



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2024/058
Judgment No.:	UNDT/2025/059
Date:	2 September 2025
Original:	English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

SANTOS DA SILVEIRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Hilda Ojiambo, Office of Staff Legal Assistance

Counsel for Respondent:

Nisha Patel, AS/ALD/OHR, UN Secretariat

Charlene Ndirangu, AS/ALD/OHR, UN Secretariat

Introduction and Procedural History

1. The Applicant formerly served the United Nations Truce Supervision Organisation (UNTSO) as a Field Security Officer on a temporary appointment, based in Jerusalem.
2. On 2 September 2024, the Applicant filed an application challenging the denial of his request for a security evacuation allowance (SEA) for the evacuation of his wife who was residing at the duty station with him.
3. The Respondent filed a Motion for Summary Judgment on the grounds that the application was not receivable for failure to file a timely request for management evaluation. The Respondent also filed a reply in which he argued that the application is not receivable and lacking in merit.

Facts and Submissions

4. The Applicant was selected for and offered a six-month temporary appointment, covering 26 September 2023 through 25 March 2024.
5. Prior to being recruited to the post, the Applicant sought advice on whether the terms of his appointment allowed for his spouse to reside with him at the duty station. On 28 July 2023, the Mission informed the Applicant that official travel for eligible family members can only be authorised for staff holding fixed term or continuing appointments, and that if the Applicant wanted to have his spouse join him, he would have to make his own travel and visa arrangements for the spouse. On 31 July 2023, the Applicant acknowledged receipt and understanding of the advice that any travel to the duty station would be at his expense.
6. Conflict broke out in the region on 7 October 2023.
7. On 4 November 2023, the Under-Secretary-General for the Department of Safety and Security (USG/UNDSS) issued a memorandum introducing restrictions for eligible family members of internationally recruited personnel in Jerusalem and elsewhere (“Memorandum”). It stated dependent children were required to depart Jerusalem, but that spouses were permitted to remain if they chose.

8. On 13 November 2023, the Human Resources Network, on behalf of the United Nations System Chief Executive Board, issued administrative guidelines on evacuation-related payments to eligible family members of internationally recruited personnel in Jerusalem:

Eligible family members are those recognized family members of an internationally recruited staff member (holding fixed-term and continuing contracts) who travelled and were installed at the duty station at the Organization's expense and/or reside at the duty station with the staff member.

9. On 6 December 2023, the Applicant informed the Mission that his spouse was evacuating on 10 December 2023 and sought guidance on what documents he needed to submit to access the security evacuation allowance (SEA).

10. On the same day, the Applicant's Human Resources partner advised the Applicant that the Mission's database would be updated to reflect that his spouse has left the mission area and clarified that the allowance is "applicable to staff members whose dependents/spouse were installed in the duty station."

11. The Applicant responded to that advice citing a broadcast dated 10 November 2023 that was sent to everyone in the Mission indicating that the allowance was payable to those who were installed "and/or reside at the duty station with the staff member."

12. Following further correspondence on the issues, the Applicant eventually sought review of the decision by management evaluation on 19 April 2024.

13. On 3 June 2024, the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC) upheld the decision not to pay SEA for the Applicant's spouse.

14. It is the Applicant's case that although his wife was not installed at the duty station, she is a "legally recognised dependent" and was "authorised to reside with him at the duty station."

Considerations

Receivability

15. The Respondent takes the position that the application is not receivable. He argues that the decision to not pay the security evacuation allowance was made on 6 December 2023. The Applicant sought management evaluation on 19 April 2024, which was 74 days past the 60-day deadline.

16. As a preliminary point, the Tribunal notes that receivability was not raised as an issue when the Respondent issued his management evaluation decision. It was argued as a threshold issue only once the Applicant challenged the impugned decision before the Tribunal. The Tribunal may therefore consider the issue waived.

17. As “it is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party,” the Tribunal will go on to consider the issue on the basis of the parties’ arguments. *Olowo-Okello* 2019-UNAT-967, citing *Cardwell* 2018-UNAT-876.

18. Article 8(1)(c) of the UNDT Statute provides that an application shall be receivable if the applicant has previously submitted a contested decision for management evaluation where required. This obligation is also prescribed in staff rule 11.2(a), which provides that a staff member wishing to formally contest an administrative decision shall, as a first step, submit to the Secretary-General in writing a request for management evaluation. The rule goes on to stipulate in paragraph (c), that that request to the Secretary-General must be submitted within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

19. The question before the Tribunal, therefore, is *when* the Applicant received notification of the decision he is contesting.

20. The Applicant submits that he received two emails on 6 December 2023, which were inconsistent, unclear and equivocal. One email said that he was not entitled to the allowance because his wife was not installed at the duty station, and

the second email said that the allowance was not applicable to temporary appointment holders.

21. The Applicant responded by pointing out the conflicting information and arguing against both reasons given for his not being eligible for the allowance.

22. On 20 February 2024, after several follow-up emails, the Applicant was told “OHR [the Office of Human Resources] has advised that you are not eligible for SEA and related expenses as you hold a temporary appointment.”

23. The Tribunal agrees with the Applicant that the initial emails of 6 December 2023 were inconsistent and unclear on the reason for denying the security evacuation allowance. Clarity was only determined in the 20 February 2024 email, and thus, this is when time began to run for the filing of his request for management evaluation.

24. The request for management evaluation was filed on 19 April 2024, which is 59 days after 20 February 2024. Therefore, the application is receivable.

Merits

25. On the merits of the application, the question before the Tribunal is whether the Applicant was entitled to the security evacuation allowance for the evacuation of his spouse from the mission area.

26. The General Assembly adopted resolution A/RES/63/250 on Human Resources Management in December 2008, and determined that

[S]taff on temporary contracts would be eligible to receive *only* the following benefits and allowances: post adjustment; rental subsidy; hazard pay; hardship allowance; the daily subsistence allowance portion of the assignment grant; leave (depending on the length of contract); home leave (per classification of duty station); and limited shipment allowance. [Emphasis added]

27. This exhaustive list of entitlements does not include the security evacuation allowance. The Resolution makes clear that the Organisation is not responsible for either the installation or evacuation of the Applicant’s spouse.

28. Staff rule 7.7 (b) in ST/SGB/2018/1 accords with this policy and expressly states that “[t]he United Nations shall not pay the travel expenses of family members of staff members holding a temporary appointment.”

29. The Applicant points out that Jerusalem was a family duty station and his spouse was legally residing there with him. He then relies on provisions of the Security Policy Manual which do not explicitly distinguish between internationally recruited staff based on their type of appointment. However, in each provision the manual uses the term “eligible family members” and as the spouse of a staff member on temporary appointment, the Applicant’s wife was not an eligible family member under A/RES/63/250 and staff rule 7.7 (b).

30. Additionally, and more importantly, this Tribunal has stated in *Villamorán* UNDT/2011/126, para. 29, that there is a legislative hierarchy within the United Nations:

At the top of the hierarchy of the Organization’s internal legislation is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General’s bulletins, and administrative instructions ... Information circulars, office guidelines, manuals, and memoranda are at the very bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances.

31. So, to the extent that the Security Policy Manual is inconsistent with A/RES/63/250 and staff rule 7.7 (b), the resolution and staff rules govern. Thus, the Applicant’s argument premised on the manual must fail.

32. The Applicant argues that there are “other security benefits and entitlements (such as residential security measures) that are paid to temporary appointment holders that are not mentioned in GA resolution.” The application fails to support this claim with any evidence and, even if it were factually true, that would not change the clear meaning of the resolution and the staff rule.

33. Having failed to demonstrate that the contested decision was unlawful, the application also fails.

Conclusion

34. The application is DISMISSED.

(Signed)

Judge Sean Wallace

Dated this 2nd day of September 2025

Entered in the Register on this 2nd day of September 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi