



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2025/086
Judgment No.: UNDT/2025/090
Date: 20 November 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

MYENI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**SUMMARY JUDGMENT ON
RECEIVABILITY**

Counsel for Applicant:

Molla Attorneys, Incorporated

Counsel for Respondent:

Chenayi Mutuma, UNHCR

Introduction and Procedural History

1. The Applicant is a former Information Management Associate with the United Nations High Commissioner for Refugees (UNHCR) in its Multi-Country Office in Pretoria, South Africa.

2. In May 2023, the Applicant was the subject of an investigation into misconduct for altering and submitting an official travel authorization form for an official mission. As a result of that investigation, in October 2023, she received a disciplinary sanction of three steps demotion and deferment of promotion for two years.

3. On 18 August 2025, the Applicant filed an application entitled “Suspension of Action,” which contained a submission on the UNDT template for a “Motion for Revision of Judgment.” The Registry emailed the Applicant requesting that the application be refiled to clarify whether the Applicant intended to file an application for suspension of action or for revision of judgment.

4. On 19 August 2025, the Applicant re-filed her application as a Motion for Revision of Judgment, challenging the May 2023 disciplinary sanction that she had received for misconduct, following her discovery of a similar case on 23 February 2025.

5. On 2 September 2025, the Respondent filed a Motion for Summary Judgment arguing that the motion is not receivable, *ratione materiae*; and that any challenge to the May 2023 case was not receivable, *ratione temporis*.

6. On 16 October 2025, the Applicant filed an “Opposition to the Respondent’s Motion for Summary Judgment,” averring that the application “raises substantial legal issues involving violations of United Nations regulations” and requesting that the Respondent’s motion be dismissed. The Applicant further averred that “exceptional circumstances exist that justify condonation of any delay in filing the Application.”

Facts

7. On 29 November 2022, the Applicant received notice from the Inspector General's Office ("IGO") that she was the Subject of an ongoing investigation into possible misconduct. The investigation was based on a report that the Applicant had "altered the approved official duty and travel dates on a signed travel authorization form for a mission in Pakistan using UNHCR software and submitted the altered travel authorization form to the Organization to purchase flight tickets, without approval of any of the original signatories of the travel authorization form."

8. The Applicant initially refused to participate in the investigation, but she later cooperated with IGO by commenting on the draft investigation findings. In her comments she admitted that she had changed the travel authorization form and apologized for her conduct.

9. On 25 October 2023, UNHCR issued a sanction letter which concluded that the Applicant had committed misconduct and imposed a disciplinary measure of "loss of three steps in grade with deferment, for a period of two years of eligibility for consideration for promotion." The letter indicated that the sanction would become effective "upon acknowledgement of receipt of the letter, the date on which an electronic return receipt is generated, or seven calendar days from the date on which the letter was transmitted to your official UNHCR email address."

10. The sanction letter further advised the Applicant that

"in accordance with Staff Rule 10.3(c), any staff member against whom a disciplinary measure has been imposed following the completion of a disciplinary process may submit an application challenging the imposition of such measure directly to the United Nations Dispute Tribunal ... within 90 days from the receipt of this notification."

11. It also advised the Applicant of her right to be assisted by the Office of Staff Legal Assistance (OSLA). However, the Applicant did not file an application to the Dispute Tribunal within the prescribed 90 days.

12. On 6 May 2024, the Applicant filed a management evaluation request with the Management Advice and Evaluation Section ("MAES") seeking a "review and

written-off (*sic*) of the decision on the disciplinary measures and request to be properly aligned to the correct position in terms of the salary, duties, and office.” The Applicant indicated in her request that she was notified of the decision on 27 October 2023 and that the decision was implemented 55 days later.

13. On 13 May 2024, MAES informed the Applicant that her request was not receivable because as a UNHCR staff member, she should have directed her request for management evaluation to UNHCR, not MAES. MAES also told the Applicant that, “as you are a staff member contesting a disciplinary measure, you are not required to request management evaluation prior to filing an appeal with the United Nations Dispute Tribunal.” She was also advised again to contact OSLA “to inquire about your next steps” and “the relevant timeline for filing appeals”.

14. In October 2024, the Applicant sought mediation with UNHCR through the South African Commission for Conciliation, Mediation and Arbitration in Pretoria.

15. On 24 February 2025, UNHCR issued its annual “Practice of the High Commissioner in disciplinary matters and cases of criminal behaviour, 1 January 2024 to 31 December 2024” summarizing cases in which administrative and/or disciplinary action had been taken against UNHCR staff members. The Applicant took note of case number 65, in which a staff member had received a written reprimand for an offense facially similar to that committed by the Applicant.

16. The Applicant then filed this application on 18 August 2025. At the same time, she also filed an Application for Condonation for Late Filing of Appeal.

17. On 2 September 2025, the Respondent filed a Motion for Summary Judgment arguing that the application was not receivable. Specifically, the Respondent argues that the Application for Revision of Judgment is not receivable *ratione materiae* because there is no judgment to revise. To the extent that the application is mistitled and actually seeks to challenge the demotion decision dated 25 October 2023, the application is not receivable *ratione temporis*. Similarly, the motion for condonation of the late filing is also not receivable *ratione temporis*.

18. On 16 October 2025, the Applicant filed an Opposition to the Respondent's Motion for Summary Judgment wherein she argued that the motion should be denied because:

- a. the Applicant acted diligently and in good faith in pursuing all available internal remedies;
- b. exceptional circumstances exist that justify condonation of any delay in the filing of the Application;
- c. the Application raises substantial legal issues involving violations of United Nations regulations and fundamental principles of natural justice, warranting adjudication on the merits;
- d. the Respondent has suffered no prejudice, whereas the Applicant faces significant and irreparable harm should her claim be summarily judged.

19. On 19 November 2025, the Applicant filed two additional documents entitled "IM Workstream" and "evidence over working" and consisting of email exchanges between the Applicant and her supervisor and/or the Data, Identity Management and Analysis ("DIMA") Coordinator in 2023 and 2024. In these documents the Applicant complains of being over worked and posits that the disciplinary measure imposed upon her was unfair and unlawful.

Consideration

20. The Appeals Tribunal has long held that the Dispute Tribunal "is competent to review its own jurisdiction." *O'Neill* 2011-UNAT-182, para. 31. Furthermore, "in assessing its own competence, the Dispute Tribunal can choose to proceed by way of summary judgment." *Kazazi* 2015-UNAT-557, para. 42.

21. Article 9 of the Dispute Tribunal Rules of Procedure addresses summary judgment. Specifically, it provides that

A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement

as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

22. In this case, there is no dispute as to the material facts. Hence the Tribunal deems it appropriate to determine this application by way of summary judgment *proprio motu* pursuant to art. 9 of its Rules of Procedure.

Receivability of Application for Revision of Judgment

23. Article 12.1 of the UNDT Statute provides:

Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

24. The underlying rationale for this provision is to assure the finality of judgments. *Masri* 2013-UNAT-320. Further, the Appeals Tribunal has noted that “crucially, facts which occur after a judgment has been rendered cannot be the basis for revision of a judgment.” *AAH* 2024-UNAT-1410.

25. It is clear from the rule and these two caveats that in order to entertain a motion for revision of a judgment, there must be a final revisable judgment at issue. In this case, there is not.

26. The Applicant, having never filed an application with the UNDT challenging her demotion, “crucially” never received a judgment. Therefore, there is no judgment to revise, and the Application for Revision of Judgment is not receivable *ratione materiae*.

Receivability of Challenge to the Demotion Decision

27. Looking beyond the title of the application to its substance, it appears that the Applicant seeks to revise or challenge the administrative disciplinary decision to demote her which was issued on 25 October 2023. However, that challenge is not receivable *ratione temporis*.

28. Article 8.1(d) of the Dispute Tribunal Statute sets out the deadlines for filing an application with the Dispute Tribunal, and these deadlines depend on whether management evaluation is required before coming to the Tribunal. Under art. 8.1(d)(i)(a), in cases where management evaluation of a contested decision is required, the application shall only be receivable if it is filed within 90 calendar days of the Applicant's receipt of the management evaluation response. Article 8.1(d)(ii) prescribes the timeframe for cases where management evaluation of the contested decision is not required. It specifically notes that an application is receivable if it is filed within 90 calendar days of the applicant's receipt of the administrative decision. These same deadlines are set out in staff rule 11.4.

29. Staff rule 11.2, in turn, prescribes when management evaluation is required. The general requirement to request management evaluation is contained in rule 11.2(a), while rule 11.2(b) makes an exception to that general requirement for, *inter alia*, disciplinary decisions. Thus, "a staff member wishing to formally contest an administrative ... decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation."

30. In this case, as the Applicant was expressly advised by MAES on 13 May 2024, management evaluation was not required in her case because she was appealing a disciplinary sanction. Accordingly, the deadline for filing an application challenging that decision is 90 calendar days from the Applicant's receipt of the disciplinary decision on 27 October 2023. Therefore, the deadline for filing an application challenging that decision was 25 January 2024.

31. The Appeals Tribunal has made clear that the time limits for filing applications and appeals are to be strictly enforced. *Mezoui* 2010-UNAT-043; *Kissila* 2014-UNAT-470; *Ruger* 2016-UNAT-693.

32. As the Applicant admits, she "did not file an appeal against the original judgment" before filing the instant application. Ultimately, the application was filed over 18 months late, so it is not receivable *ratione temporis*.

33. The Applicant argues that her appeal rights of the decision should run from the date that she discovered that a different staff member received a less severe sanction for what she claims to be a similar infraction. She claims to have discovered this information in the UNHCR 2023 Disciplinary Measures Report on 23 February 2025

34. The Dispute Tribunal Statute recognizes only three exceptions to the statutory deadlines:

1. when the application is filed on behalf of an incapacitated or deceased staff member (art. 8.1(d)(iii));

2. when the parties have sought mediation within the deadline but were still in negotiations (art. 8.1(d)(iv));¹ and

3. when the Tribunal decides to suspend or waive the deadline in an exceptional case (art. 8.3).

The first two do not apply in this case, and the third will be discussed below.

35. Additionally, the Tribunal rejects the concept that a flexible concept of tolling would apply under these circumstances. If every staff member were able to toll or reset the filing deadline upon subsequently learning of discipline imposed upon another staff member (or subsequent jurisprudence for that matter), there would be no finality to any disciplinary decision. Clearly that was not contemplated by the General Assembly when enacting the deadlines in the Dispute Tribunal Statute. See, e.g., *Masri* 2013-UNAT-320 and *AAH* 2024-UNAT-1410.

36. Finally, even assuming, *arguendo*, that tolling was permitted, the application is still untimely. Applicant says she learned of the other case on 23 February 2025. If the 90-day deadline were to run from that date, the application would be due no

¹ Although the Applicant alleges that she sought mediation with the South Africa Commission for Conciliation, Mediation and Arbitration, The Appeals Tribunal has held that this provision relates only to “tolling of the limitations period when the Mediation Division of the Ombudsman’s Office is involved in settlement or mediation discussions.” *Eng* 2015-UNAT-520, para. 23; *Abu-Hawaila* 2011-UNAT-118, para. 10; and *Applicant* 2015-UNAT-590, para. 51. Thus, this provision does not apply in this case.

later than 24 May 2025. Yet, the Applicant did not file her application until 18 August 2025, so it would remain not receivable *ratione temporis*.

Motion for condonation

37. As noted above, the Applicant filed an Application for Condonation for Late Filing of Appeal along with her Application for Revision of Judgment. Article 8.3 of the Dispute Tribunal Statute authorizes the Tribunal “to suspend or waive the deadlines for a limited period of time and only in exceptional cases,” so the Application for Condonation will be viewed in the context of art. 8.3²

38. The Appeals Tribunal has held that a request for suspension or waiver of the time limit must be submitted by the applicant prior to filing an application in order for the Tribunal to have jurisdiction to consider whether exceptional circumstances exist and to exercise its discretion. *Thiam* 2011- UNAT- 144, para. 18; *Nikwigize* 2017-UNAT-731, paras. 17-19. For that reason, an applicant cannot submit a request for a waiver or suspension of the time limits for filing a late application along with an untimely application. *Nikwigize*, para. 19. *Cf. Gelsei* 2020- UNAT- 1035, para. 20.

39. Since the Applicant filed her request for condonation concurrently with her application on the merits, it seems that the Tribunal lacks jurisdiction to consider her arguments about exceptional circumstances.

40. Even if the Tribunal had the authority to examine a concurrently filed motion to suspend or waive, the Appeals Tribunal has directed that “[i]t is an applicant’s responsibility to pursue her or his case and, where she or he fails to do so, to convince the Tribunal of the existence of exceptional circumstances justifying a waiver of the applicable time limits.” *Scheepers* 2012-UNAT-211, para. 42, quoting with approval *Scheepers* UNDT/2011/074, para. 24. Furthermore, “only circumstances ‘beyond his or her control that prevented the applicant from [filing] in a timely manner’ may be considered ‘exceptional circumstances’ justifying a

² Inexplicably, the Applicant says her “application is brought in terms of Article 7(5) of the Statute of the United Nations Appeals Tribunal (UNAT), read together with Article 12.1 of the Statute of the United Nations Dispute Tribunal (UNDT).” However, neither of those provisions applies to the issue of late filing.

waiver of a time limit or deadline”. *Shehadeh* 2016-UNAT-689, para. 19. See also, *El-Khatib* 2010-UNAT-029, para. 14; *Diagne et al.* 2010- UNAT-067, para. 1; *Bofill* 2014-UNAT-478, para. 19.

41. Some of the Applicant’s stated reasons for not filing timely are clearly irrelevant. For example, she claims that on 11 March 2024, she was administratively reassigned from the Southern African Multi-Country Office (SAMCO) to the Regional Bureau for Southern Africa (RBSA).³ The deadline for filing an application with the Dispute Tribunal was 25 January 2024, so events thereafter cannot explain her failure to file by the deadline. The same is true with respect to her being placed on sick leave in March 2024 and to her post being discontinued on 30 October 2024 -- the deadline had already passed.

42. Other reasons proffered are clearly incorrect. For example, the Applicant claims that “Staff Rule 10.2 requires the disciplinary process to be completed, including the full appeal period, before enforcement.” That is simply wrong.

43. Staff rule 10.2 enumerates various disciplinary and non-disciplinary measures that may be taken in response to a finding of misconduct. In fact, there is nothing in the staff rules that establishes the proposition that the Applicant claims.

44. Indeed, the Applicant’s alleged reassignment on 11 March 2024 is contradicted by a “Grievance Summary” that the Applicant submitted in the record. This document includes a “simplified timeline of events” indicating “Mar-Apr 2020 Contract reassigned from SAMCO to RBSA without prior notification.” This contradiction calls into question the accuracy of the Applicant’s recall, if not her general veracity.

45. Similarly, the Applicant claims that her failure to file a timely application was due to her pursuit of internal efforts (“engagements with the Medical Officer, Staff

³ The Respondent disputes this “reassignment.” According to him, the Applicant was hired in 2020 as an Information Management Associate assigned to RBSA. By mistake her initial appointment letter listed her job was with SAMCO. (RBSA and SAMCO are co-located in the same building in Pretoria.) The Respondent says the mistake was discussed with the Applicant “soon after onboarding” and that her contract extensions in 2021 and 2023 correctly reflected her appointment with RBSA. The 2023 appointment letter is in the record of this case and does show this.

Counsellor, Senior Mediator, Global Staff Association, Human Resources, OSLA, and the Ombudsman's Office") followed by

the need to pursue the proper external remedies as directed. It was only thereafter clearly indicated to me that any challenge to the imposed disciplinary sanction must be brought before the United Nations Dispute Tribunal ("UNDT").

46. In fact, the sanction letter explicitly advised the Applicant that, she "may submit an application challenging the imposition of [the disciplinary] measures directly to the United Nations Dispute Tribunal... [S]uch application must be filed to the United Nations Dispute Tribunal within 90 days from the receipt of this notification." Thus, it was clearly indicated on 27 October 2023 that any challenge was to be brought "directly" to this Tribunal, along with the deadline for doing so.

47. In other words, the Applicant found sufficient time to engage with numerous other people and offices, but not with the one entity (UNDT) where she was advised to direct her challenge.

48. The Applicant also allege two reasons for delay that are beyond her control: the demotion caused her income to decrease: and her uncle died on 7 December 2023. Of course, a decrease in income is the expected result of a demotion, and this this is not extraordinary. As to the latter, the Tribunal has sympathy for the loss of a family member and can understand taking some time to grieve. However, neither the death nor her decreased income explains the Applicant's failure to file in the months before and after those events. And these events certainly do not excuse the ensuing 18 months before she filed this application.

49. In sum, the Tribunal finds there to be no exceptional circumstance sufficient to justify a waiver of the time limits.

Conclusion

50. In view of the foregoing, the Tribunal DECIDES:

- a. The Respondent's Motion for Summary Judgment is granted.
- b. The matter is dismissed in its entirety as not receivable.

(Signed)

Judge Sean Wallace

Dated this 20th day of November 2025

Entered in the Register on this 20th day of November 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi