USD2,000. The award was made by the Dispute Tribunal in *Mezoui* UNDT/2011/098 based on the finding that the applicant engaged in abuse of process "by many and various maneuvers [which added] exaggerated complications that served no real purpose in defending [the applicant's] rights". The Appeals Tribunal found that "the finding of abuse of process was based on the actions of [the applicant's] counsel during trial and since [the applicant] should not be made responsible for her counsel's conduct". Accordingly, the Appeals Tribunal reversed the imposition of costs against the applicant;

c. *Balogun* 2012-UNAT-278, in which the Appeals Tribunal struck down the award of costs against the applicant in the amount of USD500. The award was made by the Dispute Tribunal in *Balogun* UNDT/2012/026 based on the finding that the applicant abused the proceedings by filing a claim that had been the subject of three separate judgments of the United Nations Administrative Tribunal, and that the applicant sought to re-adjudicate the same facts and issues that

were previously found not receivable and were *res judicata*. The Appeals Tribunal vacated the award of costs based on its finding that, although the applicant filed his claims several times under the old system of justice, "he may have been misguided into believing that he could bring the matter before the [United Nations Dispute Tribunal]";

d. *Gehr* 2013-UNAT-328, in which the Appeals Tribunal awarded costs against the applicant in the amount of USD100. The Appeals Tribunal found that Applicant's claims were clearly not receivable and without merit and that, in in filing his appeal, he manifestly abused the proceedings. The Appeals Tribunal ordered that, should the Applicant fail to comply with the order awarding USD100 in costs, the Appeals Tribunal would not entertain any further appeals from the applicant;

e. *Bi Bea* 2013-UNAT-370, in which the Appeals Tribunal struck down the award of costs against the Secretary-General in the amount of CHF5,000. The award was made by the Dispute Tribunal in *Bi Bea* UNDT/2012/150 for delays caused by the Secretary-General during the Joint Appeals Board. The Appeals Tribunal found that the Tribunal failed to make a determination that the Secretary-General "manifestly abused the proceedings" and therefore erred in law in making the impugned order for costs.

56. The Tribunal finds that the Applicant, represented by Counsel from OSLA, failed to comply with the elementary statutory preconditions for filing a claim. The claims filed by the Applicant in these cases had fundamental procedural flaws that the Applicant attempted to cure by multiple re-filings of the same claims, making concurrent self-contradictory submissions regarding receivability issues. This resulted in a waste of the valuable resources of this

Tribunal. Such conduct is frivolous and constitutes a manifest abuse of proceedings.

57. The Tribunal considered the Appeals Tribunal's ruling in *Mezoui* (see the discussion above) that the applicant should not be held responsible for her counsel's conduct. The reasoning in *Mezoui* does not apply to the present case because there is no indication that Counsel for the Applicant (Mr. Hastie of OSLA) acted without or outside of the instructions given to him at any stage of the proceedings. It is clear from the annexes to the applications that the Applicant was copied on many of the emails between his Counsel and the Administration. Mr. Hastie remains Counsel of record and is presumed to have acted on the Applicant's instructions, in the absence of any indications to the contrary.

58. Further, the Tribunal notes that, in contrast to the matter of *Balogun*, all of the present cases were filed before the same tribunal, well after the Appeals Tribunal issued its rulings concerning relevant receivability issues.

59. The Tribunal takes into account the particular role of OSLA in providing much needed advice and representation to staff members at no cost. OSLA was set up as an essential component of the new system of internal justice. They are funded by the Organization and, in recent years, by a significant voluntary financial contribution by staff. As the key staff legal assistance body, OSLA has made, since the inception of the new system, an invaluable contribution and has acquired much knowledge and experience of the formal system of justice. Regrettably, their failure to provide proper advice and guidance on this occasion and their persistence in advancing legally untenable propositions and frivolous arguments have crossed the line between a vigorous and proper litigation strategy and a manifest abuse of process. There

is no power to order costs against a representative, and the Tribunal considers that costs are properly to be ordered against the Applicant.

60. In the circumstances, the Tribunal finds it appropriate to order costs against the Applicant for the manifest abuse of proceedings in the sum of USD1,000.

