



Before: Judge Eleanor Donaldson-Honeywell

Registry: Geneva

Registrar: René M. Vargas M.

EFRATI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Albert Angeles, DAS/ALD/OHR/UN Secretariat

Introduction

1. The Applicant, a Senior Staff Assistant at the United Nations Office at Vienna (“UNOV”), contests a decision to delay her long service step increment from 1 August 2026 to 1 August 2028.
2. For the reasons set forth below, the Tribunal finds that the Applicant’s case is not receivable.

Facts

3. On 9 December 2022, the Applicant received a disciplinary sanction comprising three elements: a written censure, loss of two steps in the grade, and deferment for two years of eligibility for salary increment, in accordance with staff rule 10.2(a)(i), (ii), and (iii). This is the “original contested decision”.
4. On 9 March 2023, the Applicant filed an application with this Tribunal to contest the aforementioned disciplinary sanction, which was registered under Case No. UNDT/GVA/2023/013.
5. After engaging in settlement discussions, the parties signed a settlement agreement dated 22 August 2023 (“the Agreement”). In it, they agreed, on the one hand, that the Respondent would rescind the loss of two steps in the grade imposed on the Applicant. The other two elements of the sanction remained unchanged. On the other hand, the Applicant undertook to withdraw her application before the Tribunal, namely Case No. UNDT/GVA/2023/013 . The Agreement entailed a full and final resolution of any and all causes of action against the Organization in connection with the “original contested decision”.
6. As a result of the above,
 - a. The Applicant withdrew her application in above-mentioned case;
 - b. The Applicant was restored to the G-6 level, step 11, with retroactive effect from 9 December 2022;

c. The decision letter dated 9 December 2022 was amended to remove the portion of the disciplinary measures consisting of loss of two steps in the grade; and

d. The disciplinary measures of written censure and deferment for two years of eligibility for salary increment were maintained.

7. The Agreement included a provision that in the event the Applicant “claims that implementation has not occurred as agreed and provided by the terms of [the] Agreement, [she] may file an application for enforcement of the Agreement pursuant to art. 8 of the Statute of the UNDT”.

8. On 24 August 2023, the Organization re-issued the disciplinary sanction of 9 December 2022 (see para. 6.c above).

9. On 19 September 2023, in response to a letter written by the Applicant seeking “guidance” on how the amended sanction would be implemented, she was informed that instead of receiving her long service step increment in August 2026, she would receive it in August 2028 due to the deferment for two years of eligibility for salary increment. This is the “contested decision”.

10. The Administration noted in the Applicant’s UMOJA records that:

Staff member is at step 11 and due for long service step review in August 2026, upon rescinding the decision for loss of two steps. To maintain the implementation of deferment for two years of eligibility for salary increment, the new date to review the eligibility for long service step increment is set to August 2028.

11. On 16 November 2023, the Applicant sought management evaluation, identifying the delaying of the grant of long service step increment as the challenged decision.

12. On 17 November 2023, the Applicant filed an application for enforcement of the aforementioned settlement agreement, registered under Case No. UNDT/GVA/2023/061. The application was rejected as not receivable by Judgment No. UNDT/2024/092.

13. On 22 December 2023, the Management Evaluation Unit (“MEU”) determined that the Applicant’s request for management evaluation was not receivable.

14. By application filed on 22 March 2024, the Applicant contests the decision dated 19 September 2023 to delay her long service step increment from 1 August 2026 to 1 August 2028.

15. On 1 April 2024, the Respondent filed his reply. In it, he contests, *inter alia*, the receivability of this application.

16. By Order No. 68 (GVA/2024) of 21 June 2024, the Tribunal instructed the Applicant to file a rejoinder, and encouraged the parties to explore alternative dispute resolution.

17. On 19 July 2024, the Applicant filed her rejoinder.

18. On 29 July 2024, the parties filed a joint submission informing the Tribunal that they were not able to reach an amicable settlement.

19. By Order No. 121 (GVA/2024) of 26 September 2024, the Tribunal granted the Applicant’s request for disclosure of evidence and instructed the parties to file their respective closing submissions by 18 October 2024.

20. On 4 October 2024, the Respondent submitted the evidence requested by the Applicant, pursuant to Order No. 121 (GVA/2024).

21. On 18 October 2024, the Applicant and the Respondent filed their respective closing submissions.

Consideration

Whether the application is receivable

22. The Applicant claims that, by informing her that she would only be entitled to the long service step increment in August 2028 instead of August 2026, the Administration effectively made a new and separate administrative decision that is

reviewable under the Tribunal's jurisdiction. She further asserts that this decision is unlawful and against the terms of the Agreement because, by August 2026, the two years sanction she received will have already expired.

23. The Respondent, however, contends that the 19 September 2023 communication to the Applicant (i.e., the contested decision) does not constitute a new and separate administrative decision. Instead, it is simply a response to her query about the implementation of the disciplinary sanction imposed on the Applicant. The response explained that the deferment of two years of eligibility for salary increment could only be effective if counted from the moment the Applicant becomes eligible for a salary increment, which is, precisely, August 2026.

24. As it follows, the issue under challenge for the purpose of receivability is whether the communication sent to the Applicant on 19 September 2023 constitutes a reviewable administrative decision.

25. To answer it, the Tribunal first turns to its Statute. According to arts. 2.1(a) and 8.1(a), the Dispute Tribunal is competent to hear and pass judgment on an application to appeal an administrative decision that is alleged to be in "non-compliance with the terms of appointment or the contract of employment".

26. The Tribunal is, thus, mindful of the fact that staff members can only contest administrative decisions that have a direct and adverse impact on their terms of appointment or employment contract, whose definition is consensual in international administrative law. In this connection it is worth recalling *Lloret Alcañiz et al.* 2018-UNAT-840, para. 61:

An administrative decision is a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences.

27. In the present case, the Applicant is contesting the "decision" dated 19 September 2023. In support, she submits an email of 13 September 2023 from the Chief, Disciplinary Accountability Service, Administrative Law Division instructing the Office of Human Resources that:

“[...] the effect of the disciplinary measure is that [the Applicant]’s eligibility for longevity will be postponed for the stated two-year period, until August 2028. Otherwise, that aspect of the disciplinary measure would be ineffectual”.

28. As it relates to any application challenging an administrative decision imposing a disciplinary measure, the Tribunal’s Statute provides at art. 8.1(d)(ii) that the application is only receivable if filed within 90 calendar days of the Applicant’s receipt of the measure.

29. Two main issues arise in determining receivability of the instant application. They are as follows:

a. Was the 19 September 2023 correspondence a new reviewable decision or was it an explanation of how an unchanged prior disciplinary measure issued on 9 December 2022 would be implemented?

b. Was the application filed within the timeframe permitted by the Statute?

30. The Tribunal’s finding is that there was no decision made by the Respondent in the 19 September 2023 correspondence that adversely affects the rights of the Applicant. The said email was merely a response to the Applicant’s query about how her unchanged 9 December 2022 sanction of deferment of eligibility for salary increment would be affected by the settlement reached in August 2023.

31. The Applicant wrote asking for the said guidance a few days after the settlement in August. The response produced no new direct legal consequences for the Applicant. It served only to explain the consequences on eligibility for increments that flowed automatically from the agreement to reverse the demotion by two steps that was initially part of the sanction.

32. There is also nothing in the Respondent’s disclosed email exchange with HRMS, UNOV, between 31 August 2023 and 13 September 2023, indicative of any new decision taken regarding the 9 December 2022 deferment of eligibility for increment. The correspondence merely shows that the persons concerned were carefully examining the interpretation of the unchanged deferment of increment

eligibility aspect of the 9 December 2022 sanction considering the subsequent change in the Applicant's step.

33. Ultimately, it was made clear, in answer to the Applicant's query, that the deferment of her eligibility for long-service step until August 2028 was a mere consequence of the restoration of two steps in grade and of the implementation of the two years deferment of eligibility.

34. In other words, the sanction the Applicant received of two years deferment of eligibility will count from the moment she becomes eligible for a salary increment. And, as a staff member already occupying the last step of her grade, this will only happen on August 2026, when she becomes eligible for the long-service step increment.

35. Accordingly, the Applicant has failed to establish that the alleged contested decision meets the definition of a new administrative decision.

36. Indeed, the original administrative decision of 9 December 2022 has remained unchanged. In the Tribunal's view, the Applicant's challenge to the September 2023 guidance is in fact a challenge to the initial 9 December 2022 decision. It challenges the unchanged disciplinary decision made at that time. Such a challenge was, therefore, time barred long before the instant application was filed on 22 March 2024.

37. Moreover, the Applicant had already filed and withdrawn an application challenging the 9 December 2022 decision, based on the settlement which included an undertaking by the Applicant not to re-litigate the subject matter of the application.

38. The instant application amounts to an attempt to re-litigate the said subject matter of the prior application. It is not receivable because no new administrative decision is being challenged. To the extent that it re-litigates a challenge to a 9 December 2022 sanction, it is also time barred.

Conclusion

39. In view of the foregoing, the Tribunal DECIDES to reject the application as not receivable.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 13th day of November 2024

Entered in the Register on this 13th day of November 2024

(Signed)

René M. Vargas M., Registrar, Geneva