



**Before:** Rowan Downing

**Registry:** Geneva

**Registrar:** René M. Vargas M.

ISLAM

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

UNICEF

## **Introduction**

1. On 19 June 2018, the Applicant, a former staff member with the United Nations International Children's Emergency Fund (“UNICEF”) in Bangladesh, filed an application in which he contests the decision to cancel the payment to him of an indemnity benefit following his separation from service on 5 July 2017.

## **Background facts**

2. By a letter of 20 September 2016, from the Officer-in-Charge (“OIC”), Human Resources, UNICEF Bangladesh Country Office, the Applicant was advised that his post would be abolished at the close of business on 31 December 2016. The letter proffered advice concerning details of the benefits he would receive upon separation, one of which was a termination indemnity.

3. By a letter of 18 April 2017, which was expressed to supersede a letter of 15 December 2016 from UNICEF Global Shared Services Center (“GSSC”), a copy of which was not provided to the Tribunal and is not required for current purposes, it was confirmed to the Applicant by a Human Resources Officer, GSSC, that his request for a separation deferral had been granted. This resulted in the Applicant being placed on special leave without pay from 1 January 2017 to 5 July 2017. He was then separated from the Organization on 5 July 2017, on early retirement. This letter of advice did not mention the payment of a termination indemnity and such was not paid to the Applicant upon his retirement.

## **Consideration**

4. The Tribunal may, in the interest of judicial economy, first consider if the matter before it is receivable (see *Gehr* 2013-UNAT-313, *Christensen* 2013-UNAT-335).

5. Article 8 of the Statute of United Nations Dispute Tribunal governs the receivability of matters before it, relevantly providing that:

1. An application shall be receivable if:

...

(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;

(ii) In cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant's receipt of the administrative decision;

....

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.

6. It follows that a staff member must request management evaluation of the impugned decision before he or she can challenge it before this Tribunal, unless management evaluation is not required by the applicable rules.

7. Pursuant to staff rules 11.2(a) and (b), management evaluation is required, except when the administrative decision that the staff member seeks to challenge was taken "pursuant to advice obtained from technical bodies, as determined by the

Secretary-General” or follows the completion of a disciplinary process. It is clear that the present case does not fall under any of these two exceptions.

8. The Applicant stated in his application that he has not requested management evaluation of the impugned decision. The Applicant cannot now make such request, as it was required to be made 60 days after he was notified of the contested administrative decision (see staff rule 11.2 (c)). That is, 60 days after 18 April 2017, which was the date of the impugned decision. The time to request management review thus expired on 17 June 2017, over a year before the Application was made.

9. Given the Applicant did not seek management evaluation of the contested decision, the Tribunal has no jurisdiction to consider it. The application is not receivable *ratione materiae*.

10. The Tribunal makes no comment on the merits or otherwise of the substantive complaint, but notes that this is a case where it may be appropriate for the Respondent to better explain to the Applicant the basis for him not being paid the termination indemnity upon his separation from service from the Organization. This is particularly relevant in the case at hand because deferring the date of separation from service, and thus changing the reason for it to “separation upon appointment expiry”, entailed entitlements different from those arising from a separation following the abolition of a post.

### **Conclusion**

11. In view of the foregoing, the application is dismissed as not receivable.

*(Signed)*

Judge Rowan Downing

Dated this 14<sup>th</sup> day of November 2018

Entered in the Register on this 14<sup>th</sup> day of November 2018

*(Signed)*

René M. Vargas M., Registrar, Geneva