Observations

Involvement of the MEU

61. Among the principal reasons for the creation of the new system of justice at the United Nations were the egregious delays that plagued the former system (see A/61/205 (Report of the Redesign Panel on the United Nations system of administration of justice), dated 20 July 2006). It is instructive that the current system of justice, as adopted by the General Assembly, specifies strict deadlines for various stages of the proceedings, including at the management evaluation stage, and the specific conditions under which such deadlines may be extended.

62. The Tribunal notes, with regret, the failure on the part of the MEU to have due regard to the policy objectives of having clearly defined time limits, enshrined in the language and substance of staff rule 11.2 and art. 8 of the Statute, as well as MEU's failure to have due regard to the binding jurisprudence of the Appeals Tribunal, specifically with the pronouncements in *Neault*. MEU's non-compliance with the time limits for completion of their management evaluation reviews has been criticized in a number of rulings (see, e.g., *Granfar* Order No. 51 (NY/2012)).

63. It appears that, instead of completing management evaluations within the time limits prescribed by the Staff Rules (30 or 45 days depending on

the location of the staff member), the MEU continues to engage in protracted correspondence with staff well beyond the prescribed time limits, blurring the lines between formal procedures and some form of informal resolution role that it apparently attempts to carry out.

64. Although it is the responsibility of the Applicant and his Counsel to be aware of the relevant statutory provisions and to comply with them, the MEU should also respect the applicable legal provisions that were put in place by the General Assembly to ensure that the new system does not suffer the ills of the system it replaced.

65. In the Tribunal's view, it is incumbent upon the Administration to carefully review how the MEU handles its management evaluation requests in order to ensure compliance with the applicable time limits and consistency with the judgments of the Dispute Tribunal and the Appeals Tribunal.

Conclusion

66. In summary, the Tribunal makes the following findings:

a. The five cases are not receivable due to the Applicant's failure to comply with the relevant statutory requirements, including the filing of his management evaluation requests and the deadlines for the filing of an application with the Tribunal.

b. In the cases concerning separation (Cases No. 011 and 028), the Applicant failed to file an application with the Tribunal within the statutory period of 90 days from the date of expiration of time for a response to his management evaluation request. Pursuant to *Neault* 2013-UNAT-345, MEU's belated communications after the expiration of the 90-day period did not re-set the applicable time limits.

c. In the cases concerning non-selection (Cases No. 012, 027, and 029), the Applicant identified the date of 5 February 2015 as the date of notification of the non-selection decision. He failed to file a management evaluation request of this decision. Thus Cases No. 012, 027, and 029 are not receivable. Further, in relation to the Applicant's earlier alternative assertions regarding the relevant dates in Cases No. UNDT/NY/2015/011 and 027 (on non-selection), the Tribunal finds that the Applicant failed to file timely management evaluation requests even with regard to those dates. Even if the Tribunal were to accept the Applicant's submission that he made a purported request for management evaluation by email or "orally" on 10 June 2014, his claims would not be receivable under *Neault*, as the Applicant failed to file his application within 90 days of the date of expiration of time for the management evaluation response (which expired 45 days after 10 June 2014). Further, even if the Applicant asserted that his Counsel's email exchange of 2 December 2014 (which was referred to in the MEU letter of 5 February 2015) constituted a management evaluation request in relation to his claims that the CISS position should have been given to him as part of the retrenchment process, these claims would still not be receivable. The contested position was advertised on 17 April 2014, and any purported request of 2 December 2014 would have been well outside the statutory 60-day period for the filing of a management evaluation request.

d. In a misguided attempt to cure receivability flaws, the applicant filed multiple applications with contradictory submissions on receivability and relevant dates. This was a manifest abuse of proceedings warranting an award of costs against the Applicant in the sum of USD1,000.

Orders

67. The applications in Cases No. UNDT/NY/2015/011, UNDT/NY/2015/012, UNDT/NY/2015/027, UNDT/NY/2015/028, UNDT/NY/2015/029 are dismissed as not receivable.

68. The Tribunal orders costs against the Applicant in the sum of USD1,000.

(*Signed*)

Judge Goolam Meeran

Dated this 31st day of December 2015

Entered in the Register on this 31st day of December 2015

(*Signed*)

Hafida Lahiouel, Registrar, New York