



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2025/058
Judgment No.: UNDT/2025/076
Date: 17 October 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

OOKO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Khalid A. Issa

Counsel for Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Victoria Nakaddu Mujunga, AS/ALD/OHR, UN Secretariat

Introduction

1. By application filed on 5 June 2025, the Applicant contests the 29 January 2025 decision by the Regional Service Center-Entebbe (“RSCE”) refusing to reconsider the 14 June 2024 United Nations Integrated Transition Assistance Mission in Sudan (“UNITAMS”) decision not to pay him daily subsistence allowance (“DSA”) for the period 24 July 2023 to 31 May 2024 while he was on an alternate working arrangement (“AWA”) in Nairobi. He also contests the related decisions denying his request for DSA and the Management Advice and Evaluation Section’s decision (“MAES”) finding that his request for management evaluation was untimely.
2. The Respondent argues that the contested decisions are not receivable and if found receivable, the application lacks merit.
3. On 8 August 2025, the Applicant filed a rejoinder.
4. Having considered these submissions, the Tribunal is fully apprised of the facts and arguments of the parties and prepared to rule on the application.

Facts

5. The Applicant joined the Organization in 1990 and served in various United Nations missions throughout his tenure. He was with UNITAMS at the time when his permanent appointment was terminated.
6. The Applicant is a Kenya national, so Nairobi was his place of recruitment and home leave.
7. Following the outbreak of armed conflict in Sudan on 15 April 2023, all UNITAMS international personnel, including the Applicant, were evacuated from Khartoum. The Applicant was initially sent to Entebbe, Uganda.
8. On 6 June 2023, the Applicant was temporarily assigned to Nairobi, Kenya to help establish Information Communications Technology structures for UNITAMS.

9. In July 2023, the Organization established temporary UNITAMS offices in Nairobi, Port Sudan and Addis Ababa.

10. On 18 July 2023, while in Nairobi, the Applicant was temporarily assigned to Port Sudan in Sudan. However, the Applicant's Sudanese residence visa had expired, and the government of Sudan did not renew it. As a result, the Applicant, remained in Nairobi under an alternative work arrangement ("AWA"), with Port Sudan technically listed as his duty station.

11. On 1 December 2023, the United Nations Security Council terminated the mandate of UNITAMS by resolution 2715 (2023). UNITAMS thus went into a liquidation phase running from 1 March 2024 to 31 August 2024.

12. On 29 January 2024, UNITAMS notified the Applicant of a decision to terminate his permanent appointment in accordance with staff regulation 9.3 (c) and staff rule 9.7, effective 29 February 2024. However, on 27 February 2024, UNITAMS rescinded this initial termination because the Applicant's functions were required on the liquidation team.

13. By email dated 16 May 2024, the Officer in Charge of the UNITAMS Human Resources Section reminded the Applicant that the Port Sudan duty would close on 31 May 2024. The email advised that "[f]ollowing the closure, should you opt to remain with UNITAMS effective 1 June 2024 to 31 August 2024, your post location would be changed from Port Sudan to Nairobi. As communicated earlier, since you were not travelled by the organization on a Temporary Assignment to Port Sudan, DOS HR Advice [Department of Operational Support, Human Resources Service Division, Advisory Services] provided guidance clarifying that you would not be entitled to any of your travel related entitlements including repatriation grant and relocation grant." The email continued:

Having said the above, please note that we have for a 3rd time reverted to OHR/DMSPC [Office of Human Resources, Department of Management Strategy, Policy and Compliance] seeking exceptional approval to pay relocation and repatriation grants. In case this request is approved, it would be recommended that you separate COB [Close of Business] 31 May 2024, with Port Sudan

still reflected as your duty station. If not and should you opt to remain with UNITAMS to COB 31 August 2024, your duty station would be changed to Nairobi effective 1st June 2024 and according to our records in Umoja, Nairobi is both your place of home leave and recruitment. For this reason, upon your separation COB 31 August 2024, you will not be entitled to any travel-related entitlements and benefits including RLG [relocation grant] and repatriation grants. This is because you would be separated while at your authorized place of recruitment/home leave and therefore travel on repatriation would not apply.

