



**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

BELHACHMI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**

Me. Ben Aberrazik

**Counsel for the Respondent:**

Cristiano Papile, ALS/OHRM, UN Secretariat

## **Introduction**

1. On 31 May 2011 the Applicant filed an application dated 24 May 2011, requesting an extension of time for filing her Application on the Merits.

2. On 9 June 2011, the Applicant applied to the United Nations Dispute Tribunal (UNDT) for an extension of time in which to file her Application. By Order No. 60 (NBI/2011) the Tribunal granted the Applicant an extension of two months, until 15 August 2011, in which to file her Application.

3. On 15 August 2011 the Applicant filed an Application with the UNDT which was served on the Respondent on 17 August 2011. On 19 August following further correspondence with the Tribunal, the Applicant indicated that she had in fact three separate applications to file with the Tribunal. In view of the apparent difficulties her counsel was experiencing in filing these three claims, the Tribunal granted the Applicant until 24 August 2011 in which to complete her filing of her three applications.

4. On 24 August 2011, the Respondent filed an Application for Leave to Reply on Receivability and attached a Reply on Receivability.

5. The Tribunal considered the Respondent's Application and issued Order No. 111 (NBI/2012), rejecting the Respondent's Application.

6. On 15 November 2011, the Applicant sent to the Tribunal a single Application on the Merits which was served on the Respondent on 16 November 2011.

7. On 17 November 2011, a status conference was held and was attended by the Applicant and Counsel for the Respondent.

## **Facts**

8. The Applicant joined the United Nations Operation in Côte d'Ivoire (UNOCI) as a Senior Civil Affairs Officer, on 21 April 2007 under a 300-series Appointment of

Limited Duration for a period of six months—to 21 October 2007. At that time, her contract was extended for a further month, to 20 November 2007.

9. On 22 August 2007 the Applicant made a complaint of harassment to the Chairman of the Field Staff Union Committee at UNOCI.

10. According to the Applicant, on 13 September 2007, following a meeting with the Applicant, the Deputy Special Representative of the Secretary-General (DSRSG), Mr. George Charpentier, advised the Applicant by confidential email that her contract would not be renewed. On 14 September 2009, the Applicant states that she received a “written notification package” to be completed by herself and the DSRSG. At the Applicant’s request, a meeting was held with the DSRSG on 20 September 2007, when the Applicant was advised by the DSRSG that the decision not to renew her contract “was final”. The Applicant asserts that she was not provided with a proper justification of the non-renewal decision, but that it was on the grounds of misconduct. In the following weeks, the Applicant wrote a number of times to the DSRSG requesting justification for the non-renewal of her contract and completion of her performance evaluation.

11. On 22 September 2007, the Applicant complained to Ms. Jane Lute, Under-Secretary-General for Field Support, about what the Applicant described as gender abuse, abuse of authority, and violation of due process.

12. On 24 September 2007, the Applicant sent an email to the Conduct and Discipline Unit of UNOCI, complaining of “abuse of authority, harassment and rumour mongering...leading to the unjust termination of my contract (October 20, 2007)”. The complaint makes reference to “the DSRSG’s ‘announcement’ on September 16 that my contract *will not be renewed*” (emphasis in original).

13. On 8 October 2007 the Applicant received an email from the UNOCI Check-Out Operator, providing details of the check-out procedure and requesting the Applicant to comply with it.

14. On 16 October 2007, the Applicant went on sick leave.

15. On 24 October 2007 the Applicant's contract was extended for one month, effective 21 October. This short extension was reflected in a letter addressed to the Applicant and dated 5 November 2007, which stated:

Please be advised that your appointment is extended beyond its expiry date of 21 October 2007 for a period of one month through 20 November 2007. Please note that this extension is final.

16. There is no evidence on file to indicate why the Applicant's contract was extended for a month in this way. However, it seems that the Applicant was sick for several months, during which time she wrote again to the DSRSG requesting justification for the non-renewal of her contract. The Applicant claims that it was not until 1 February 2008 that she received formal notification of the non-renewal of her contract beyond 20 November 2007. It was then, she says, that she received the letter referred to in paragraph 15 above, as an attachment to an email ("the 1 February 2008 email") from Mr. Philip Cooper, Director, Department of Field Support, which stated, *inter alia*:

ONUCI informed you in writing last November why your appointment was not extended. As I have been informed, on 11 November 2007, Ms. Rose Gonzales delivered an explanatory letter, together with your performance appraisal, to your residence. Because you were not there she slid the envelope that contained both of them under the door. I attach a copy of each document for ease of reference.

Consequently, since 20 November 2007, you no longer have been a United Nations staff member...Should you wish to contest the decision not to extend your appointment then you may submit an appeal to the UN Joint Appeals Board, United Nations Secretariat, Room S-2110, New York, NY 10017.

17. Also included was the Applicant's performance appraisal for the period 21 April-20 October 2007, in the form of a Special Report, apparently completed by the DSRSG, dated 3 November 2007, and indicating that the Applicant's performance was "not satisfactory".

18. Upon receipt of the documents attached to the 1 February 2008 email, the Applicant immediately protested that the performance evaluation was fraudulent because

it was not signed by the Applicant's supervisor, but by somebody else. She also demanded payment of her salary for the months of November 2007-January 2008 and until she received "genuine written notification about [her] contractual status" and a performance evaluation bearing the authentic signature of her supervisor.

19. In late February 2008, on the recommendation of the Field Staff Union, the Applicant contacted the Ombudsman's office for assistance in resolving her disputes with UNOCI. It seems that there were on-going discussions and communications between the parties with the assistance of the Ombudsman's office until July 2009. The Tribunal has not seen the correspondence from the Ombudsman but it seems from the Management Evaluation letter of 28 December 2010 (referred to below in paragraph 23 *et seq*) that the Ombudsman advised the Applicant that all attempts at informal resolution had then failed, and the case was closed.

20. It seems that the Applicant discussed her case with OSLA, and brought it again to the attention of the Field Staff Union. She wrote to the Under-Secretary-General for Field Support again in February 2008 and in 2009. The Applicant also complained to the Office of Internal Oversight Services (OIOS) in March 2009, referring to "Systemic Gender Abuse and the instrumentalization [sic] of the medical for profession gain."

21. On 25 November 2009, counsel from OSLA wrote to the Applicant advising that:

As repeatedly communicated, our Office has identified the most efficient and effective avenue(s) for you to address your multiple concerns and we have obtained confirmation from the Department of Field Support that it would waive the time-limits that govern these avenue(s). We therefore repeatedly requested you to provide draft submissions for our review. Despite our advice, however, you persist in both request(s) and claims which we assessed as either ineffective or without identifiable merit.

[...]

Please be assured that should you require evidence that the Department of Field Support agreed that time-limits would be waived should you wish to bring the matter to the attention of the Management Evaluation Unit – as well as in relation to the performance report – we will provide the same.

22. On 2 October 2010, the Applicant sent a letter to the Under-Secretary-General for Management, requesting three separate management evaluations in respect of the non-renewal of her contract; gender abuse and discrimination; and a ‘medical component’.

23. On 28 December 2010, the Management Evaluation Unit (MEU) responded to the Applicant advising her at length that her request was not receivable. The MEU based this conclusion on the fact that the Applicant was notified of the non-renewal of her contract on 5 November 2007, and that, in accordance with the rules applicable at that time, any request for review should have been submitted by 5 January 2008. The MEU wrote:

This was an indispensable condition precedent to bringing an appeal against the decision not to renew your contract, and any other decision, express or implied, which you felt violated the terms of your employment contract with the United Nations. Insofar as you did not, your submission under former Staff Rule 111.2(a) is time-barred.

24. The MEU went on to consider whether there were exceptional circumstances in the Applicant’s case warranting a waiver of the rules. The MEU concluded that the delay in submitting the request for review “was the result of a choice you freely made on the basis of your own assessment of the situation and the pertinent Rules. That this assessment was mistaken does not constitute a circumstance beyond your control.”

25. Having received the MEU’s letter, the Applicant did not approach the Dispute Tribunal until 31 May 2011, some five months later, at which point she requested an extension of time to file her Application on the Merits.

### **Consideration – Receivability of the Application**

26. Before the Tribunal can consider the substance of the Applicant’s case, the Tribunal must consider the Application to be receivable.

27. It must be stated that the overriding characteristic of this case is its incoherence. The Applicant has made complaints to numerous different individuals and entities within the United Nations, including this Tribunal, and yet it is very difficult to grasp the pattern of events and the true nature of her complaints. It is for this reason that the Tribunal

granted the Applicant an extension of time to file her initial Application. However, the granting of an extension does not mean that the Tribunal accepts the Application as receivable or that, at the date of the request for an extension of time, the Application was receivable as within the time-limits prescribed in the rules.

28. As far as the Tribunal can understand, the fundamental issue contested by the Applicant is the non-renewal of her contract and the concurrent loss of salary and entitlements as from 20 November 2007. In addition, the Applicant has complaints of gender abuse and, perhaps, a 'medical component'. Despite referring to these matters in general terms, and despite the voluminous documentation submitted by the Applicant, it must be said that it is very hard to understand the root causes of action which underpin the Applicant's claims. In any event, it does seem to the Tribunal that the matters complained of occurred in the course of the Applicant's employment, which we know ended on 20 November 2007.

29. The relevant parts of Article 8 of the Statute of the Tribunal read as follows:

1. An application shall be receivable if:

[...]

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission;

[...]

(iv) Where the parties have sought mediation of their dispute within the deadlines for the filing of an application under subparagraph (d) of the present paragraph, but did not reach an agreement, the application is filed within 90 calendar days after the mediation has broken down in

accordance with the procedures laid down in the terms of reference of the Mediation Division.

[...]

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.
  4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.
30. The Respondent contends that the Applicant received the contested administrative decision on 5 November 2007; the Applicant argues that it was not until 1 February 2008 that she received it, notwithstanding the earlier discussions with the DSRSG and her admission that as early as 13 September 2007, she was informed that her contract was not to be renewed.
31. The Tribunal is not aware of all the circumstances surrounding the Applicant's sick leave and the supposed delivery of the letter of 5 November 2007; however, it is evident from the Applicant's response to the 1 February 2008 email that she was surprised to receive the documents attached thereto, and absent any evidence from the Respondent to prove that the Applicant did indeed receive the documents earlier, this Tribunal is prepared to accept the Applicant's version of events in this regard. It does nonetheless seem odd that the Applicant, who corresponded on the subject of her non-renewal in November 2011, was really completely blind to the reality of the situation.
32. Such issues notwithstanding, if the Tribunal accepts that the formal notification of non-renewal beyond 20 November 2007 was received by the Applicant on 1 February 2008, and since her first contact with the Dispute Tribunal was not until 31 May 2011, it would appear that the Application falls foul of Article 8.4 of the Statute of the Tribunal, which prohibits the Tribunal from receiving any claim filed more than three years after the applicant's receipt of the contested decision. This rule does not allow for any discretion, and must be applied strictly. When a claim is filed three years or more after



the date that the cause of action arose, the Tribunal has no discretion or power to address the issue of time extension. Article 8.4 of the Statute of the Tribunal clearly prohibits consideration of a claim that is filed three years or more from the date of the cause of action.

33. In *Zewdu*, UNDT/2011/043, Judge Izuako stated:

Applicants have a duty to pursue their causes of action promptly. Delay can cause considerable uncertainty and inconvenience not only for the Respondent but for third parties as well. Over time, evidence of all sorts can be corrupted or disappear, memories may fade, crime scenes are changed and companies may destroy records.

34. Since the Tribunal is bound by the strict prohibition in article 8.4 of the Statute, the question of whether or not there are exceptional circumstances justifying the delay does not fall to be addressed. However, the Tribunal cannot help but remark that whatever excuses the Applicant has made over the years for her dilatory conduct of her case, she cannot claim that she was not made aware of the proper avenues for recourse, at least as early as 1 February 2008, if not before. It is surprising, to say the least, that the Applicant appears to have completely ignored clear indications as to the appropriate channels through which to lodge her complaints. Firstly, she was clearly informed by Mr. Cooper in the attachment to the 1 February 2008 email that if she wished to contest the non-renewal of her contract she could do so by appealing to the Joint Appeals Board, which then existed. In late 2009, with the assistance of OSLA, the Department of Field Support had apparently agreed to a waiver of the deadlines for management evaluation, yet in spite of being advised of this, the Applicant did not take the opportunity to request a review.

35. Indeed, the Applicant appears to have almost deliberately avoided addressing her appeal through the appropriate channels. For example, in February 2008, when, at the very latest, she became aware that she was no longer considered an employee of UNOCI, the Applicant persisted in arguing that no appealable administrative decision had been taken, stating in an email to one Ms. Maxfield on 26 February 2008:

I am fully aware of Mr. Cooper's advice [regarding the right to appeal to the Joint Appeals Board]. However, there must be a legitimate document duly signed by the authorized officials to contest in the first place...For me to go through the Appeal UNUCI [sic] has first to follow procedure. It did not staff regulation 11.1., [sic] shall as a first step, address a letter to the secretary-General [sic], requesting that the administrative decision be reviewed, such a letter must be sent within two months from the date *the staff member received* notification of the decision in writing...I will be forever indebted to Mr. Cooper for sending me the fraudulent document in February 1, 2008. Therefore, for the Appeal, there must be my signature signifying reception. Consequently, Once I get the legitimate decision to contest, I will then and only then take an informed Once I get a legitimate decision that I think is to be contested [sic], then and only then will I decide whether I should pursue an appeal or not [sic]. (Emphasis in original)

36. The Applicant submitted her requests for management evaluation nearly three years after the events she was contesting occurred. There does not appear to be any excuse for this, nor for the delay in approaching the Tribunal after the negative response from the MEU had been received in December 2010. Thus any blame for the failure of the Applicant's case rests firmly at her own door.

### **Conclusion**

37. The Application is dismissed as not receivable.

*(Signed)*

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Judge Vinod Boolell

Dated this 17<sup>th</sup> day of April 2012

Entered in the Register on this 17<sup>th</sup> day of April 2012

*(Signed)*

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Jean-Pelé Fomété, Registrar, UNDT, Nairobi