



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/051
Judgment No.: UNDT/2025/093
Date: 21 November 2025
Original: English

Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

KHAMBATTA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Martine E. Lamothe, OSLA
Aly Ahmed, OSLA

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR/UN Secretariat
Fabian Preger, AS/ALD/OHR/UN Secretariat

Introduction

1. The Applicant, a former Programme Officer, Office of the Under-Secretary-General, Department of Operational Support (“OUSG/DOS”), filed an application contesting “the Administration’s decision to deny the extension of her loan to the World Food Programme (“WFP”)”.
2. On 13 January 2025, the Respondent filed a motion submitting that the application was not receivable and requested that the Tribunal determine the receivability of the application as a preliminary matter.
3. By Order No. 004 (NY/2025) dated 17 January 2025 the Tribunal granted the Respondent’s motion to determine the receivability of the application as a preliminary matter and ordered the Applicant to file a rejoinder addressing the Respondent’s submissions on receivability.
4. On 3 March 2025, the Applicant duly filed her rejoinder.
5. For the reasons set out below, the application is not receivable.

Factual and procedural background

6. On 23 March 2020, the Applicant commenced employment in OUSG/DOS at the P-4 level, on a fixed-term appointment (“FTA”).
7. In August 2022, the Applicant was selected for a Senior Programme Policy Officer position, at the P-4 level, at WFP based in Rome, Italy. The Applicant informed DOS that she decided to take up the offer from the WFP for personal reasons.
8. In order to allow the Applicant to take the position at WFP on a reimbursable loan agreement, on 31 August 2022, the Applicant and DOS signed a Memorandum of Understanding titled “Memorandum of Understanding Relinquishing the lien on parent

post [the Applicant] (“MOU”). The MOU stated (emphasis in the original and footnotes omitted):

3. The purpose of this MOU is to outline the agreement of the Parties to the following terms and conditions in order for the Organization to allow [the Applicant] to take the position of Senior Programme Policy Officer, P-4 with the World Food Programme (WFP) on a [reimbursable loan agreement, “RLA”] basis under the *Inter-Organization agreement concerning transfer, secondment or loan of staff among the organizations applying the United Nations common system of salaries and allowances*.

a) [The Applicant’s] RLA effective 23 September 2022 is for an initial period of 364 days.

b) [The Applicant] has no return right to any post in the OUSG/DOS, nor any other post in the UN Secretariat.

c) The OUSG/DOS will advertise the position to be vacated by [the Applicant] and fill it through the staff selection system.

d) At the end of the RLA, [the Applicant] will be placed on Special leave without Pay (SLWOP) until 04 December 2023, when her fixed term appointment will expire, unless [the Applicant] has applied to and been selected for a position within the [United Nations] Secretariat, in which case she will be transferred to that position; or if WFP requests an extension of the RLA for additional 364 days in which case the OUSG agrees to extend [the Applicant’s] fixed term appointment solely to accommodate an extension of the RLA with WFP, provided that the total period of the loan does not exceed 728 days. If she is separated from the Organization effective 04 December 2023, [close of business, “COB”], or at the end of the extension of the RLA, the final pay and any related entitlements will be paid by the OUSG/DOS.

e) [The Applicant] agrees that she will not take legal action against the Organization to contest the terms of the MOU, or of any administrative decision related to its implementation.

To confirm the understanding and acceptance of the terms outlined, this MOU is signed by the Parties of their own free will and without any duress.

9. On 9 September 2022, the Applicant, DOS and WFP signed an agreement titled “Inter-Organization Agreement covering the Reimbursable Loan of [the Applicant] from the United Nations Secretariat to the World Food Programme” [“RLA”]. This agreement was signed pursuant to the 1 January 2012 “Inter-Organization Agreement

concerning transfer, secondment or loan of staff among the organizations applying the United Nations common system of salaries and allowances” (“2012 Inter-Organization Agreement”), which establishes the rights of a staff member of one organization who is transferred, seconded or loaned to another organization, and the rights and liabilities of the two organizations concerned.

10. The RLA stated (emphasis in the original):

Salary

8. The [United Nations] will continue to pay, on behalf of WFP, directly to [the Applicant] salary and allowances plus any salary adjustments and annual within-grade increments that may be payable to her as a WFP staff member. [The Applicant] will serve at P-4/8, **level and current step**.

...

Service Credit

17. In the spirit of cooperation embodied in this agreement, [the Applicant's] service with WFP will be counted as active service in the [United Nations] for the purposes of seniority, time-in-grade, within-grade increments, etc., where applicable.

Reimbursement and Reporting of Expenses

18. The [United Nations] will submit to WFP an itemized statement of expenses incurred in connection with the staff member's salary, allowances, entitlements and administrative costs related to this agreement. WFP agrees to settle any outstanding charges within one (1) month of receipt of the invoice.

11. On 18 August 2023, WFP requested that DOS grant a one-year extension of the RLA. Following internal consultations and coordination in connection with costs related to the requested extension, DOS agreed.

12. On 14 September 2023, the Applicant and DOS signed an “Addendum to the Memorandum of Understanding signed on 31 August 2022 Relinquishing the lien on parent post [the Applicant] (index 509054).” The addendum states:

1. At the request of World Food Programme (WFP) for a further extension, the Office of the Under-Secretary-General of the Department of Operational Support (OUSG/DOS), agrees to a final extension of the

Reimbursable Loan Agreement (RLA) to WFP effective 22 September 2023 through 20 September 2024. No further extension will be granted.

2. Consequently, [the Applicant's] fixed term appointment will be extended through 20 September 2024. Unless [the Applicant] is transferred to WFP and/or selected to any other position within the Secretariat prior to that date, she will be separated from the Organization effective 20 September 2024, COB, on expiration of appointment.

3 All other items remain the same.

To confirm the understanding and acceptance of the terms outlined, this MOU is signed by the Parties of their own free will and without any duress.

13. On 27 September 2023, the Applicant, DOS, and WFP signed an extension of the agreement signed on 9 September 2022 “for a period effective 21 September 2023 to 20 September 2024”.

14. On 31 July 2024, WFP requested that DOS extend the RLA for a third year.

15. On 1 August 2024, DOS responded to WFP that, regrettably, it was not in a position to accommodate a further extension and inquired whether WFP would consider a transfer.

16. On 6 August 2024, WFP responded to DOS, stating that they were not in a position to consider an inter-agency transfer on completion of the RLA.

17. On 10 August 2024, the Applicant emailed the Chief of Office of OUSG/DOS and the DOS Executive Office (“EO/DOS”) requesting an extension of the RLA.

18. On 14 August 2024, the Chief of Office OUSG-DOS responded to the Applicant that “with deep regret, we are not in a position to continue with the RLA for a third year”. The Chief of Office recalled the conditions of the agreement that the Applicant had signed:

[T]he agreement for this RLA was captured through an MoU which specified that the RLA would be for a period of one year with only one 364 day extension possible if WFP (and no other entity) requested it, provided the period of the loan did not exceed 728 days. This was done

to give WFP an extra year to find a way to effect a transfer and, while sympathetic because we are also beset with financial difficulties, we had trusted that they would manage to make this happen.

19. On 14 August 2024, DOS again advised WFP that DOS was “not in a position to agree to a further extension of the RLA”. DOS additionally informed WFP that, consistent with the MOU the Applicant signed in 2022 and its addendum in 2023, upon expiration of the RLA and FTA, the Applicant would need to separate from the Secretariat.

20. On 15 August 2024, the EO/DOS informed the Applicant that they would send her a separation notification package.

21. On 26 August 2024, the Applicant requested management evaluation of the decision by DOS to not grant her an extension of the RLA to WFP for one additional year. In her request, the Applicant stated that the OUSG/DOS informed her of the decision on 14 August 2024 and that the EO/DOS informed her of the decision on 15 August 2024.

22. On 8 October 2024, the Management Advice and Evaluation Section found the Applicant’s request not receivable.

23. Effective 11 October 2024, the Applicant separated from the Organization by reason of expiration of her FTA concurrent with the end of her loan to WFP.

Considerations

24. The Appeals Tribunal has held that the Dispute Tribunal may consider the receivability of an application as a preliminary matter before reviewing the merits of the case (see, for instance, *Pellet* 2010-UNAT-073). Based on the 13 January 2025 motion of the Respondent on non-receivability, and for the fair and expeditious disposal of the case in accordance with art. 19 of its Rules of Procedure, the Tribunal has decided to do so.

25. The Respondent states that the application is not receivable on a number of grounds. The Respondent submits that: (a) the Applicant is estopped from challenging the terms of the MOU and its addendum in which she agreed to not take legal action against the Organization; (b) the application is not receivable *ratione temporis* as Applicant did not request a timely management evaluation; and (c) is not receivable *ratione materiae* as the Applicant does not identify a final administrative decision in non-compliance with her terms of appointment or contract of employment.

Is the Applicant estopped from challenging the contested decision?

26. The Tribunal notes that a memorandum of agreement signed by a staff member will normally be enforced (see, *Faust* 2017-UNAT-777, para. 29, citing *Jemai* 2011-UNAT-137, paras. 13 and 14). The Appeals Tribunal has stated that when the content and meaning of a memorandum of agreement are plain and clear, and there is no evidence that it was signed under duress, there is no reason that a memorandum of agreement should not be enforced (see, *Caucci* 2022-UNAT-1251, paras. 55-57).

27. The record shows that the Applicant initiated the request for a transfer from OUSG/DOS in New York to WFP in Italy for personal reasons in August 2022. On 31 August 2022, in order to facilitate the Applicant's request, DOS signed an MOU with the Applicant, allowing her to take the position with WFP on an RLA basis, under the framework of the Inter-Organization Agreement. The MOU established that the Applicant's RLA would be for an initial duration of 364 days and subject to extension only once provided that the total period of the loan does not exceed 728 days. Paragraph 3(b) of the MOU stated that the Applicant had no return right to any post in OUSG/DOS, nor any other post in the United Nations Secretariat. Paragraph 3(e) stated that the Applicant would not take legal action against the Organization to contest the terms of the MOU, or any administrative decision related to its implementation.

28. Under the RLA, it was agreed that United Nations would continue to pay, on behalf of WFP, directly to the Applicant her salary and related benefits. It was further agreed that the United Nations would submit to WFP an "itemized statement of

expenses incurred in connection with the staff member's salary, allowances, entitlements and administrative costs related to this agreement, and WFP agrees to settle any outstanding charges within one (1) month of receipt of the invoice”.

29. A year later, on 18 August 2023, WFP requested an extension of the RLA for an additional 364 days which was granted by OUSG/DOS as per the conditions of the MOU. DOS agreed to extend the RLA to WFP for an additional 364 days as per the extension conditions of the 23 September 2022 MOU. On 14 September 2023, the Applicant signed an addendum to the MOU. The addendum explicitly stated that the Applicant agreed to a final extension of the RLA and that no further extension would be granted.

30. It follows from the above that on 31 August 2022, the Applicant signed an MOU agreeing that the total period of the loan granted by OUSG/DOS to WFP would be subject to extension only once provided that the total period of the loan does not exceed 728 days. The Applicant was granted one extension on the 18 August 2023 addendum to the MOU. The Applicant agreed in both the MOU and its addendum that she would “not take legal action against the Organization to contest the terms of the MOU, or of any administrative decision related to its implementation”.

31. The Respondent submits that the Applicant, having signed the agreements of her own free will and subsequently receiving benefit from the agreements by serving for two years at WFP in Rome, Italy, is estopped from challenging the terms of the MOU and its addendum.

32. The Applicant submits that she should not be held to the terms of the MOU as it was “unilaterally drafted” and “composed and enforced by the Administration without genuine input or agreement from the staff member involved”. She states that the MOU was drafted and presented to her as a precondition to grant her request to move to WFP and that at “no point did she have a real opportunity to discuss or negotiate the terms of the MOU”. She further submits that she “encountered a challenging dilemma in which she faced two undesirable outcomes. By opting not to

sign the “MOU”, she would lose her position. Conversely, signing the MOU would result in the potential loss of her position at a later date. Signing the MOU, in this case, was the most sensible decision for the [Applicant]”.

33. The Tribunal finds little merit in the Applicant’s argument. First, the Applicant herself initiated the request to transfer from OUSG/DOS in New York to WFP in Rome. The MOU and its addendum were entered into by the parties in order to accommodate the Applicant’s personal life.

34. Second, at the time the MOU and its addendum were signed, the Applicant confirmed, in writing, that she understood and accepted the terms outlined therein and that she signed the agreements of her own free will and without any duress. The Tribunal finds no indication that the terms of the MOU were enforced upon the Applicant or that she even requested alternative terms. By her own admission, it was “sensible” for the Applicant to agree to the MOU. In the Tribunal’s view, making a decision for sensible reasons is not duress.

35. Third, the record demonstrates that OUSG/DOS entered into the MOU in good faith in order to facilitate the Applicant’s request. OUSG/DOS did not otherwise require the Applicant to leave her position. In this regard, the Tribunal notes that the MOU and its addendum were signed pursuant to the 2012 Inter-Organization Agreement. This agreement was entered into, in a spirit of cooperation, by various organizations in the United Nations common system, including related agencies, and funds and programmes in order to facilitate the release of staff members on transfer, secondment or loan to another United Nations organization while maintaining continuity of service in the United Nations system. Entities of the United Nations Secretariat and WFP are listed as parties to this agreement. The Tribunal finds no indication that the agreements were improper or tainted by *ulterior motives*.

36. Based on the above, the Tribunal finds that the content and meaning of the MOU and its addendum are plain and clear. The parties freely made the agreements. The Applicant received a benefit under the agreements. It follows that the Applicant is

estopped from taking legal action against any administrative decision related to the implementation of the agreements.

Conclusion

37. In light of the above, the application is not receivable.

(Signed)

Judge Francis Belle

Dated this 21st day of November 2025

Entered in the Register on this 21st day of November 2025

(Signed)

Isaac Endeley, Registrar, New York