14. On 19 May 2024, the Applicant received a new notice of termination of his permanent appointment and his service on the liquidation team since his post would be abolished effective 31 August 2024.

15. On 29 May 2024, the Applicant requested UNITAMS to pay him DSA for the period 24 July 2023 to 31 May 2024 when he was on AWA in Nairobi. The Applicant also stated that he raised a request in the Umoja system for processing his request for DSA.

16. On 31 May 2024, UNITAMS closed the Port Sudan duty station and officially deployed the Applicant's post to the Nairobi duty station, effective 1 June 2024. Thus, the Applicant was permanently reassigned to Nairobi where he was already located working remotely. UNITAMS paid him a settling-in grant and DSA amounting to USD11,034.93.

17. On 14 June 2024, UNITAMS denied the Applicant's request for DSA for the period from 24 July 2023 to 31 May 2024. The actual decision was not filed by either party, but the Applicant describes the decision as follows:

DSA was not payable to staff working under AWA, as per United Nations rules. UNITAMS explained that the AWA arrangement allowed the Applicant to retain his benefits and entitlements while working from Nairobi, Kenya, his home country, and his place of home leave.

Nearly identical language was used in the subsequent Management Advice and Evaluation Section letter.

18. On 31 August 2024, the Applicant separated from the Organization.

19. On 4 October 2024, the Applicant repeated his request for DSA to RSCE. RSCE responded the same day, saying that his DSA claim fell outside its purview.

20. On 8 November 2024, the Applicant requested management evaluation of the 14 June 2024 UNITAMS decision to deny him DSA. On 20 December 2024, the Management Advice and Evaluation Section (“MAES”) found the request time-barred and thus not receivable.

21. On 26 December 2024, the Office of Human Resources (“OHR”) issued OHR Policy Guideline OHR/PG/2024/7 on Flexible working arrangements (“FWA”) and AWA. That document said that “these two working modalities address fundamentally different needs and challenges, follow different decision-making processes and result in different impacts on benefits and allowances.” Additionally, the guideline noted that:

ST/SGB/2019/3 and ST/IC/2019/15 on Flexible working arrangements provide the policy framework for the implementation of these two modalities for staff members. The purpose of this document is to provide additional policy information and clarify the policy differences between FWA and AWA. ***

This guideline does not replace the applicable Staff Regulations and Rules and relevant administrative issuances, which prevail in case of conflict with the provisions in the guideline.

22. In light of this new guideline, on 6 January 2025 the Applicant requested RSCE to reconsider its prior decision not to reconsider the UNITAMS decision denying him DSA.

23. On 29 January 2025, RSCE declined to reconsider the 14 June 2024 UNITAMS decision. RSCE wrote:

You had already requested UNITAMS for the payment of DSA for the period from 24 July 2023 to 31 May 2024 and were informed of the decision from UNITAMS on 14 June 2024 to reject the request. In addition, you requested management evaluation of the decision, and the Management Advice and Evaluation Section has determined that your request was not receivable as per their letter to you dated 20 December 2024.

The OHR Policy Guidelines on FWA and AWA issued on 26 December 2024 is meant to provide more detailed guidance on FWA

and AWA but not to change the policy as promulgated in ST/SGB/2029/3 and ST/IC/2029/15 and contains no new policy provisions. Therefore, at this time, there is no scope for reconsideration of the decision that was communicated to you on 14 June 2024 by UNITAMS and we will have to consider the matter closed.

24. On 28 February 2025, the Applicant requested management evaluation of the 29 January 2025 “rejection of my request for reconsideration of my new request for Daily Subsistence Allowance (DSA)”.

25. On 7 March 2025, MAES found the Applicant’s request to be not receivable. MAES observed that the Applicant was essentially challenging the same decision for which he had submitted a request for evaluation on 8 November 2024 and which had been found to be time-barred.

26. Thereafter, the Applicant filed this application with the Tribunal.

Considerations

Receivability

27. The Respondent contends that the application is not receivable *ratione materiae*. He submits that the Applicant’s challenge to the 7 March 2025 management evaluation outcome is not receivable since it is well-settled that it is not a contestable administrative decision. The Applicant does not address this argument in his rejoinder.

28. The Respondent is correct that a management evaluation response is not itself a reviewable decision. See, for example, *Nastase* 2023-UNAT- 1373, para. 40; *Melbiksis* 2023-UNAT-1386, para. 36; and *AEM* UNDT/2025/073, para. 15. Therefore, the Dispute Tribunal lacks jurisdiction to review the MAES decision.

29. The Respondent further argues that the 29 January 2025 email from RSCE refusing to reconsider the Applicant’s DSA request is also not a contestable administrative decision with direct adverse consequences to the Applicant’s employment contract because there is no contractual right to have the decision on his initial request reconsidered.

30. The Applicant responds that the 29 January 2025 decision constituted a new administrative decision since OHR/PG/2024/7 “incorporated new information that was not known to UNITAMS at the time he was denied the DSA” and thus “has profoundly changed the substance of the issue.” In arguing this, the Applicant relies on *AEM* UNDT/2025/021 paras 26-28, for the proposition that “the critical juncture of Staff Rule 11.2 (c) occurs when all pertinent facts are known or should have been.”

31. The Applicant’s recitation of the *AEM* holding is correct, but his application of that holding to this case is incorrect. In *AEM*, the Applicant repeatedly requested FWA, and the Organization repeatedly turned down those requests. The Respondent argued to this Tribunal that the newer denials were mere reiterations of the first denial and thus did not reset the clock for requesting management evaluation and filing with the Tribunal. The Tribunal disagreed with the argument, observing that circumstances changed between the first and subsequent denials which made the latter new administrative decisions. *Id.* para. 24-27. These were factual changes, such as armed conflict near the duty station which resulted in approval for all the United Nations Economic and Social Commission for Western Asia staff to telecommute from elsewhere and the Applicant’s new need for surgery to address her work-related injury. *Id.*

32. In this case, the subsequent issuance of OHR/PG/2024/7 was not a factual change in circumstance. Nor was the new guideline a change in the applicable rules and regulations. By its very terms the guideline was merely an attempt to provide clarity and “[did] not replace the applicable Staff Regulations and Rules and relevant administrative issuances.”

33. As such, the new guideline did not give rise to a new administrative decision. Accepting the Applicant’s argument would result in the absurd situation where every new effort to clarify existing rules or regulations would reopen all previous decisions to reconsideration and litigation. This cannot be the correct result.

34. Finally, the Respondent argues that the application is not receivable *ratione temporis* because the Applicant did not file with the Tribunal within the required 90 days from the 20 December 2024 MAES letter.

35. The Applicant responds to this argument saying that:

the non-receivability letter issued by MAES on 20 December 2024 does not pertain to his evaluation request submitted to MAES on 28 February 2025. This request was prompted by new evidence related to the Policy on Flexible Working Arrangements (FWA) and Alternate Working Arrangements (AWA)–OHR/PG//2024/7 dated 26 December 2024. The Applicant maintains that, given his actions adhered to the statutory timelines, his application before the UNDT remains admissible.

36. The Applicant's position is rejected for all the reasons set out above. However, it is worth noting that the Respondent's argument is also improperly premised. The 20 December 2024 MAES letter was a response to a request for management evaluation of the 4 October 2024 denial of reconsideration. For the same reasons just examined, that was not a new administrative decision.

37. To be perfectly clear, the only contestable administrative decision related to this case was the 14 June 2024 decision by UNITAMS denying the Applicant's request for DSA for the period from 24 July 2023 to 31 May 2024. If the Applicant wanted to seek review of that decision, staff rule 11.2(c) required him to first seek management evaluation within 60 days, or by 13 August 2024. Since the Applicant did not do so, his application would not be receivable *ratione materiae*. His subsequent requests for reconsideration and management evaluation did not change that.

38. For all these reasons, the Tribunal determines that the application is not receivable.

Conclusion

39. In light of the foregoing, the Tribunal DECIDES to dismiss the application.

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(Signed)

Judge Sean Wallace

Dated this 17th day of October 2025

Entered in the Register on this 17th day of October 2025

(Signed)

Isaac Endeley, for Wanda L. Carter, Registrar, Nairobi