



Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

OKONGO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Halil Goksan, ALD/OHR, UN Secretariat

Nisha Patel, ALD/OHR, UN Secretariat

Introduction and Procedural History

1. The Applicant was an FS-4 Administrative Assistant with the Human Rights Division in the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”), based in Bangui, Central African Republic.
2. On 7 August 2025, the Applicant filed an application with the Tribunal challenging what she described as “Unjust medical accommodation denial leading to coercion of termination of continuing appointment.”
3. In his Reply, filed on 8 September, the Respondent contests the receivability of this application on the grounds that: there was no timely request for management evaluation; once requested, the Applicant filed before the management evaluation process was complete; and the application violates the terms of the agreed termination, and an agreed termination is not a reviewable administrative decision.
4. In Order No. 158 (NBI/2025), the Tribunal directed the Applicant to file a rejoinder “addressing the Respondent’s arguments in the reply, specifically responding to the receivability issues raised.” While the Applicant did file a rejoinder, she did not address the receivability issues.

Facts

5. From 8 May 2023 to 11 March 2024 and 11 June to 30 September 2024, the Applicant was on sick leave. During these periods, she was in Ontario, Canada, outside her official duty station of Bangui.
6. On 3 October 2023, the Applicant requested flexible working arrangements (FWA) to telecommute from outside the duty station “due to [her] current inability to travel by air because of [her] illness and advi[c]e from [her] physician.” The request was denied by her First Reporting Officer (FRO) on 24 October 2023, who stated that the Applicant’s “position is location dependent, and [her] functions cannot be carried out via FWA.”

7. On 16 November 2023 the Applicant emailed MINUSCA Human Resources saying, “From 13 November, I am on FWA”. That email was forwarded to the Applicant’s FRO who responded with a reference to her communications with the Applicant in October and added:

I confirm that I do not concur. The staff has contacted me, asking for FWA and I have responded that I am not granting the request[.] The duty can’t be performed from outside of Bangui and I confirm that she is not working. Absences should be recorded as sick leave[.]

HR then wrote to the Applicant that “the FRO had confirmed that “your FWA effective 13.11.2023 is not approved.”

8. Apparently, the Applicant returned to Bangui as she worked from her duty station from 12 March to 22 April 2024. She then went on annual leave, and the FRO approved, on an exceptional basis, her request for one month of FWA from 10 May to 10 June 2024.

9. On 9 June 2024, the Applicant emailed MINUSCA’s Chief of Staff to say that she had exhausted her leave and requested an agreed termination. On 10 September 2024, the Applicant again requested an agreed termination. which was approved on 7 October 2024. She signed a Memorandum of Understanding (MOU) memorializing the agreed termination.

10. According to the terms of the MOU, the Applicant agreed: (a) not contest the decision to terminate her appointment “or any decision related to this action;” (b) to accept termination indemnity for 12 months; (c) to not receive any payment of compensation in lieu of notice; (d) to terminate and separate from the Organization by 7 October 2024; (e) “to withdraw any and all claims and appeals I may have pending against the Organization and to refrain from filing any further claims or appeals against the Organization arising from my terms of appointment or separation,” and (f) to be ineligible for re-employment with the Organization for three years.

11. By 31 December 2024, MINUSCA paid the Applicant her separation entitlements, including the agreed one-year termination indemnity.

12. On 19 February 2025, the Applicant wrote to the Under-Secretary-General (“USG”) for Peace Operations protesting “unfair and unjust treatment,” stating that her agreed termination was forced, due to the denial of her FWA. She further contended that the amount of her final entitlement benefits had been incorrectly calculated. The Applicant contends that she never received feedback from the USG.

13. On 4 August 2025, the Applicant filed a management evaluation request (“MER”) challenging the contested decisions. Three days later, while the MER was still pending, the Applicant filed the instant application.

Consideration

14. The Tribunal first notes that the application is vague and inconsistent about the contested decision(s). When asked to provide details of the contested decision, the Applicant first lists the decision made on “November 17th, 2023, Denial of FWA.” But in the very next line she states that she was notified of the decision “Agreed termination came into effect on October 7, 2024”. Then she annexed as the Contested Decision her 10 September 2024 “Request for an Agreed Termination of my Continuing Appointment with the United Nations.”

15. In her request for management evaluation, which is also annexed to the application, the Applicant was equally as equivocal. Asked to specify the decision, she wrote “Request for urgent intervention regarding the denial of medically justified flexible work arrangement and subsequent coerced termination”. But as to when the decision was taken or she became aware of it, the Applicant stated, “October 7th Agreed termination came into effect.”

16. Thus, the Tribunal infers that the Applicant is challenging three separate but related “decisions”: the denial of FWA, the subsequent agreed termination, and an alleged miscalculation of her termination benefits.

17. 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.

Was there a timely request for management evaluation?

18. 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. See, e.g., *Gehr* 2013-UNAT-293. Whether a request for management evaluation is required is set out in staff rules 11.2. Section (a) and (c), which provide as a general requirement:

(a) 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.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

19. It is undisputed that the contested decisions were not exempt from the requirement to request management evaluation, being neither decisions taken upon advice from technical bodies, nor decisions following the disciplinary process. Thus, neither exception applies to this case.

20. Accordingly, in order to be receivable, a timely request for management evaluation had to be initiated within 60 days of the date of the impugned decision(s). A timely management evaluation request is a prerequisite to UNDT competence, and the lack of one makes the application not receivable *ratione materiae*. *MP*, UNDT/2025/007; *Egglesfield* 2014-UNAT-402, para. 16, citing *Ajdini* 2011- UNAT-108, para. 23. The Tribunal is bound by this strict prohibition in article 8.4 of the Statute.

21. In the present case, each of the three separate decisions had a separate deadline for filing of a MER and must be addressed individually.

22. In her initial application, the Applicant herself laid out the relevant timeline for her actions, with which the Respondent concurred. In her rejoinder, the Applicant merely reiterates and re-confirms the same timeline.

23. Regarding the decision to deny the Applicant's request for FWA, the Applicant specifies that the decision was made on 17 November 2023, and this is confirmed by email exchanges between the Applicant and Human Resources that are in the record.¹

24. Accordingly, the time to file management evaluation of that decision began to run on 17 November 2023. Consequently, the 60-day deadline to file a MER of this decision expired, at the latest, on 16 January 2024. Since her MER was not filed until 5 August 2025, it was not receivable, as correctly held by MAES.

25. With respect to the agreed termination, the Applicant herself requested this option on 10 September 2024. It was approved effective 7 October 2024, and the Applicant signed documents to formalize the agreed termination². Accordingly, the Applicant's deadline for contesting this decision would have expired 60 days later,

¹ However, as set out in para. 6 above, the Applicant had previously requested FWA in October which was denied by her FRO on 24 October 2023. Apparently, she is only challenging the denial of her renewed FWA claim in November 2023.

² The signed MOU is dated 16/10/2024. Even if the nine days between the agreed effective date and MOU were added, this would not materially change the analysis regarding the timeliness of her request for management evaluation.

on 6 December 2024. Thus, the Applicant's 5 August 2025 MER was untimely and consequently, the 7 August 2025 filing with the Tribunal is not receivable.

26. The Applicant also appears to challenge an alleged incorrect calculation of her agreed termination benefits. Regarding the date of that decision, the record shows that the Applicant separated on 8 October 2024, and an off-cycle payment of her relocation grant was paid on 11 November 2024. The remaining payments (separation travel, termination indemnity, repatriation grant, and annual leave payout) were included in a final pay statement showing payment on 31 December 2024.

27. Using this end date, the deadline for filing a MER on the alleged miscalculations would be 1 March 2025.

28. The Applicant claims that she was unaware of the miscalculations at that time, but the record shows that she raised this issue on 19 February 2025, in an email to the Under-Secretary-General for Peace Operations, the Under-Secretary-General for Operational Support, the MINUSCA Special Representative of the Secretary-General, the Director of Administration for the Regional Service Centre Entebbe, MINUSCA Director of Mission Support, and the MINUSCA Chief of Human Resources. Even if we accept that the Applicant was not previously aware of the miscalculations, she would still have had to request management evaluation within 60 days from 19 February 2025, or by no later than 20 April 2025. Again, the MER filed on 5 August 2025, falls far short of the deadline, regardless of how calculated.

29. In sum, the Applicant did not request management evaluation of any of the decisions in a timely manner. In her application, she states "[w]hile I acknowledge the delay in filing, the consistent submission of unanswered internal communications and a sincere expectation of good-faith resolution constitute exceptional circumstances (see UNAT Judgment 2012- UNAT-229)." To the extent that this is an implicit request for the Tribunal to waive the deadline for requesting management evaluation, the UNDT Statute very clearly provides that "[t]he Dispute

Tribunal shall not suspend or waived the deadlines for management evaluation.” *Id.* art. 8.3. As such the application is not receivable. See, e.g., *Egglesfield* 2014- UNAT-402, para. 18; *Seyfollahzadeh* 2016-UNAT-620, para. 28; *Survo* 2016-UNAT-644, para. 34.

Was the application filed in the proper time frame?

30. In addition to being too late in requesting management evaluation, the Applicant was also premature in filing her application with the Dispute Tribunal. As noted above, the Applicant requested management evaluation on 4 August 2025 and filed the instant application three days later.

31. Article 8(1)(d)(1) of the UNDT Statute sets forth the time frame for filing an application with the Tribunal and provides that, in cases where a management evaluation is required, the application shall be filed

- a. within 90 calendar days of the applicant’s receipt of the response by management to his or her submission; or
- b. within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices

32. The Appeals Tribunal has held that “[m]anagement evaluation is to afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary”. *Pirnea* 2013- UNAT-311, para. 42; *Neault* 2013-UNAT-345, para. 33; *Applicant* 2013- UNAT-381, para. 37; *Nagayoshi* 2015-UNAT-498, para. 36; *Faust* 2016- UNAT-695, para. 40.

33. By filing her application only three days after requesting management evaluation, the Applicant was circumventing the management evaluation process and denying that process the opportunity to correct any errors and make judicial review unnecessary. Thus, the premature application is not receivable. *Namoro* UNDT/2023/023 (not appealed), para. 7; *Steinbach* UNDT/2018/034, para 47; *Omwanda* UNDT/2016/098/Corr.1 at paras. 24-25.

Does the Applicant contest a reviewable administrative decision?

34. Additionally, it is worth noting that the agreed termination is not a reviewable administrative decision.

35. The Appeals Tribunal has repeatedly affirmed that to be subject to judicial review, administrative decisions “are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry legal consequences.” *Hamad* 2012-UNAT-269, para. 23, quoting a decision from the former UN Administrative Tribunal in *Andronov*, Judgment No. 1157 (2003) V. See also, *Al Surkhi et al.* 2013-UNAT-304, para. 26; *Ngokeng* 2014- UNAT-460, para. 26; *Gehr* 2014-UNAT-475, paras. 16-17; *Lee* 2014-UNAT-481, para. 48; *Terragnolo* 2015-UNAT-517, para. 31; *Reid* 2015- UNAT- 563, para. 32; *Staedtler* 2015-UNAT-578, para. 30; *Hassanin*, 2017- UNAT-759, para. 36; *Loubani* 2021-UNAT-1086, para. 19; *Reilly* 2022- UNAT-1309, para. 78.

36. The agreed termination was not a unilateral decision taken by the Administration. Instead, the Applicant made the unilateral decision to request an agreed termination and the Administration accepted that request. Thus, it was ultimately a bilateral agreement in which both the Applicant and the Administration joined. The Appeals Tribunal has held that such an agreement does not give rise to a reviewable discretionary decision. *Darwish*, 2013-UNAT-369, para. 31.

Is the application barred by the doctrines of waiver and estoppel?

37. As noted above, as part of the agreed termination, the Applicant signed a Memorandum of Understanding which included language that she agreed to the following, *inter alia*:

a) I will not contest the Secretary-General's decision to terminate my [fixed term/continuing/permanent] appointment...or any decision related to this action....

d) I agree ... that the Organization has no further obligations, financial or otherwise, upon separation....

e) I agree to withdraw any and all claims and appeals I may have pending against the Organization and to refrain from filing any further claims or appeals against the Organization arising from my terms of appointment or separation.

38. The doctrines of waiver and estoppel are general principles of law which have been acknowledged to be viable in the United Nations internal justice system. *Egglefield* UNDT/2013/006, paras. 36-38, reversed on other grounds 2014- UNAT-402. As summarized by the Dispute Tribunal, "Waiver of a right is an express or implied abandonment of that right.... For estoppel, the essential requirements are a representation by the representor that is accepted by the representee, and which induces the latter to act in such manner, or to alter his position, to his prejudice." Both doctrines clearly apply in this case.

39. The Applicant's statements in the MOU that she signed clearly constitute an express abandonment of the rights enumerated therein. As such it is a classic instance of waiver.

40. Additionally, the Applicant's representation that she agreed to give up those rights was accepted by the Administration which induced it to pay her 12 months of termination indemnity. This also brings the estoppel doctrine into play.

41. Having requested and received an agreed termination (along with the financial benefits agreed therein), the Applicant's effort to challenge that agreed termination is barred by the doctrines of waiver and estoppel.

Conclusion

42. In view of the foregoing, the Tribunal DECIDES

- a. The Respondent's motion for summary judgment is GRANTED;
- b. The application is DISMISSED in its entirety as not receivable.

(Signed)

Judge Sean Wallace

Dated this 10th day of December 2025

Entered in the Register on this 10th day of December 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi