



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2025/106
Judgment No.: UNDT/2025/078
Date: 23 October 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

DIAB

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Joseph Iskander

Counsel for Respondent:

André Luiz Pereira de Oliveira, Legal Specialist, UNFPA
Elizabeth Ann Interlandi, Legal Specialist, UNFPA

Introduction

1. The Applicant was a former Programme Coordination at the United Nations Population Fund (“UNFPA”) the Iraq Country Office, based in Baghdad, Iraq.
2. On 6 October 2025, she filed an incomplete application contesting the abolition of her “IB-funded” post in UNFPA Iraq Country Office and consequential termination of her fixed-term appointment. She filed a complete application on 7 October 2025.
3. On 9 October 2025, the Applicant filed a motion seeking leave to file new evidence in support of her application.
4. The Respondent filed a submission opposing the motion arguing, *inter alia*, that the application is not receivable *ratione materiae* because the Applicant never filed a request for a management evaluation contesting the decisions.
5. The Applicant filed a rejoinder arguing that her application is receivable because she timely requested management evaluation.
6. Having considered the parties’ submissions, the Tribunal must first determine whether it is competent to review this application. This is because the Dispute Tribunal’s competence is entirely based on an application being receivable pursuant to the requirements of the applicable legal framework. *See, for example, Philippe Schifferling* 2024-UNAT-1499, para. 59. Indeed, the Dispute Tribunal Statute “prevents the UNDT from receiving a case which is actually non-receivable.” *Christensen* 2013-UNAT-335, para. 21.

Facts

7. On 27 June 2025, the Applicant requested management evaluation (“MER”) of a decision which she describes as:

the decision by the Administration to not make good faith efforts to absorb her on to a new post after it decided to abolish her existing post. **Specifically, Ms Diab contests the decision not to select her for any of the vacant suitable P-3 posts with UNFPA in her category that she timely applied for and should be considered a**

priority candidate for selection, as well as any of the other suitable posts she previously applied for (emphasis added).

8. In the management evaluation request (“MER”), the Applicant “requests that the Administration rescind its decision, upon deciding to abolish her post and terminate her fixed-term appointment, to not follow its obligations to make good faith efforts to absorb her on to a new post - specifically, to select her for one of the many suitable posts for which she has timely applied and for which she should have been given preferential treatment.” The Applicant additionally requested that the decision to terminate her appointment on 3 July 2025 be suspended pending the review.

9. On 5 August 2025, the UNFPA Acting Executive Director, issued the outcome of the management evaluation. It was determined that:

12. You generally asserted that you were contesting the decision “not to select [you] for any of the vacant suitable P-3 posts with UNFPA in [your] category that [you] timely applied for and should be considered a priority candidate for selection, as well as any of the other suitable posts [you] previously applied for.” However, other than this generalized assertion, you have not provided any specific non-selection decision to be reviewed. Therefore, your claim in this regard is not receivable *ratione materiae*.

13. Similarly, concerning your claim that UNFPA broke an “express promise” to you by abolishing the Post and terminating your FTA, this management evaluation finds that there was no express written promise to maintain your FTA until its expiration date. To the contrary, on 16 July 2024, you were informed that ... Accordingly, you failed to specify a reviewable administrative decision. Therefore, this management evaluation finds that your claims are not receivable *ratione materiae*.

Parties' submissions

10. The Respondent's principal contentions on receivability are:
 - a. The Applicant never filed an MER contesting the decisions in her application as required under staff rule 11.2.
 - b. The decisions she challenged are separate and distinct from those she now seeks to challenge in the application.
 - c. Specifically, the Applicant never challenged the abolition decision through an MER as required by staff rule 11.2.
11. The Applicant's principal contentions on the issue of receivability are:
 - a. The management evaluation outcome of 5 August 2025 "narrates and confirms: realignment, abolition effective 31 May 2025, the Executive Director's approval of termination on 28 May 2025, notice on 2 June 2025, and separation on 3 July 2025."
 - b. That document exists only because she requested management evaluation of the contested action.
 - c. In her MER, she expressly sought to rescind the separation/termination and to enforce the protective safeguards promised in writing. The Respondent cannot rely on the management evaluation outcome "to tell the termination story while simultaneously claiming the [MER] somehow did not reach termination."
 - d. The application is therefore timely as it was filed within 90 days of the management evaluation outcome. Nothing more is required for receivability.

Considerations

12. Under art. 8.1(c) of the UNDT Statute, an application is receivable if an applicant has previously submitted the contested administrative decision for management evaluation, where required. Absent a request for management evaluation, the Tribunal may not consider the merits of the case.

13. Whether a request for management evaluation is required is set out in staff rule 11.2. Section (a) of that rule sets the general requirement as follows:

A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

14. Section (b) exempts from the general rule, decisions taken upon advice from technical bodies and decisions following the disciplinary process. Neither exception applies to this case.

15. Thus, the question becomes whether the Applicant's management evaluation request was directed at the decision now challenged before the Tribunal. On their face they are separate and distinct from one another.

16. The decision being contested before the Tribunal is the decision to abolish the Applicant's existing post and consequently terminate her appointment. On the other hand, the Applicant's management evaluation request contested "the decision not to select her for any of the vacant suitable P-3 posts with UNFPA." These are different decisions.

17. The Applicant argues that the management evaluation issued in response to her request "narrates and confirms realignment, abolition effective 31 May 2025, ED approval of termination on 28 May 2025, notice on 2 June 2025, and separation on 3 July 2025 ... That document exists only because the Applicant requested management evaluation of the contested action." While this is correct, the narration was merely part of a review of the Applicant's employment background, beginning

from when she first joined the UNFPA in 2014. This background does not change the nature of the decision contested in her MER.

18. The Applicant also argues that she “expressly sought to rescind the separation/termination and to enforce the protective safeguards promised in writing.” However, this argument mischaracterizes her request. In fact, in her MER, the Applicant expressly requested:

that the Administration rescind its decision, upon deciding to abolish her post and terminate her fixed-term appointment, to not follow its obligations to make good faith efforts to absorb her on to a new post—specifically, to select her for one of the many suitable posts for which she has timely applied and for which she should have been given preferential treatment.

19. Her reference in the request to the abolition and termination decision is merely a parenthetical phrase to give context to the contested decision “to not follow its obligations ...” This parenthetical reference does not change the nature of the decision contested in the MER. This can be seen clearly when the parenthetical phrase is removed: “that the Administration rescind its decision ... to not follow its obligations to make good faith efforts to absorb her on to a new post—specifically, to select her for one of the many suitable posts for which she has timely applied and for which she should have been given preferential treatment.”

20. In this regard, it should be noted that the MER was submitted on the Applicant’s behalf by legal counsel from the Office of Staff Legal Assistance, and counsel are deemed to understand the import of their written communications.

21. In sum, it is quite clear that the decision addressed in the request for management evaluation is precisely what the Applicant stated she was challenging in that request: “the decision not to select her for any of the vacant suitable P-3 posts with UNFPA.” This is not the same administrative decision that she now contests before the Dispute Tribunal.

22. The jurisprudence is very clear that claims not raised in the request for management evaluation are not receivable *ratione materiae*. See, *Luvai* 2014 - UNAT-417, para. 28; *Seyfollahzadeh* 2016-UNAT-620, para. 29. See also,

Pirnea 2013-UNAT-311, para. 42; *Survo* 2015-UNAT-595, paras. 84-85; and *James* 2015-UNAT-600, para. 25.

23. Accordingly, the application is not receivable *ratione materiae* for failure to request management evaluation of the decision contested in the application.

24. Having determined that the application is not receivable, the various other requests cited in the Applicant's motions are moot.

Conclusion

25. The application is dismissed as not receivable *ratione materiae*.

(Signed)

Judge Sean Wallace

Dated this 23rd day of October 2025

Entered in the Register on this 23rd day of October 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi