



**Before:** Judge Margaret Tibulya

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

SIVAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT ON RECEIVABILITY**

---

**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Clémentiné Foizel, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is a former Supply Assistant, at the United Nations Disengagement Observer Force (“UNDOF”), based in Camp Ziouani, Israel.<sup>1</sup> On 14 September 2021, he filed an application before the Dispute Tribunal contesting UNDOF’s decision to separate him for abandonment of post.<sup>2</sup>

## **Background**

2. In 2020, due to reasons relating to his personal safety at work and the Covid-19 pandemic restrictions in Israel, the Applicant did not report to work.<sup>3</sup>

3. On 3 December 2020, the Chief Human Resources Officer (“CHRO”), UNDOF, requested the Applicant to report to work, advising him that his continued absence would be treated as unauthorized.<sup>4</sup>

4. On 14 December 2020, the CHRO wrote to the Applicant again indicating that he had not reported to work. The CHRO clarified that if he did not return to work immediately, the Mission would move forward with the process of separating him for abandonment of post.<sup>5</sup>

5. On 17 December 2020, the CHRO sent an email to him requesting that he return to work within ten days failure of which, abandonment of post proceedings would commence.<sup>6</sup>

6. On 18 December 2020, the Applicant reported to the camp, and informed the CHRO accordingly. On the same day, Mr. Bernard Lee, the Chief of Mission Support

---

<sup>1</sup> Application, section II.

<sup>2</sup> Ibid, section V.

<sup>3</sup> Ibid, section VII, paras. 1-6.

<sup>4</sup> Application, annex 4.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid, section VII, para. 7.

(“CMS”) noted the Applicant’s presence at work and advised him on the security protocols to observe while going to the office.<sup>7</sup>

7. Information in the documents before the Tribunal indicates that the Applicant reported to work on 18 December 2020 but that he did not continue to report on duty thereafter.<sup>8</sup> Consequently, between 23 December 2020 and 20 January 2021, several emails were exchanged between the Applicant and UNDOF. The Applicant maintained that his inability to report to work was due to personal security concerns and to Covid-19 restrictions. The UNDOF maintained that his security risk level was low and that he should report to work.<sup>9</sup>

8. On 25 January 2021, the Applicant was separated for abandonment of post.<sup>10</sup>

9. In response to the Applicant’s Counsel, UNDOF, on 6 April 2021, stated that the Applicant was not entitled to termination indemnity because he was separated due to abandonment of post.<sup>11</sup>

10. On 20 May 2021, the Applicant requested management evaluation of the contested decision. On 16 July 2021, the Management Evaluation Unit responded, informing him that his request was not receivable since it had been submitted beyond the 60 calendar-day statutory deadline.<sup>12</sup>

11. On 14 September 2021, the Applicant filed this application which was served on the Respondent with a deadline to file his reply by 21 October 2021.

12. On 28 September 2021, the Respondent filed a motion arguing that the application is not receivable *ratione materiae*. In the motion, the Respondent requested that the Tribunal determine the receivability of the application as a preliminary matter.

---

<sup>7</sup> Unnumbered annex to the Application.

<sup>8</sup> Application, annex 4.

<sup>9</sup> Application, section VII, paras. 9-11; Application, annex 4.

<sup>10</sup> Application, annex 4.

<sup>11</sup> Application, annexes 3 and 4.

<sup>12</sup> Ibid, annex 4.

The Respondent also sought suspension of the 21 October 2021 deadline for the filing of the reply pending the Tribunal's determination of the motion.

13. By Order No. 214 (NBI/2021), issued on 8 October 2021, the Tribunal granted the Respondent's motion. The Tribunal also directed the Applicant to file a response to the Respondent's motion specifically on the issue of receivability as argued by the Respondent.

14. On 1 November 2021, the Applicant complied and filed his submissions on the issue of receivability.

### **Submissions**

15. The Respondent contends that the application is not receivable *ratione materiae* because the Applicant did not request management evaluation within the 60-day statutory period of staff rule 11.2(c). The 60-day period commenced on 25 January 2021, the day the Head of Mission notified the Applicant of the contested decision. On that day, all relevant facts were known or should have reasonably been known to the Applicant. Instead, the Applicant mailed his request for management evaluation on 16 April 2021, more than three weeks after the expiration of the statutory deadline.<sup>13</sup>

16. The Applicant submits that it would be in the interest of justice that he is given the opportunity to present his evidence on the merits of the case rather than foreclosing it by imposing a technical bar of which neither the Applicant nor his Counsel at the time, were aware of. He further argues that the issue of time limitation would have been adhered to had the United Nations officers familiar with the procedures been forthcoming and cooperative. He, accordingly, requests the Tribunal to deny the Respondent's motion and proceed to review his application.

---

<sup>13</sup> Respondent's motion to determine receivability as a preliminary matter.

## Considerations

17. The question before the Tribunal is whether or not the Applicant sought management evaluation within the stipulated timelines.

18. Staff rule 11.2(c) provides that “a request for management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.” Article 8.3 of the Dispute Tribunal’s Statute provides that the Tribunal shall not waive or suspend the deadlines for management evaluation.

19. The Applicant does not dispute the fact that he did not request management evaluation within the 60-day statutory period of staff rule 11.2(c). He does not dispute the assertion that while the 60-day period commenced on 25 January 2021, he mailed his request for management evaluation on 16 April 2021, more than three weeks after the expiration of the statutory deadline.

20. While he pleads ignorance of the rules relating to seeking management evaluation, the Applicant doesn’t deny that he had legal representation at the material time. His legal representative should have advised him about the relevant rules. This, coupled with the fact that the Tribunal’s jurisprudence puts an obligation on staff members to know the applicable regulations and rules and ensure that they are complied with,<sup>14</sup> provide an effective response to the Applicant’s assertions.

21. The Applicant argues that it would be in the interest of justice to be given the opportunity to present his evidence on the merits of the case rather than foreclosing it by imposing a technical bar of which neither he nor his Counsel were aware of. The requirement for management evaluation is however, a legal requirement and not a mere technical bar as the Applicant portrays it. The interest of justice is served when laws are complied with.

---

<sup>14</sup> See *Dzuveronic* 2013-UNAT-338, para, 31; *Jennings* 2011-UNAT-184, para, 26.

22. The assertion that the time limits would have been adhered to had the United Nations officers familiar with the procedures been forthcoming and cooperative is untenable. The United Nations officers had no obligation to advise the Applicant about the rules relevant to his application.

23. Since to his admission the Applicant did not seek management evaluation in a timely manner before he filed this application, it is not receivable *ratione materiae*.

**Conclusion**

24. The application is dismissed as not receivable.

*(Signed)*

Judge Margaret Tibulya  
Dated this 15<sup>th</sup> day of July 2022

Entered in the Register on this 15<sup>th</sup> day of July 2022

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi