



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/018  
Judgment No.: UNDT/2022/124  
Date: 17 November 2022  
Original: English

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**Before:** Judge Eleanor Donaldson-Honeywell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

HAROUN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**

Norbert Okumu

**Counsel for the Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Fatuma Minde-Silungwe, AS/ALD/OHR, UN Secretariat

## **Introduction and procedural history**

1. On 16 February 2022, the Applicant, a former Associate Human Resources Officer with the United Nations-African Union Hybrid Operation in Darfur (“UNAMID”), filed an application with the Dispute Tribunal contesting what he describes as “8 outstanding claims for 4000 former UNAMID national staff members and the claims were refuted by UNAMID management on 28 August 2021”.

2. The Respondent filed a motion to have receivability determined as a preliminary matter on 17 March 2022. Vide Order No. 042 (NBI/2022), the Tribunal refused the motion and directed the Respondent to file a reply on receivability and on the merits by 18 April 2022.

3. The Applicant filed a reply to the Respondent’s motion on 25 March 2022.

4. The Respondent filed a reply on receivability and on the merits on 19 April 2022.<sup>1</sup>

5. On 26 August 2022, the Applicant was directed to supplement his response to the Respondent's receivability motion by filing an additional submission that fully and clearly addressed the issues raised by the Respondent at paragraphs 6, 7, 8, 9, 11 and 12 of his receivability motion, by 22 September 2022.

6. The Applicant filed the required response on 21 September 2022.

7. The Applicant was previously self-represented. On 5 October 2022, the Applicant filed a Legal Representative Authorization Form notifying the Tribunal that he was now represented by Counsel.

8. The Tribunal held a case management discussion (“CMD”) on 6 October 2022. At the CMD, the parties agreed, *inter alia*, that an oral hearing was not required in this case.

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<sup>1</sup> 18 April 2022 was an official United Nations holiday in Kenya.

9. On 7 October 2022, the Tribunal issued Order No. 146 (NBI/2022) in which the Applicant was, *inter alia*, granted leave to file an amended application by or before 5.00 p.m. (Nairobi time), on 28 October 2022.

10. On 28 October 2022, the Applicant filed a motion seeking an extension of time to file the amended application. On the same day, the Tribunal granted the Applicant's motion until 5.00 p.m. (Nairobi time) on Monday, 31 October 2022.

11. On 1 November 2022, the Applicant's Counsel, having failed to file the amended application as per the new deadline, informed the Tribunal that "such an extension has to be carried in a formal order from the [J]udge" and that he believed that the "application for extension of time has to be placed before the [T]ribunal for hearing and determination".

12. On 1 November 2022, the Tribunal issued Order No. 157 (NBI/2022) in which the Applicant was granted, on an exceptional basis, an extension of time until 5.00 p.m. (Nairobi time) on 1 November 2022 to file his amended application. He failed to do so.

13. On 1 November 2022, the Applicant filed a motion requesting for an oral hearing on the ground that "[u]pon reading the application and response, it is apparent that oral evidence should be taken to prove the claims especially because the Respondent has refuted the said claims entirely."

14. The Respondent filed a response to the Applicant's motion on 3 November 2022.

15. On 4 November 2022, the Tribunal issued Order No. 158 (NBI/2022) in which it was determined, *inter alia*, that the case would proceed without the amended application and without an oral hearing. The Applicant was granted leave to file a closing submission on receivability and on the merits raised by the Respondent in the 3 November 2022 response, by 15 November 2022.

16. The Applicant failed to file the closing submission as directed.

### **Summary of the relevant facts**

17. The Applicant joined UNAMID on 22 July 2007 as an Associate Human Resources Officer. He was separated from the Organization upon expiry of appointment on 10 November 2021.<sup>2</sup>

18. In February 2016, a revised national salary scale was established which resulted in a salary increase effective 1 September 2015 with the option of payment of salary in Sudanese Pounds (“SDG”) or in United States Dollars (“USD”).<sup>3</sup>

19. By memorandum dated 10 February 2016, the Chairperson, UNAMID National Staff Association (“NSA”), informed the Under-Secretary-General for the Department of Field Support (“USG/DFS”) that they had rejected the proposed disbursement of salaries in local currency and requested payment in USD.<sup>4</sup>

20. On 9 March 2016, the Chairperson/NSA sent a memorandum to UNAMID’s Director of Mission Support (“DMS”) making an appeal for a one-time opportunity for the national staff to retroactively reimburse to the United Nations system their September 2015 to February 2016 salaries, originally disbursed in SDG, and have them repaid in USD according to the United Nations exchange rate.<sup>5</sup>

21. On 15 March 2016, UNAMID raised the matter with the former Field Personnel Division, Department of Field Support for their review.<sup>6</sup>

22. On 5 June 2016, the Chairperson/NSA sent another letter to the USG/DFS requesting for his urgent intervention to address the issue of the delay in approval of the NSA’s request for national staff refund salaries from September 2015 to February

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<sup>2</sup> Reply, annex R/1.

<sup>3</sup> Application, annex 4, management evaluation response dated 16 December 2021, at page 4.

<sup>4</sup> Unnumbered annex to the application.

<sup>5</sup> Unnumbered annex to the application.

<sup>6</sup> Application, annex 4, management evaluation response dated 16 December 2021, at page 4.

2016.<sup>7</sup>

23. On 17 June 2016, the Assistant Secretary-General, Human Resources Management and the Assistant Secretary-General, Controller, Office of Programme Planning, Budget and Accounts, informed the members of the UNAMID/NSA that the Organization was not in a position to retroactively pay locally recruited UNAMID National Staff in USD from, September 2015 to February 2016, the portion of the salary that had already been paid in SDG.<sup>8</sup> UNAMID/NSA members went on strike in July and August 2016, demanding the refund.<sup>9</sup>

24. On 17 August 2016, a code cable was issued by the USG/DFS to UNAMID indicating that an agreement had been reached with the Controller to reissue payments of salaries for one month of the six month's refund claimed, namely the month of February 2016 in USD for Sudan-based National Staff.<sup>10</sup>

25. On 19 August 2021, the representatives of former UNAMID National Staff sent a letter to the Officer-in-Charge/UNAMID.<sup>11</sup> They raised several issues:

- a. Pending payment of staff salary refund for five months;
- b. Pension miscalculation and non-inclusion of Mission contribution;
- c. Portion reimbursement against staff Medical Insurance Plan ("MIP") contribution after Mission closure;
- d. Entitlements of staff contract status after five years in service;
- e. Review of staff salary payment methodology;
- f. Refund of income tax earned from staff assessment deduction;

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

<sup>8</sup> Respondent's motion to have receivability determined as a preliminary matter, annex R/2.

<sup>9</sup> Application, page 5

<sup>10</sup> Application, annex 4, management evaluation response dated 16 December 2021, at pages 4 and 5.

<sup>11</sup> Unnumbered annex to the application.

- g. Entitlements related to an End-of-Service Allowance;
- h. Mission reply to NSA outstanding National Staff concerns; and
- i. Group financial outstanding demands and other individual pending cases.

26. The Officer-in-Charge/UNAMID responded to the letter on 28 August 2021 providing an outcome and rationale for each issue raised.<sup>12</sup>

27. By letter dated 21 October 2021, Mr. AA, filed a request for management evaluation (“ME request”) on his own behalf and on behalf of over 2,700 other former UNAMID National Staff of the decisions not to reimburse staff assessment deducted from their salary and not to pay full salary in USD for the period September 2015 to February 2016. Mr. AA also described the contested decision as the one contained in the letter dated 28 August 2021.<sup>13</sup>

28. On 16 December 2021, the Management Evaluation Unit (“MEU”) determined that the ME request was not receivable.<sup>14</sup>

### **Parties’ submissions on Receivability**

#### ***The Respondent***

29. The Respondent submits that the application is not receivable, for the reasons provided below.

- a. The Dispute Tribunal lacks jurisdiction to adjudicate representative claims brought on behalf of other staff members. Even if the Dispute Tribunal individualizes the alleged contested decision, the Applicant does not identify a precise decision that is in non-compliance with his terms of appointment and his contract of employment. The Applicant has not produced any evidence

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<sup>12</sup> Application, annex 2.

<sup>13</sup> *Ibid.*, at annex 3.

<sup>14</sup> *Ibid.*, at annex 4.

that he requested management evaluation within 60 days of when he first became aware of any contestable administrative decision that had adverse consequences for his employment contract.

b. The Dispute Tribunal's Statute grants jurisdiction to adjudicate individual claims only. The Applicant purports to file this application on behalf of 4,000 former UNAMID locally recruited National Staff members regarding eight different unspecified claims. Where a group or class of people claim contractual breaches, each person must file an individual application. In the absence of such individual applications, the Applicant may only contest an administrative decision that directly affects his terms of appointment.

c. Even assuming that the application is construed to be brought on behalf of the Applicant only, it is still not receivable. As a former staff member, the Applicant does not contest a decision relating to his former terms and conditions of employment. Nor does he claim a violation of a right arising from his status as a staff member. He does not identify any decision taken that was in non-compliance with his contract of employment in line with art. 2.1(a) of the UNDT Statute. Administrative decisions must be identified with precision and particularity.

d. The application is vague and imprecise. It refers generally to eight claims, not any specific decision regarding the Applicant. The Applicant does not allege that he was entitled to, requested, and was denied a refund of salary for September 2015 to January 2016 or any other relief. The direct negative legal consequences of a decision cannot be presumed. Even if the Applicant did have such a claim, it would be barred by staff rule 3.17(ii) which requires a staff member to make a written claim for retroactive payment of an allowance, grant or other payment within one year following the date on which the staff member would have been entitled to the initial payment.

e. The Applicant does not identify any administrative decision to unlawfully deduct staff assessment from his salary or not to pay him termination indemnity, relocation allowance, daily subsistence allowance (“DSA”), or any other entitlement. The application mentions these general grievances without specifying any administrative decision. The Dispute Tribunal may only individualize this application as one brought on behalf of the Applicant if he has identified contestable administrative decisions relating to his employment contract for which he has timely requested management evaluation. He has not done so.

f. The only decision to which the Applicant has referred is the 28 August 2021 letter regarding payment of a salary refund from 1 September 2015 to 31 January 2016. If the Dispute Tribunal finds this is a contestable administrative decision, the Dispute Tribunal lacks subject matter jurisdiction for lack of timely management evaluation. The 28 August 2021 letter only reiterated a June 2016 decision that was communicated to the UNAMID/NSA of which the Applicant was aware or reasonably should have been aware when it was made. The 28 August 2021 letter does not constitute a new decision. Reiteration of an original administrative decision does not reset the clock with respect to applicable statutory deadlines.

g. Based on this notification, the Applicant had to request management evaluation by 16 August 2016, 60 days after being notified. The Applicant was aware of the Administration’s decision and states that in July and August 2016, he participated in a strike to oppose the decision. In addition, the Applicant’s July 2016 pay slip reflected that he continued to be paid in SDG notwithstanding the NSA’s request for payment in USD. The Applicant did not request management evaluation in time and the Dispute Tribunal has no discretion to waive the deadline.

h. The Application is also not receivable *ratione temporis*. The cause of action that the Applicant has identified as the contested decision arose over



five years ago. Therefore, the application is time-barred under art.8(4) of the UNDT Statute. This provision is an absolute restriction on the Dispute Tribunal's discretion to waive the time limit to file an appeal more than three years after the Applicant received the contested decision.

***The Applicant***

30. The Applicant's submissions on receivability are summarized below.

a. The interests of judicial economy and efficiency are better served when a court accepts a group action/group litigation where several individuals with similar claims, arising from similar circumstances proceed as a single group. This helps the courts by not having to hear every single small claim that comes their way.

b. The Applicant submits that at the time of filing the application, he had the legal power of attorney to represent all former UNAMID National Staff. The former UNAMID National Staff requested refund of their salaries from September 2015 to February 2016 on many occasions and even went on strike.

c. The former UNAMID National Staff who were entitled to DSA were only paid for 45 instead of 90 days.

d. The letter dated 17 June 2016 had never been communicated to former UNAMID National Staff and the first written response they received was the letter of 28 August 2021.

e. The claim for non-payment of wages is not time-barred and "statute-barred does not mean the debt no longer exists". Their rights continue to exist "notwithstanding that the remedy is barred by limitation".

f. The former UNAMID National Staff escalated their demand for salary refund immediately after they became aware of the decision of salary

currency conversion through the NSA on 9 March 2016. This was within the 60-days period. They continued pursuing their claims to date. They went on strike in July and August 2016, but UNAMID decided to pay for only one month instead of six months.

g. As the Mission failed to respond to them in writing, they escalated their claims to the DMS.

h. There are many legal precedents proving that whenever there are due claims, they should be cleared even after several years as happened in the case of former UNAMID Security Guards who were paid claims dating back eight years.

i. The former UNAMID National Staff feared retaliation and downsizing that is why they did not strongly pursue their claims. Now that they are no longer staff members, they can pursue their demands “openly and fearlessly”.

### **Considerations**

31. The initial threshold for applicants seeking judicial review of the Respondent’s administrative decisions to overcome is that the application must be receivable. The grounds for receivability are governed by the regulatory framework as interpreted in binding judgments of the Appeal’s Tribunal. Accordingly, it is incumbent on applicants seeking justice on the merits, to ensure that their applications are made in a manner that qualifies to be heard by the Dispute Tribunal. In the instant case, the Applicant has failed on several grounds, to meet the receivability requirements. The application is not receivable for several reasons as further explained in this Judgment.

#### *No evidence of timely Management Evaluation Request by the Applicant*

32. Staff rule 11.2(c) provides that “[a] request for a 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.** 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.” [Emphasis added]. The timely submission of the ME request is critical in that the Dispute Tribunal’s jurisdiction in non-disciplinary matters is limited to determining applications that are preceded by timely ME requests<sup>15</sup>.

33. At the outset it is noted that there is no evidence on record of an ME request submitted by the Applicant. Instead, the instant application was preceded only by an ME request made in October 2021, by a colleague of the Applicant, one Mr. AA. It is apparent however, that the Applicant considers the said ME request to have been made on his behalf as one of the affected members of the UNAMID national staff.

34. Of greater relevance to the issue of receivability is that the ME request was submitted more than four years after the Applicant received notification of the administrative decision being contested. The decision was made in June 2016 and communicated to the UNAMID/NSA of which the Applicant was a member. The Applicant admits that he was aware of it around that time as he participated in the July 2016 strike action protesting the decision.

35. According to the Applicant, there was no response in writing to the NSA’s demands for reversal of the decision not to pay the refunds until the 28 August 2021 letter<sup>16</sup>. However, the Applicant ought reasonably to have been aware that the June 2016 decision had not been reversed when he received, with no refund, his July 2016 pay slip and all that followed thereafter. The fact that the administrative decision being contested was reiterated in the 28 August 2021 response to Mr. AA’s correspondence dated 19 August 2021, did not bring forward the effective date when the Applicant received notice of the decision<sup>17</sup>.

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<sup>15</sup> Article 8.1(c) of the Statute of the Dispute Tribunal

<sup>16</sup> Applicant’s Response filed on 21 September 2022, Page 2.

<sup>17</sup> *Mbok* 2018-UNAT-824 at para. 42.

36. The application is accordingly not receivable on grounds that there was no timely ME request.

*No precise identification of an individualized administrative decision*

37. Article 2.1(a) of the Statute of the Dispute Tribunal makes clear that the Tribunal is competent to hear and pass judgement on “an application filed by an individual.” The purpose of the application must be “to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.” Administrative decisions are characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.<sup>18</sup>

38. In the instant case, the application is not in the form of an individual claim. Neither the application nor the prior ME request filed by Mr. AA refer specifically to the Applicant. Instead, these documents are expressly submitted in a representative capacity on behalf of several NSA members. There is no clear statement in the application identifying the Applicant as one of the persons adversely affected by the challenged decision. The conclusion the Tribunal draws from the wording of the application is that it is intended to be a representative claim brought by the Applicant on behalf of other staff members.

39. As correctly submitted by the Respondent, established Appeals Tribunal jurisprudence underscores that the Dispute Tribunal does not have jurisdiction to hear representative claims<sup>19</sup>.

32. A staff representative acting on behalf of staff members does not have standing to bring an application in the UNDT challenging an administrative decision. The UNDT Statute is quite clear that the right to challenge an administrative decision in the UNDT is an individual right.

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<sup>18</sup> *Lee*, 2014-UNAT-481 at paras. 48-49, citing former Administrative Tribunal Judgment No. 1157, *Andronov* (2003).

<sup>19</sup> *Faye* 2016-UNAT-657 at paras. 32-35.

33. Article 2(1) of the UNDT Statute provides that the Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

34. Article 3(1) of the UNDT Statute defines the individual who is entitled to file an application as being: (a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes; (b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes; (c) 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 United Nations funds and programmes.

35. There is no statutory provision or other law which gives the UNDT jurisdiction to entertain an application by a staff representative on behalf of staff members. The only recognition given to a staff association in the UNDT Statute is contained in Article 2(3), which provides: “The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association”.

40. On this basis, the application is not receivable. Even if the application could be interpreted as intended to relate to the Applicant as an individual, it fails to precisely identify how the decision challenged amounted to non-compliance with his own identified terms of appointment or contract of employment individually.

41. Appeals Tribunal jurisprudence holds that a staff member is required to clearly identify the administrative decision which is contested.<sup>20</sup> The only administrative decision specified in the application as being challenged is the 28 August 2021 letter. However, the application provides no specific details on the impact of that letter, or the 2016 decision reiterated therein on the Applicant himself. The application is therefore not receivable *ratione materiae*.

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<sup>20</sup> *Argyrou*, 2019-UNAT-969 at para 32

*Application filed out of time*

42. Article 8(4) of the Dispute Tribunal’s Statute provides that “an application shall not be receivable if it is filed more than three years after the applicant’s receipt of the contested administrative decision.”

43. The contested decision referred to in the application was the letter issued on 28 August 2021. However, it reiterates a 2016 decision. The instant application was not filed until February 2022. It is therefore not receivable *ratione temporis*.

**Conclusion**

44. For the reasons set out above the application is not receivable and is therefore dismissed.

*(Signed)*

Judge Eleanor Donaldson-Honeywell

Dated this 17<sup>th</sup> day of November 2022

Entered in the Register on this 17<sup>th</sup> day of November 2022

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi