



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/018

Order No.: 042 (NBI/2022)

Date: 7 April 2022

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

HAROUN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE RESPONDENT'S
MOTION TO SUSPEND DEADLINE TO
FILE REPLY PENDING RULING ON
RECEIVABILITY**

Counsel for the Applicant:

Pranav Krishna
Shrey Patnaik

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat
Fatuma Mninde-Silungwe, AAS/ALD/OHR, UN Secretariat

Background

1. The Applicant is a former Human Resources Officer with the United Nations-African Union Hybrid Operation in Darfur (“UNAMID”).
2. On 5 August 2021, he filed an application contesting what he describes as “eight outstanding claims for 4,000 former UNAMID national staff members.”
3. The deadline for submission of the reply was 18 March 2022.
4. On 17 March 2022, the Respondent filed a motion to have receivability addressed as a preliminary matter pursuant to arts. 9 and 19 of the UNDT Rules of Procedure. In the said motion, the Respondent also requested the Tribunal to suspend the 18 March 2022 deadline for the filing of the reply pending the Tribunal’s determination of the motion.
5. On 18 March 2022, the case was assigned to the present Judge.
6. The Applicant filed a response in opposition to the Respondent’s motion to address receivability as a preliminary matter on 25 March 2022.

Parties’ submissions

7. The Respondent’s contentions on receivability are:
 - a. The Application is not receivable *ratione materiae*. The Dispute Tribunal lacks jurisdiction to adjudicate representative claims brought on behalf of other staff members. The Dispute Tribunal’s Statute grants jurisdiction to adjudicate individual claims only. The Applicant purports to file this application on behalf of 4,000 former UNAMID locally recruited national staff members regarding eight different unspecified claims. However, where a group or class of people claim contractual breaches, each person must file an individual application. In the absence of such individual applications,

the Applicant may only contest an administrative decision that directly affects his terms of appointment.

b. Assuming that the application is construed to be brought on behalf of the Applicant only, it is still not receivable. As a former staff member, the Applicant does not contest a decision relating to his former terms and conditions of employment. Nor does he claim a violation of a right arising from his status as a staff member. He does not identify any decision taken that was in non-compliance with his contract of employment in line with art. 2.1(a) of the UNDT Statute. Administrative decisions must be identified with precision and particularity.

c. The only decision to which the Applicant has referred to is a 28 August 2021 letter regarding payment of a salary refund from 1 September 2015 to 31 January 2016. If the Dispute Tribunal finds this as a contestable administrative decision, the Dispute Tribunal lacks subject matter jurisdiction for lack of timely management evaluation. The 28 August 2021 letter only reiterated a June 2016 decision that was communicated to the UNAMID national staff association of which the Applicant was aware or reasonably should have been aware when it was made. The 28 August 2021 letter does not constitute a new decision. Reiteration of an original administrative decision does not reset the clock with respect to applicable statutory deadlines.

8. In his response to the Respondent's motion, the Applicant argued as follows:

a. The interests of judicial economy and efficiency will be better served when the Tribunal accepts group litigation which involve a number of individuals with similar claims arising from similar circumstances.

b. He has legal power of attorney to represent all former UNAMID national staff which he has attached to the application.

c. The former UNAMID national staff requested, on many occasions, refund of salaries from September 2015 to February 2016 and escalated to the Mission level as well as to the United Nations Headquarters. They went on strike and only then did UNAMID pay them in February 2016, however, the requests for refund of the remaining five months, were not responded to until 28 August 2021.

d. The letter of 28 August 2021 is the first written response they received in relation to their claims.

e. Their right to be paid their wages continues to exist notwithstanding that the remedy is barred by limitation. The Law of Limitation merely bars the remedy, but not the right. It is well known that the Limitation Act, with regard to personal action, bars the remedy without extinguishing the rights.

f. There are many legal precedents proving that whenever there are due claims, they should be cleared even after several years and this was effected for former UNAMID security guards. UNAMID paid former security guards claims that were due for more than eight years from 2012. These were paid in 2021 and UNAMID did not argue that the claims were time barred.

Considerations

9. This Tribunal has previously found that splitting an application into two distinct replies, one on receivability and the second on the merits is not what was intended by the legal framework governing practice and procedure in handling applications in the Dispute Tribunal¹.

10. The Respondent has not made any reference to any rule of procedure or practice direction to support the motion. Further, the Respondent has not cited any

¹*Balakrishnan Menon*, Order No. 027 (NBI/2022).

jurisprudence as an authority for the request that the application may be split into two, thereby necessitating two distinct adjudications on matters arising from the same claim.

11. Since there is no procedure or practice of the Tribunal on handling the Respondent's request, the Tribunal reckons that pursuant to art. 36(1) of the Rules of Procedure, this case must be determined based on its own merits taking all the circumstances into account including its complexity, novelty, whether Applicant is represented and whether the question of receivability is so patently clear that there would be no need for a reply and could be determined by the Tribunal *sua sponte*².

12. Taking these factors into consideration, the Tribunal finds that allowing the motion would duplicate proceedings which would prove costly and time consuming, therefore not serve judicial economy nor the interests of justice.

13. Further, the Tribunal notes that to determine the question of receivability without recourse to the complete reply on the application would deny the Tribunal the opportunity to appreciate the full context of the Applicant's application, as the scope of its review, would be narrowed down by the Respondent's motion on receivability.

14. The Respondent has not shown that this case is so clearly irreceivable that there is no need for him to file a complete reply as required by the rules. In fact, the Respondent's motion and the Applicant's response to the motion show that there are contentious factual and legal issues that must be determined requiring a complete reply. In particular, the Applicant is not represented by Counsel and there are allegedly 4,000 former staff members with an interest in this application, it would be unjust to dispose of the case on a preliminary point without affording him an opportunity to address the Tribunal³.

² See for example *Mackie* UNDT/2020/015, affirmed in *Mackie* 2020-UNAT-1062; *Chahrour* 2014-UNAT-406 citing *Christensen* 2013-UNAT-335.

³ See generally, *Hossain* 2021-UNAT-1135.

15. Therefore, the Respondent's motion should not be granted as doing so would be inappropriate for the fair and expeditious disposal of the case and would not do justice to the parties.

Ruling

16. The Respondent's motion to suspend the time limit within which to file a reply pending determination of the Tribunal on the question of receivability is denied.

Order

17. It is accordingly ordered that the Respondent shall file a reply in accordance with the Practice Directions, which shall not exceed 10 pages, on the question of receivability and the merits by 5.00 p.m. (Nairobi time) on 18 April 2022.

(Signed)

Judge Rachel Sophie Sikwese

Dated this 7th day of April 2022

Entered in the Register on this 7th day of April 2022

(Signed)

Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi