



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2025/057  
Order No.: 170 (NBI/2025)  
Date: 29 September 2025  
Original: English

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**Before:** Sean Wallace  
**Registry:** Nairobi  
**Registrar:** Wanda L. Carter

PAJTIC

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON RECEIVABILITY**

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**Counsel for Applicant:**

Manuel Calzada

**Counsel for Respondent:**

Jonathan Croft, DAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant served as a Human Resources Officer on a continuing appointment with the United Nations Human Settlement Programme (UN-Habitat) in Nairobi. He filed an application with the United Nations Dispute Tribunal challenging the Respondent's decision to "impose a post-separation sanction" on him.

2. In his reply, the Respondent argues, *inter alia*, that the application is not receivable because that the Application did not seek management evaluation. The Applicant then filed a rejoinder arguing that management evaluation was not required.

## **Considerations**

3. The Dispute Tribunal Statute provides that an application is receivable if, among other things, "an applicant has previously submitted the contested administrative decision for management evaluation, where required". *Id.* art.8.1(c). In turn, staff rule 11.2 generally requires a request for management evaluation as a first step to contesting an administrative decision.

4. However, Staff Rule 11.2(b) provides an exception to that requirement: "[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."

5. The decision is set out in a letter dated 28 April 2025 from the Assistant Secretary-General for Human Resources (ASG/HR) reporting the decision of the Under-Secretary-General for Management Strategy, Policy and Compliance (USG/DMSPC). The Tribunal takes judicial notice that the USG/DMSPC is based at Headquarters in New York.

6. The letter refers to "the investigation and subsequent disciplinary process," determines that the Applicant committed misconduct as alleged, and recounts what

the USG/DMSPC considered “in determining the appropriate sanction”. It then explicates the decision: the USG/DMSPC

has decided that, had you remained a staff member, the disciplinary measure that would have been imposed upon you would have been that of separation from service, with compensation in lieu of notice, and without termination indemnity, in accordance with Staff Rule 10.2(a)(viii). This letter, memorializing this matter will be placed in your official status file. Additionally, your name will be included in ClearCheck, a UN-system database that contains the names of individuals who have a record of serious misconduct.

7. The final sentence of the sanction letter reads: “Staff Rule 10.3(c) provides that an application challenging the imposition of a disciplinary measure may be submitted directly to the United Nations Dispute Tribunal, in accordance with Chapter XI of the Staff Rules.” [Emphasis added]

8. The Respondent’s argument is that the application is not receivable because a disciplinary measure was not imposed on the Applicant; and that the placement of his name on ClearCheck is a separate administrative measure that requires him to have first sought management evaluation.

9. In examining this argument, it is clear that this was an administrative decision taken at the Headquarters in New York following the completion of a disciplinary process. The Respondent argues a disciplinary measure was not imposed on the Applicant; he was merely “informed of the decision that he *would have* received a disciplinary sanction that included separation from service had he remained a staff member.”

10. Given the express and explicit terms of the sanction letter, the Tribunal finds the Respondent’s submissions on the nature of the measure imposed on the Applicant to be most baffling.

11. Nonetheless, it is irrelevant whether or not the measure imposed was a disciplinary one. The exception in staff rule 11.2(b) applies to the imposition of both “a disciplinary or non-disciplinary measure.” Beyond informing the Applicant of the hypothetical disciplinary measure of separation from service, the contested

decision imposed the non-disciplinary measure of placing the letter “memorializing this matter,” in the Applicant’s official status file.<sup>1</sup> As such, the decision clearly comes within the exception, and a request for management evaluation was not required of the Applicant.

12. The Respondent also argues that the decision to place the Applicant’s name in the ClearCheck database “is a separate administrative decision which must be subjected to management evaluation”, citing *Applicant*, 2022-UNAT-1216, para. 61.

13. The cited language from *Applicant* is clearly *obiter dicta* when read in context. As the Appeals Tribunal initially noted in its considerations,

[T]he Appellant claims, through his articulated grounds of appeal, that the UNDT erred in law and exceeded its competence in concluding that the sanction of dismissal from service meted out on him was proportionate to the offense of having sexually harassed the Complainant. Therefore, this is the sole issue for the Appeals Tribunal to consider. *Id.*, para. 42.

14. After analysing that issue and concluding that the sanction was proportionate, the Appeals Tribunal went on to say “[t]his conclusion renders it unnecessary to examine the Appellant’s request to remove his name from the Screening Database, which came as a result of his dismissal from service for engaging in the sexual harassment of a colleague.” *Id.*, para. 61.

15. Curiously, having addressed the sole issue for its consideration and stating that it was unnecessary to examine the ClearCheck issue, the Appeals Tribunal went on to make the statement upon which the Respondent relies:

the decision to post the Appellant’s information on the Screening Database was a final administrative decision in and of itself, which was distinct from the dismissal decision. As such, if the Appellant

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<sup>1</sup> Staff rule 10.2(a) lists nine disciplinary measures (including separation from service) and rule 10.2(b) says “[m]easures other than those listed under staff rule 10.2 (a) shall not be considered to be disciplinary measures within the meaning of the present rule. These include, but are not limited to, the following administrative measures: (i) Written or oral reprimand;...” The Tribunal deems placing the sanction letter in the Applicant’s official status file as akin to a written reprimand. Even if it is not, it is obviously a measure other than a disciplinary measure.

sought to challenge it, he should have first submitted a request for management evaluation, pursuant to Article 8 of the Dispute Tribunal Statute, which he failed to do.” *Id.*

16. In the Appeals Tribunal’s own words, this language is not essential to the decision and merely an incidental comment. This makes those sentences *obiter dicta*.

17. Indeed, this is a quintessential example of why *obiter dicta* is accorded no precedential value. It is obvious that the reference to art. 8 of the Dispute Tribunal Statute was an afterthought since that article simply says that a contested decisions must be submitted for management evaluation “where required.” The article does not articulate whether management evaluation is required. Determining where management evaluation is required necessitates an examination of the staff rule 11.2, as done above.

18. Even if the ClearCheck decision was “distinct from the dismissal decision,” it is a decision taken at Headquarters in New York imposing a non-disciplinary measure following the completion of a disciplinary process. As such, staff rule 11.2(b) exempts it from the general requirement for management evaluation.

19. Finally, the Tribunal notes that the contested decision letter ends with a statement that an application “may be submitted directly to the United Nations Dispute Tribunal.”

20. The legal doctrine of estoppel is well-recognized in the United Nations internal justice system. *Simmons* 2012-UNAT-221, paras. 60-61; *Kortes* 2019 - UNAT-925, paras. 37-38; *Castillo and Fernandez* 2024-UNAT-1505, paras. 48-49; *Skheileh* 2021-UNAT-1085, para. 23; *Newland* 2018-UNAT-820, para. 35. As the Appeals Tribunal explained “[f]or there to be an estoppel there would have to be a representation by the Secretary-General, upon which [the Applicant] relied to his prejudice.” *Id.* That is the situation here.

21. The contested decision contained a statement that an application may be submitted directly to the Dispute Tribunal. Clearly, the Applicant relied on this statement by filing directly with the Tribunal instead of first requesting

management evaluation. This reliance would be to his detriment and prejudice if the Tribunal were to adopt the Respondent's current argument and find that management evaluation was required before filing the application.

22. The requirements of the doctrine having been met, the Tribunal finds that the Respondent is estopped from asserting this argument in contradiction of his previous statement to the Applicant. Permitting the Respondent to say one thing in the contested decision letter and then argue to the contrary before the Tribunal would deny the Applicant his right to fair dealing and due process. This, the Tribunal will not countenance.

23. In sum, the Tribunal rejects the Respondent's arguments that the application is not receivable.

### **Conclusion**

24. The application is receivable.

*(Signed)*

Judge Sean Wallace

Dated this 29<sup>th</sup> day of September 2025

Entered in the Register on this 29<sup>th</sup> day of September 2025

*(Signed)*

Wanda L. Carter, Registrar, Nairobi