



**Before:** Judge Sean Wallace  
**Registry:** Nairobi  
**Registrar:** René M. Vargas M., Officer-in-Charge

NDUATI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for Applicant:**  
Namada Simoni

**Counsel for Respondent:**  
Nisha S. Valabhji, UNON

## **Introduction**

1. The Applicant, a former Cyber Security Compliance Officer at the Office of Information and Communication Technology (“OICT”), United Nations Office at Nairobi (“UNON”), seeks to contest what she terms as her “termination of employment through constructive dismissal”.

## **Factual and procedural background**

2. On 10 August 2023, the Applicant sent an email to her First Reporting Officer (“FRO”) in which she wrote:

I thought I would write a reconfirmation of resignation from the post of Regional Cybersecurity Compliance Officer, as I informed you in our meeting in June, and you confirmed on [sic] text and email. ... You may share the first paragraph reconfirming my resignation.

3. On 24 August 2023, via email, a Human Resources Officer, UNON, sent the Applicant a separation memorandum and other separation documents. The Applicant has identified this email as the contested decision and asserts that she received it on 28 August 2023.

4. The Applicant sought management evaluation on 8 November 2023. On 7 December 2023, the Management Evaluation Unit (“MEU”), (as it then was) found the Applicant’s request for management evaluation not receivable on the ground that it was time-barred. The MEU is currently known as the Management Advice and Evaluation Section.

5. On 14 November 2023, while the management evaluation was pending, the Applicant filed an incomplete application before the United Nations Dispute Tribunal (“UNDT”) sitting in Nairobi challenging the contested decision referred to in para. 1 above. After several reminders by the Registry, the Applicant completed her application on 30 April 2024.

6. The Respondent filed a reply on 23 May 2024, in which it is argued that the application is not receivable *ratione materiae* and *ratione temporis*.

7. By Order No. 60 (NBI/2024), issued on 28 May 2024, the Applicant was directed to file a response to the Respondent's position on receivability on or before 28 June 2024.

8. In her response, filed on 29 July 2024, the Applicant concedes that "there was a delay in sending the document to the management evaluation office". She also admitted "delay with UNDT".

### **Consideration**

9. The Respondent contends that the application is not receivable *ratione materiae* in light of the absence of a timely request for a management evaluation, which is a mandatory first step in the judicial review process.

10. Further, the Respondent submits that the application is also not receivable *ratione temporis*. He contends that the Applicant's submission before the Tribunal was completed on 30 April 2024 and that, assuming that the application was receivable *ratione materiae*, it should have been filed in its entirety by 6 March 2024, that is 90-calendar days from the date the Applicant received the MEU's response, in accordance with art. 8(1)(d)(i)(a) of the Tribunal's Statute.

11. The Applicant concedes that she sought management evaluation out of time and gives no explanation for the delay.

12. 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 Statute of the UNDT provides that the Tribunal shall not waive or suspend the deadlines for management evaluation.

13. Pursuant to the evidence on the record, the Applicant received the contested decision on 28 August 2023. To comply with the 60-day calendar days, the Applicant ought to have submitted her request by 27 October 2023. However, she submitted her request on 8 November 2023, nearly two weeks later.

14. Accordingly, the Tribunal finds that the request for management evaluation was time-barred, and as a result that this application is not receivable *ratione materiae*.

15. The Respondent also argues that the application was not receivable *ratione temporis* since the application was only completed on 30 April 2024. The Applicant submits that the time taken to complete her application was caused by delays in receiving medical information, accessing the Tribunal's e-filing portal and retrieving supporting documentation.

16. The Tribunal takes note that since its creation in 2009, it has consistently used the initial date of the filing of an application, complete or incomplete, to determine compliance with the filing deadline. Therefore, the Respondent's argument concerning receivability *ratione temporis* is invalid. If at all, the application may be premature, but this argument was not raised.

### **Conclusion**

17. In view of the foregoing, the Tribunal DECIDES that the application is dismissed.

*(Signed)*

Judge Sean Wallace

Dated this 14<sup>th</sup> day of August 2024

Entered in the Register on this 14<sup>th</sup> day of August 2024

*(Signed)*

René M. Vargas M., Officer-in-Charge, Nairobi