UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2017/105
Judgment No.:	UNDT/2018/034
Date:	8 March 2018
Original:	English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

STEINBACH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicants:
Robbie Leighton, OSLA

Counsel for the Respondent:
Melissa Bullen UN Women,
Mylène Spencer, UN Women

Introduction

1. On 16 October 2017, the Geneva Registry of the United Nations Dispute Tribunal (UNDT) received 323 similar applications filed by the Office of Staff Legal Assistance (OSLA) on behalf of staff members employed by different United Nations entities at the Geneva duty station.

2. The 323 applications were grouped into six cases. Most of the cases were incomplete and were completed between 24 October and 3 November 2017. The Geneva Registry assigned these cases to Judge Teresa Bravo.

3. All the Applicants are requesting the rescission of the Organization's decision to implement a post adjustment change in the Geneva duty station which results in a pay cut. The Applicants also seek compensation for any loss accrued. The present case concerns a staff member of the United Nations Entity for Gender Equality and the Empowerment of Women also known as UN Women.

4. On 13 November 2017, Judge Bravo issued Orders Nos.: 208, 209, 210, 211, 212, and 213 (GVA/2017) recusing herself from handling the cases.

5. On 14 November 2017, Judge Rowan Downing, then President of the UNDT, issued Order No. 215 (GVA/2017) accepting the recusal of Judge Bravo, recusing himself from adjudication of the cases, and ordering the transfer of the six cases to the Dispute Tribunal in Nairobi.

Summary of relevant facts

6. In September and October 2016, cost-of-living surveys were conducted by the International Civil Service Commission (ICSC) at seven headquarter duty stations outside New York (Geneva, London, Madrid, Montreal, Paris, Rome and Vienna). The purpose of these surveys was to gather price and expenditures data to be used for the determination of the post adjustment index at those locations. In the years prior to

this round of surveys, the ICSC had approved a number of changes to the survey methodology based on recommendations of the Advisory Committee on Post Adjustment Questions (ACPAQ).[1]

7. The results of the surveys were included in the ACPAQ Report presented to the ICSC Secretariat at its 84th meeting in March 2017. The ICSC Secretariat noted at the time that, in the case of Geneva, implementation of the new post adjustment would lead to a reduction of 7.5% in the net remuneration of staff in that duty station as of the survey date (October 2016).[2]

8. On 11 May 2017, the Applicant received an email broadcast from the Department of Management, United Nations Headquarters, informing them of a post adjustment change effective from 1 May 2017 translating to an overall pay cut of 7.7%. The email states in relevant part:

> In March 2017, the International Civil Service Commission (ICSC) approved the results of the cost-of-living surveys conducted in Geneva in October 2016, as recommended by the Advisory Committee on Post Adjustment Questions (ACPAQ) at its 39th session, which had recognized that both the collection and processing of data had been carried out on the basis of the correct application of the methodology approved by the General Assembly.
>
> Such periodic baseline cost-of-living surveys provide an opportunity to reset the cost-of-living in such a way as to guarantee purchasing power parity of the salaries of staff in the Professional and higher categories relative to New York, the basis of the post adjustment system. Changes in the post adjustment levels occur regularly in several duty stations so as to abide by this principle of equity and fairness in the remuneration of all international civil servants at all duty stations.
>
> The extensive participation of staff in the recent cost-of-living salary surveys' process and the high response rates provided by staff in the duty stations provide assurance that the results accurately reflect the actual cost of living experienced by the professional staff serving at these locations.

[1] Paragraph 5 of the reply.
[2] Paragraph 6 and Annex 2 of the reply.

> The post adjustment index variance for Geneva has translated into a decrease in the net remuneration of staff in the professional and higher categories of 7.7%.
>
> The Commission, having heard the concerns expressed by the UN Secretariat and other Geneva-based organizations as well as staff representatives has decided to implement the post adjustment change for Geneva, effective 1 May 2017 (in lieu of 1 April as initially intended) with the transitional measures foreseen under the methodology and operational rules approved by the General Assembly, to reduce the immediate impact for currently serving staff members.
>
> Accordingly, the new post adjustment will initially only be applicable to new staff joining the duty station on or after 1 May 2017; and currently serving staff members will not be impacted until August 2017.
>
> During the month of April, further appeals were made to the ICSC by organizations and staff representatives to defer the implementation of the revised post adjustment. On 24 and 25 April 2017, Executive Heads, Heads of Administration and HR Directors of Geneva-based Organizations and UNOG senior management met with the ICSC Vice-Chairman and the Chief of the Cost-of-Living Division of the ICSC in Geneva to reiterate their concerns. During the meeting, a number of UN system-wide repercussions were identified.
>
> The ICSC has taken due note of the concerns expressed and in response to the questions raised, the ICSC has posted a "Questions & Answers" section on their website dealing specifically with the Geneva survey results, as well as an in-depth explanation of the results of the 2016 baseline cost-of-living surveys at Headquarters duty stations. [3]

9. Subsequently, in a memorandum entitled "Post adjustment classification memo" dated 12 May 2017, the ICSC indicated that Geneva was one of the duty stations whose post adjustment multipliers had been revised as a result of cost-of-living surveys. The post adjustment multiplier was set at 67.1. The memorandum also indicated that staff serving in Geneva before 1 May 2017 would receive a personal transitional allowance (PTA), which would be revised in August 2017.[4]

[3] Paragraph 7 and Annex 3 of the reply.
[4] Paragraph 8 and Annexes 4 and 5 of the reply.

10. Following the issuance of the broadcast, Geneva-based organizations expressed concerns regarding the cost of living surveys and post adjustment matters.[5]

11. During July and August 2017, numerous staff members based in Geneva, including the Applicant, filed management evaluation requests as well as applications on the merits concerning the May 2017 decision. To date, those proceedings for the present Applicant resulted in Judgment No. UNDT/2018/025.

12. On 19 July 2017, an article was posted on the Geneva intranet by the Department of Management indicating that a new decision of the ICSC of 18 July 2017 had amended the Commission's earlier decision with regard to the post-adjustment in Geneva, to the effect that there would be no post adjustment-related reduction in net remuneration for serving staff members until 1 February 2018, and that from February 2018, the decrease in the post adjustment would be less than originally expected. This was followed by a broadcast on 20 July 2017 by the Director General of the United Nations Office at Geneva (UNOG) which also indicated that a further decision of the ICSC had amended their earlier decision and that "[f]urther detailed information on implementation of the reduction in the post adjustment for Geneva will be communicated in due course.[6]

13. In its memorandum entitled "Post adjustment classification memo" dated 31 July 2017, the ICSC indicated that post adjustment multipliers for Geneva had been revised as a result of cost-of-living surveys approved by the ICSC during its 85th session. The post adjustment multiplier for Geneva was now set at 77.5 as of August 2017. The memorandum also indicated that staff serving in Geneva before 1 August 2017 would receive a PTA as a gap closure measure that would totally offset for a six-month period any negative impact of the reduction in the post adjustment amount; and that this allowance would be revised in February 2018.[7] The Tribunal has no information as to whether the memorandum was made accessible to the Applicant.

[5] Paragraph 10 and Annex 7 of the reply.
[6] Paragraph 4 and Annex 3 of the application.
[7] Paragraph 13 and Annex 10 of the reply.

14. Following this new ICSC decision, retroactive payments were made to new staff members in Geneva who joined after 1 May 2017, and had not received a PTA.

15. In the period from July to September 2017 the post adjustment multiplier has been further revised, mainly as a result of fluctuation of the US dollar. The decision of ICSC of May 2017 has not been implemented. The later decision has been implemented to the extent that the affected staff received a PTA meant to moderate the impact of the decreased post adjustment. This was reflected by pay check at the end of August 2017.[8]

16. On 14 September 2017, OSLA acting on behalf of the Applicant requested a management evaluation of the decision to implement the July 2017 ICSC decision. On 27 October 2017, the Applicant was informed that there was no administrative decision to be evaluated.[9]

17. On 16 October 2017, thus prior to obtaining management evaluation, OSLA filed 344 applications including the present one, contesting the July 2017 decision to "implement a post adjustment change resulting in a pay cut" as conveyed by Broadcast on 19 and 20 July 2017.[10]

18. On 6 November and 28 November 2017, OSLA again filed 344 applications contesting the decision to implement a post adjustment change in Geneva.[11]

19. On 26 and 27 December 2017 replies were filed in response to the applications from 16 October, including the present one.

[8] Application, Annex 4.
[9] Paragraph 19 and Annexes 16 and 17of the reply.
[10] Paragraph 20 of the reply.
[11] Paragraph 23 of the reply.

Respondent's submissions on receivability

A matter cannot be before management evaluation and the Dispute Tribunal simultaneously.

20. The application relates to the implementation of the July 2017 ICSC decision. A request for management evaluation was submitted on 14 September 2017 and as of the 16 October 2017 date of the filing of the application, the response from the management evaluation was not completed. The response of the management evaluation was subsequently sent to the Applicant on 27 October 2017.

21. It is uncontested that the Applicant submitted the present application without awaiting the result of her request for management evaluation. It is further uncontested that the Applicant indeed has filed an application after receiving the response to her 14 September 2017 request for management evaluation.[12]

22. Allowing the Applicant to file multiple applications with the Tribunal before the deadline for a response to a request for management evaluation has passed would contravene the Tribunal's Statute and Rules of Procedure, undermine the time lines set out in the Staff Rules, and would be contrary to the intentions of the General Assembly.

The contested decision does not constitute an "administrative decision taken pursuant to advice obtained from technical bodies", which is exempt under staff rule 11.2(b) from the requirement to request a management evaluation.

23. OSLA has asserted that the application is filed pursuant to staff rule 11.2(b) on the basis that the ICSC may constitute a technical body.

24. The ICSC is not a technical body within the meaning of staff rule 11.2(b). The ICSC is a subsidiary organ of the General Assembly within the meaning of art. 22 of the United Nations Charter and was established in accordance with General

[12] Registered as Case No. UNDT/NBI/2018/014.

Assembly resolution 3357(XXIX) of 18 December 1974 in which it approved the ICSC Statute. Article 11(c) of the ICSC Statute provides that the Commission shall establish the classification of duty stations for the purpose of applying post adjustments. The ICSC does not advise the Secretary-General on post adjustment; rather, the ICSC takes decisions which have to be implemented by the Secretary-General. Therefore, the implementation of the ICSC decisions on the post adjustment multiplier does not constitute an administrative decision taken pursuant to advice obtained from technical bodies.

25. The application is not receivable under staff rule 11.2(b), and should be filed under staff rule 11.2(a), requiring staff members to, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

The implementation of an ICSC decision on post adjustment multipliers is not an administrative decision subject to review pursuant to the UNDT Statute

26 The July 2017 ICSC decision is not an administrative decision pursuant to art. 2 of the UNDT Statute or pursuant to the Staff Regulations and Rules.

27. Criterion for receivability of an application in cases of implementation of ICSC decisions should be whether the Secretary-General has room for discretion in implementing them. The Secretary-General has no discretionary authority in proceeding with implementing the ICSC's decisions on post adjustment. The General Assembly has repeatedly reaffirmed that "resolutions of the General Assembly and the decisions of the International Civil Service Commission are binding on the Secretary-General and on the Organization". In the case of the implementation of the ICSC's decision to revise a post adjustment multiplier, there is no room for interpretation or the exercise of discretion by the Secretary-General. The only action taken to implement such a decision is to make a payment by calculating the post adjustment based on the multiplier set by the ICSC.

The Application is not receivable as the Applicant is not adversely affected by the ICSC decisions on post adjustment multipliers.

28. With the July 2017 ICSC decision, the Applicant has not been adversely affected as the ICSC has approved the payment of a PTA as a gap closure measure to address any reduction in net remuneration as a result of the revised post adjustment multiplier. This allowance will be reviewed in February 2018, which means that it will be in place until then. Moreover, further modifications to the post adjustment in Geneva are expected. According to a notice on iSeek, the reduction in Geneva may be further mitigated by the positive movement of the Geneva post adjustment index (that already increased from about 166 in March to 172.6 in July), as well as by the effects of the expected positive evolution of the United Nations/United States net remuneration margin in 2018. Therefore, given that the effect of this new decision cannot be foreseeable, the application should not be receivable at this stage.

The Applicant should not be allowed to file multiple applications to contest a new post adjustment multiplier for Geneva.

29. The Applicant has submitted that she has deliberately filed multiple applications of the same decision and has taken multiple distinct and contradictory positions to justify it – that the decision may or may not have been taken by a technical body; that the May 2017 ICSC decision is affecting the Applicant while also attempting to argue that only some parts of that earlier decision survived; and, finally, that the July 2017 ICSC decision was actually a new decision. This latter submission by the Applicant supports the arguments put forward by the Respondent that the May 2017 ICSC decision was rendered moot by the July 2017 ICSC decision. Regarding the question of management evaluation, the proper procedure would have been to submit a written request to the UNDT in accordance with art. 8.3 of its Statute to suspend the deadline to file an appeal pending the Applicant being informed whether the contested decision was taken pursuant to advice received from a technical body. The purpose of art. 10.6. of the UNDT Statute specifically serves the purpose of avoiding such blatantly frivolous proceedings.

Applicant's submissions on receivability

The ICSC may constitute a technical body.

30. Staff rule 11.2(b) indicates that the Secretary-General is competent to determine what represents a technical body for purposes of determining if a decision requires management evaluation or is contestable directly to the UNDT. The Secretary-General has not published a list of such technical bodies. In similar cases the Administration has alternately taken the position that decisions were and were not made by technical bodies falling under staff rule 11.2(b). The Administration's interpretation as to what constitutes a technical body has been subject to change over time and is not necessarily consistent between the MEU and Counsel representing the Respondent before the UNDT (for example as illustrated by *Syrja* UNDT/2015/092).

31. Given the difficulty in predicting the position that might be taken by the Respondent in the instant case, the Applicant is obliged to file multiple applications in order to ensure that she is not procedurally barred.

32. The instant application is filed pursuant to staff rule 11.2(b) on the basis that the ICSC may constitute a technical body. A further application will be made in due course pursuant to the management evaluation request of 10 July 2017.

Deadline is triggered by communication of a decision not implementation.

33. Staff rule 11.2(c) provides that the time limit for contesting an administrative decision runs from notification rather than implementation.

34. The 19 and 20 July 2017 communications notified the Applicant of a decision to implement a post adjustment change as of 1 August 2017 with transitional measures applied from that date, meaning that it would not have impact on the amount of salary received until February 2018. As such, it communicated a final decision of individual application which will produce direct negative legal consequences to the Applicant. Since the time limit runs from communication rather

than implementation of a decision and no rule specifies the means of communication required to trigger that deadline, the Applicant considered that the 60-day deadline ran from the 19 or 20 July 2017 communication.

35. In the alternative, the time limit must run from receipt of the staff member's paycheck for the month of August. Such a decision has direct legal consequences for the Applicant and is properly reviewable.

36. Further or in the alternative, the decision was taken *ultra vires*. Consequently, any argument on receivability relying on the absence of discretion on the part of the Secretary-General must fail. If the ICSC can exercise powers for which it has no authority and those actions cannot be checked by either the Secretary-General or the internal justice system, then there is no rule of law within the Organization.

Considerations

37. This Tribunal has already determined in Judgment No. UNDT/2018/025 involving the same parties and arising from the above-cited communication of 11 May 2017, that, on the basis of the definition of administrative decision adopted by the Appeals Tribunal for the purpose of art. 2.1(a) of the UNDT statute after *Andronov*[13], applications originating from implementation of acts of general order are receivable when an act of general order has resulted in norm crystallization in relation to individual staff members by way of a concrete decision, such as in similar cases had been expressed through a pay slip or personnel action.[14] It has also held that the degree of discretion exercised by the Secretary-General in the issuance of an individual decision is inconsequential for the receivability of a decision for a judicial review.[15] The Tribunal incorporates by reference the particular reasons given as substantiation of this holding.

38. Just as was the case with the communication of 11 May 2017, the communication of 19 and 20 July 2017, which announces implementation of a post

[13] Judgment No. 1157, *Andronov* (2003) V.
[14] *Steinbach* UNDT/2018/025 paras. 48-58.
[15] *Ibid*., at para 56

adjustment change as of 1 August 2017, constitutes a decision of general order. Whereas the Tribunal agrees with the Applicant that communication of a decision, and not its implementation, triggers the running of time limits for the filing of an application, the communication of 19-20 July did not constitute a decision in "precise individual case" as required under the *Andronov* definition of a reviewable decision. The Tribunal takes it, however, that an individual decision concerning the Applicant would have been issued and subsequently communicated to her through the August 2017 pay check, which is the alternative indication of the impugned decision contained in the application. As such, receivability of the application needs to be examined in the aspect of whether that individual decision should have been submitted for management evaluation.

39. Two questions fall to be resolved in this connection: first, whether in the instant case a management evaluation was required as a matter of law; second, if so, whether an application can be accepted for review by the UNDT when filed without awaiting management evaluation, or the expiration of the time limit for it, but subsequently such management evaluation has been obtained. These issues arise under art. 8 of the UNDT Statute and staff rule 11.2(b), which in relevant parts provide, respectively:

> UNDT Statute Article 8
>
> (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[.]

Staff rule 11.2

> (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.

40. To the extent the Respondent argues economy of proceedings, postulates that applicants before UNDT "should not be allowed" to file multiple applications against the same decision and imputes frivolousness to the Applicants, the Tribunal finds itself compelled to note that the issue would not have occurred had the Respondent promulgated what are technical advisory bodies as determined by him pursuant to staff rule 11.2(b).

41. The notion of "technical bodies" is not defined and is not cognizable upon research given that, apart from staff rule 11.2(b), it does not appear in this context in the index of official United Nations documents.[16] Moreover, it does not seem to denote a category created pursuant to normative criteria, whose content could thus be established through legal analysis. Rather, the language of staff rule 11.2(b) indicates that it has been left to the Secretary-General's discretion to determine where he wishes to rely on advice from technical bodies such as he deems fit, be it permanent or *ad hoc*. The exercise of discretion in reliance on technical bodies might be subject to judicial review only indirectly, through impact that such advice had on individual decisions. Its procedural aspect, however, is of general significance. This is because, instead of being determined *a priori* in a publicly accessible act, at the latest – at the time of the notification of an individual decision, the designation of technical bodies is being revealed on a case-by-case basis only once litigation has been advanced. Thus, it has been established that fact-finding panels convened under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of

[16] United Nations Official Document System. "Staff rules". Retrieved from https://documents.un.org/prod/ods.nsf/xpSearchResultsM.xsp and United Nations Human Resources Portal. "Staff rules". Retrieved from https://hr.un.org/handbook/staff-rules on 5 March 2018.

authority)[17] and rebuttal panels[18] are not technical bodies in the sense of staff rule 11.2(b).; conversely, the Advisory Board on Compensation Claims (ABCC)[19] and the Local Salary Survey Committee (LSSC)[20] are such technical bodies.

42. As has been already noted by the Dispute Tribunal in *Syrja*[21], making a determination as to what constitutes a technical body is not a function of the Dispute or Appeals Tribunals. This said, it is recalled that the Appeals Tribunal pronounced in *Faust* that an investigation panel has, as a general rule, specific tasks and a limited and temporary scope of activities, this being in contrast to a "technical body", which has a more durable and broader mandate and is generally composed of professionalized members in a specific matter[22]. This Tribunal observes that this delineation does not assist in determination of the issue at hand. The ICSC has clearly a durable and broad mandate and is generally composed of professionalized members in a specific matter. The elements argued by the Respondent, on the other hand, such as that the ICSC is a subsidiary organ of the General Assembly and not an advisory body of the Secretary-General and that the Secretary-General has no discretion in implementation of the ICSC decisions, are not ultimately dispositive of the issue. No provision limits the notion of "technical bodies' to bodies convened by the Secretary-General; likewise, no provision requires that advising be the only mandate of the body from which the Secretary-General chooses to seek advice; the question, in turn, of functional relation between ICSC's decisions which are not authorized by the General Assembly and the decisions of the Secretary-General is unresolved and the subject of the substantive argument in this case. Moreover, the Applicant rightly notes an inconsistent stance among representatives of the Respondent as to "technical body" in particular cases.[23]

[17] *Fayek* 2017-UNAT-739, *Masylkanova* 2014-UNAT-412, *Faust* 2016-UNAT-695.
[18] *Geh*r 2014-UNAT-479.
[19] *McKay* 2013-UNAT-287, *James* 2015-UNAT-600, *Likukela* 2017-UNAT-737.
[20] *Tintukasiri* 2015-UNAT-526.
[21] *Syrja* UNDT/2015/092, para. 39.
[22] *Faust* 2016-UNAT-695, para. 39.
[23] *Syrja* UNDT/2015/092, see also *Ovcharenko* UNAT 2015-UNAT-530 para. 11 *v*. para 24

43. In the face of this ambiguity the Tribunal considers it most appropriate to follow the jurisprudential line initiated by the UNAT in two of the *Gehr* cases. It indicates, first, that the overarching import of staff rule 11.2(a) read together with the UNDT Statute establishes the obligation of seeking management evaluation prior to invoking the jurisdiction of the Dispute Tribunal as a rule.[24] Second, that controlling element for the status of "technical body" in the sense of staff rule 11.2(b), is designation by the Secretary-General.[25]

44. In accordance with the aforesaid, the Tribunal concludes that absent designation by the Secretary-General, ICSC is not to be deemed a technical body for the purpose of exempting the impugned decision from the management evaluation requirement. The Tribunal notes, however, that the Applicant had no means of knowing it prior to filing her application, *i.e.*, until relevant representation was made on behalf of the Respondent, especially given that in the past representations different positions were expressed as to the status of the ICSC.[26] The Tribunal finds no grounds to attribute to the Applicant abuse of process under 10.6 of the UNDT Statute. Conversely, the Tribunal puts it before the Respondent that maintaining the state of uncertainty regarding "technical bodies" impedes staff members' right to access to court granted to them under the UNDT Statute, is not consistent with United Nations standards of the rule of law[27] and, should this argument be not sufficiently persuasive, certainly is not conducive to economy of proceedings.[28]

[24] *Gehr* 2013-UNAT-293 at para. 27; *Gehr* 2014-UNAT-479 at para. 26.
[25] *Gehr* 2014-UNAT-479 para. 26; *Faust* 2016-UNAT-695 at para. 39, *Fayek* 2017-UNAT-739 at para. 12.
[26] *Ovcharenko* UNAT 2015-UNAT-530 para. 11 *v*. para 24.
[27] See, *e.g*., the Secretary-General's definition of rule of law for operational purposes in S/2004/616, para 6: "The rule of law is a concept at the very heart of the Organization's mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are **accountable to laws that are publicly promulgated**, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards [emphasis added]."
[28] The question has been argued 12 times on appellate level whereas in connection with the present case at it amounts, in practical terms, to two sets of over 320 individual applications which needed to be drafted, filed, reviewed and registered in the case management system in two seats of the Tribunal, then considered, decided and again technically processed in the case management system, and which had been filed solely because of uncertainty whether the matter fell under the staff rule 11.2(b) or not.

45. Turning to the second question, the Tribunal recalls that in *Omwand*a, the UNDT held that:

> [a] matter cannot be before the MEU and the Dispute Tribunal simultaneously […]" and that "[a]llowing applicants to circumvent this process and file applications with the Tribunal before the deadline for a response to a request for management evaluation has passed would contravene the Tribunal's Statute and Rules of Procedure, undermine the time lines set out in the Staff Rules, and would be contrary to the intentions of the General Assembly.[29]

46. In *Omwanda*, as the application had been filed before MEU completed its management evaluation and the time limit for completing such a response did not yet expire, the application was dismissed as premature.[30] In the present case, a differing element is that by the date of this judgment, the Applicants had obtained management evaluation of the impugned decision, as a result of which their claims were not satisfied. The question before the Tribunal is thus whether a management evaluation so obtained validates the filing of the application so that it becomes receivable for adjudication.

47. In this respect, it is recalled that, although staff rule 11.2 and art. 8 of UNDT Statute require only "requesting" management evaluation and not actually obtaining it, the Appeals Tribunal stressed the obligation to await management evaluation, which process provides the Administration an opportunity to correct any errors in an administrative decision and resolve disputes without the necessity to involve judicial review.[31] Moreover, another rationale noted by the Appeals Tribunal for management evaluation and the attendant requirement to wait for the period necessary to obtain it[32], is that it provides for the applicant an opportunity to consider reasons on the part of the Administration prior to drafting and filing of the application and in this way fosters rationality and completeness of the argument before the Tribunal. In view of

[29] *Omwand*a UNDT/2016/098/Corr.1 at para. 24.
[30] *Ibid*., at para. 23.
[31] *Kouadio* 2015-UNAT-558 para 17; *Amany* 2015-UNAT-521, para. 17; *Nagayoshi* 2015-UNAT-498 para 36; *Mosha* 2014-UNAT-446, para. 17; Christensen 2013-UNAT-335, para 22.*; Pirnea* 2013-UNAT-311 para 42.
[32] *Neault* 2013-UNAT-345 at para. 34.

this reasoning, the Tribunal considers that the answer to the debated question is negative, and that the application which had been filed without awaiting the result of management evaluation (or expiry of the time limit for it) remains not receivable also after the management evaluation has been issued. Such situation, for an applicant who wishes to pursue his or her claim before the Dispute Tribunal, calls for a new filing made in accordance with the applicable time limits.

48. This conclusion renders unnecessary discussing and deciding the remainder of arguments.

CONCLUSION

49. The present application is dismissed as not receivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 8th day of March 2018

Entered in the Register on this 8th day of March 2018

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi