



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/010

Judgment No.: UNDT/2012/096

Date: 29 June 2012

Original: English

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**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

RATHORE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Stephen Margetts, ALS/OHRM, UN Secretariat

Sarahi Lim Baro, ALS/OHRM, UN Secretariat

## **Introduction**

1. By an application filed on 23 January 2012, the Applicant contests the decision whereby the start date of his first appointment with the United Nations Logistics Base (“UNLB”) in Brindisi was set at 7 October 2002, which resulted in a break in service between this appointment and his previous appointment with the United Nations Mission of Support in East Timor (“UNMISSET”), which had ended on 30 September 2002.
2. He seeks rescission of the contested decision, as well as compensation for the material and moral damage suffered.

## **Facts**

3. In March 2000, the Applicant joined UNMISSET. In August 2002, he was offered a 100-series fixed-term appointment in UNLB in Brindisi. The offer of appointment dated 27 August 2002 stated that “[the] appointment will become effective on a date to be determined on the basis of your date of departure and the approved travel time”.
4. As per the travel authorization issued on 25 September 2002, the Applicant was authorized to travel on 30 September 2002, with an official two-day stopover in Bangkok to make arrangements for his Italian visa, and a private stopover in Lahore at his own expenses.
5. The Applicant left Dili and arrived in Bangkok on Sunday 29 September 2002. After some delay, the Italian Embassy issued him a visa on Friday 4 October 2002. He arrived in Brindisi on Sunday 6 October 2002 and reported for duty on Monday, 7 October 2002.
6. By memorandum dated 2 December 2002 entitled “Break in service” and addressed to the Chief of Personnel of UNLB, the Applicant contested his appointment date with UNLB, which was reflected as 7 October 2002 on his last Personnel Action form, claiming that he should have been considered as being on official duties with UNLB from the moment he left UNMISSET. He requested that

she “take up this case with the concerned authorities for the continuation of service without any break”.

7. The Applicant’s letter of appointment, which he signed on 24 December 2002, states that his date of appointment is 7 October 2002.

8. By email dated 28 February 2003 entitled “My break in service”, the Applicant reminded the Chief of Personnel of UNLB of his memorandum of 2 December 2002 and reiterated that his appointment with UNLB should be deemed to have commenced when he left UNMISSET, without a break.

9. By memorandum dated 15 April 2003 entitled “Change of Contract Commencement Date”, the Applicant reminded the Administration of UNLB of his request as contained in his email of 28 February 2003 and his previous memorandum of 2 December 2002.

10. On 19 September 2011, the Applicant wrote to the Pension Fund to ask whether it was possible to remove the six-day break reflected in his pension statement, stating that he had unsuccessfully requested the same from “our personnel section”. He apparently received no response.

11. In October 2011, the Applicant contacted a representative of the Office of the Ombudsman.

12. On 11 October 2011, in response to a request from the Office of the Ombudsman, the Department of Field Support indicated that “unfortunately, [the Applicant] did have a break in service. When staff are on an [appointment of limited duration] or [f]ixed-term appointment, it carries no legal expectation of continuation or reappointment without a break”. This email was forwarded to the Applicant on 12 October.

13. By email dated 21 October 2011, the Department of Field Support further gave the following explanation to the Office of the Ombudsman:

The records show that [the Applicant] was not reassigned but rather separated from his appointment with UNMISSET and received a new appointment with UNLB (this was the practice

back then). UNLB brought [the Applicant] on board according to the date he arrived, including approved travel time.

Although it was clearly the intention of UNLB to have [the Applicant] arrive without a break-in-service, due to a chain of events, including [the Applicant] losing his tickets and delays in the visa submission and approval, the arrival date got pushed back. Therefore, in view that the standard text of offers indicates that a condition of appointment is the possession of the required visa, it appears that UNLB decided to on-board [the Applicant] for his new appointment, based on the date when he actually arrived with his visa.

We also note that the TA indicates an allowance for a two-day stopover to obtain the visa which is already beyond the customary standards of travel. The appointment for the visa should have been made well in advance to departure and two days actually exceeds the normal one day required for a visa appointment. This travel time should have been more than adequate for him to conduct his business. It appears that the original decision was made correctly since the Organization could not accommodate payment of DSA, or salary, for [the Applicant]'s extended stopover in Bangkok, which was a deviation from the approved travel.

This is what we can figure from the documents, since almost 10 years passed since there is no one we can discuss further with, however we believe that the information above should suffice.

14. The Office of the Ombudsman forwarded the above-quoted email to the Applicant on the same day.
15. On 15 November 2011, the Applicant filed a request for management evaluation.
16. On 23 January 2012, he filed the application that forms the subject of the present judgment.
17. On 30 January 2012, the Applicant was informed that the Secretary-General considered that his request for management evaluation was time-barred.
18. On 17 February 2012, the Respondent filed a motion for leave to submit his reply on the preliminary issue of receivability, on the ground that it was in the interest of judicial economy to first consider the issue of receivability of the application before embarking on a consideration of its merits. He simultaneously filed his reply on the issue of receivability.

19. By Order No. 39 (GVA/2012) dated 17 February 2012, the Tribunal granted the Respondent's motion to have receivability considered as a preliminary issue and gave the Applicant two weeks to file observations, if any.

20. Also on 17 February 2012, the Applicant requested that the Respondent's motion and reply on receivability, which were available in the eFiling system, be sent to him by email, as Internet connectivity was limited in his new duty station. The documents were emailed to him on the same day. He acknowledged receipt on 19 February 2012 but did not file observations on the issue of receivability.

21. By Order No. 113 (GVA/2012) dated 11 June 2012, the Tribunal requested the parties to produce additional material and convoked them to a hearing, to be held on 28 June, to discuss the preliminary issue of the receivability of the application. The Applicant and Counsel for the Respondent participated to the hearing by videoconference.

#### **Parties' submissions**

22. As regards receivability, the Applicant's contentions are:

a. "The statute of limitations on this case is not applicable as till 2011, the position of SG/Administration was not clearly conveyed [E-mail ... dated 11/10/2011]";

b. "Retrospective application of statutory limitation in this case is neither fair nor equitable. Besides that, ... seniority is treated a recurring right in jurisprudence and depriving the applicant a relief for his loss of seniority on technical grounds would be unjust. The applicant's stand for removing the time limits is further strengthened by UNAT Jurisprudence, Judgment No. 372 Kayigamba [1986] as quoted in ATJ No. 713 Piquilloud [1995]."

23. The Respondent's principal contentions are:

a. The application is not receivable *ratione temporis*. The Applicant contests an alleged decision dating from 2002. His request for

management evaluation in November 2011 is almost nine years late. Even if, as he claims, he became aware of the decision in April 2011, his request for management evaluation is still some five months out of time. Therefore, the application should be dismissed as time-barred.

### **Consideration**

24. The Applicant contests the decision whereby the start date of his first appointment with UNLB was set at 7 October 2002.

25. It is clear from the facts of the case that the Applicant was notified in writing of the contested decision at the latest on 24 December 2002, when he signed his letter of appointment which stipulated that his “effective date of appointment” was 7 October 2002. Prior to that, he had received (but neither party could provide it to the Tribunal) a Personnel Action form, which already reflected this decision, and which he challenged in his memorandum dated 2 December 2002 addressed to the Chief of Personnel of UNLB.

26. Staff rule 111.2(a), which was applicable at the time, provided that:

A staff member wishing to appeal an administrative decision ... shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing.

27. In accordance with the above-quoted provision, the Applicant had until 24 February 2003 at the latest to submit a request for review to the Secretary-General. However, he did not do so until 15 November 2011, almost nine years late.

28. Article 8.3 of the Tribunal’s Statute stipulates that “[t]he Dispute Tribunal shall not suspend or waive the deadlines for management evaluation” and in this respect, the Appeals Tribunal has consistently held that:

[T]he UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review. Time limits prescribed for administrative review (and management evaluation under the new system), which could be waived under the previous

system, cannot be waived under Article 8(3) of the Statute of the Dispute Tribunal (UNDT Statute), due to a specific prohibition in this respect contained in Article 8(3). (*Ajdini et al.* 2011-UNAT-108; see also *Costa* 2010-UNAT-036, *Trajanovska* 2010-UNAT-074, *Barned* 2011-UNAT-169, *Muratore* 2012-UNAT-191)

29. Furthermore, article 8.4 of the Tribunal's Statute provides that:

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. It results from the foregoing that the application is time-barred and must be rejected as irreceivable.

### **Conclusion**

31. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 29<sup>th</sup> day of June 2012

Entered in the Register on this 29<sup>th</sup> day of June 2012

*(Signed)*

René M. Vargas M., Registrar, Geneva