



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

KHAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVIBILITY**

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**Counsel for Applicant:**

Salim U. Shaikh

**Counsel for Respondent:**

Tamara A. Shockley, UNICEF

## **Introduction**

1. On 12 March 2014, the Applicant, a driver for the United Nations International Children's Fund ("UNICEF"), Pakistan, filed an application contesting the decision dated 23 April 2013 to abolish his post and terminate his fixed-term appointment. He alleges that the decision was discriminatory and based on extraneous reasons, and requests rescission of the decision, reinstatement to a fixed-term post, as well as compensation for moral damages.

2. On 18 March 2014, the Registry transmitted the application to the Respondent, informing him that his reply was due Thursday, 17 April 2014. On Monday, 21 April 2014, the Respondent's Counsel filed a motion for leave to enter the proceedings citing an inadvertent oversight of the deadline date for submission of the reply, due to a demanding workload. On 24 April 2014, the Applicant filed his response opposing the motion.

3. On 24 April 2014, by Order No. 98 (NY/2014), the Tribunal granted the Respondent's motion for leave to enter the proceedings. The Respondent was also ordered to file a reply by 9 May 2014, and the Applicant a response thereto by 9 June 2014.

4. On 5 May 2014, the Respondent filed a reply contending that the Applicant's claim was not receivable *ratione temporis*, since the Applicant filed his request for management evaluation more than seven months after being notified of the contested decision. The Respondent also submitted that the application was, in any event, without merit as the post encumbered by the Applicant was abolished in accordance with the proper administrative procedures, was not motivated by improper motivation or any other extraneous factor. The Respondent further submitted that the Administration assisted the Applicant in identifying other suitable posts.

5. In his application of 12 March 2014, and in his response of 4 June 2014, the Applicant filed a substantive submission on the merits, and also made brief comments on the issue of receivability.

6. Pursuant to the Tribunal's indication in Order No. 98 (NY/2014) that it would consider receivability as a preliminary issue, this judgment is restricted to that issue only.

### **Background**

7. The following is based on the parties' written submissions and the record.

8. The Applicant initially joined UNICEF Pakistan office in February 2006 on a Special Services Agreement. Following a fixed-term appointment from April 2006 to December 2008, he resumed his service with the Organization in July 2009, first on a temporary appointment until July 2011, and then on a fixed-term appointment until his separation in December 2013.

9. Following an Integrated Budget Review ("IBR") of UNICEF Pakistan, approved on 1 April 2013, it was determined that two posts would be abolished, including the post which the Applicant encumbered. On 23 April 2013, the Applicant received written notification of the abolishment of his post effective 31 December 2013.

10. On 6 September 2013, the Applicant requested the Representative of UNICEF in Pakistan to revisit the decision to abolish his post on grounds that his post should have been retained had proper consideration been given to his good performance record and his seniority to other staff members whose posts were not considered for abolishment. The Applicant alleged that his employment history was willfully misrepresented by his supervisor, in order to favor other drivers who were the latter's clansman. The Applicant further contended that there was a history of nepotism, favoritism and abuse of authority on the part of his

supervisor, which eventually translated into the unfair and unlawful abolishment of the Applicant's post.

11. On 14 September 2013, the Representative of UNICEF in Pakistan informed the Applicant that following a review of the relevant documentation, he was satisfied that the decision to abolish his post had been taken in conformity with the criteria developed by the office for the last IBR exercise, namely taking the earliest dates of appointment of staff on fixed-term appointments. The Representative indicated that the review correctly concluded that the Applicant's fixed-term appointment, which came into effect on 11 July 2011, was the latest issued amongst the drivers.

12. On 12 November 2013, the Applicant submitted his request for management evaluation of the decision of 23 April 2013 to abolish his post, and the UNICEF Representative's decision of 14 September 2013.

13. On 16 December 2013, management evaluation found that the Applicant's request was time-barred. The Applicant thereafter filed his application with the Tribunal on 17 March 2014.

14. In his application of 17 March 2014, and in his response of 4 June 2014, the Applicant submitted that justice should not be denied merely on a technical basis. He contended that the limitation period for submission of his request should be reckoned from the date of the expiration of the notice period, that is, the date on which the decision of 23 April 2013 was actually implemented. He also alleged, *inter alia*, that there was no reduction of funds in the relevant head of accounts for his post (the Polio Eradication Initiative), that the decision to abolish his post and to separate him from service was predetermined and motivated by prejudice and discrimination and/or improper motives, and that, unlike his competitors, he had been placed on a temporary appointment in 2009 in excess of a year contrary to the applicable staff rule so as to disadvantage him from future

employment. Further, he alleged that the supervisor failed to report a serious accident involving an official vehicle in order to protect one of the drivers from his region. He also denied that the Respondent made any efforts to find him an alternative job.

### **Consideration**

15. Whilst, in fairness to all parties, it is the practice of the Dispute Tribunal to deal with cases in chronological order of filing, the General Assembly has requested in its resolution 66/237, adopted on 24 December 2011, that the Dispute Tribunal and the Appeals Tribunal review their procedures in regard to the dismissal of “manifestly inadmissible cases”. It is a matter of record that the Dispute Tribunal, even prior to the aforesaid resolution 66/237, entertained and continues to deal with matters of admissibility or receivability as a preliminary issue, on a priority basis in appropriate cases, and also render summary judgments in appropriate cases under art. 9 of the Rules of Procedure.

16. In the instant case, the Applicant faces a preliminary hurdle with respect to the timeliness of his request for management evaluation and, accordingly, the receivability of his application.

#### *Date of the contested decision*

17. In *Schook* 2010-UNAT-013, the Appeals Tribunal held that the time limit within which a management evaluation has to be requested starts to run upon receipt of the written notification of the contested decision. It is common cause that the Applicant received the original decision to abolish his post on 23 April 2013 and that he only filed a request for management evaluation on 12 November 2013, almost seven months after he received notification of the contested administrative decision. At para. 15 of the application, the Applicant acknowledges that he requested UNICEF’s representative to “revisit the decision

of 23 April 2013”. The decision of 14 September 2013 made by the representative of UNICEF in Pakistan therefore confirmed and reiterated the decision of 23 April 2013.

18. It is trite law that reiterations of the same decision in response to a staff member’s repeated requests to reconsider the matter do not reset the deadlines for appealing the decision (*Bernadel* UNDT/2010/210, affirmed in *Bernadel* 2011-UNAT-180). It is also settled law that when a staff member makes the same repeated requests of the administration, only the first decision, is subject to appeal (*Ryan* UNDT/2010/174).

19. Therefore, the Tribunal finds that the decision of 23 April 2013 constituted the contested administrative decision in this case.

#### *Management evaluation*

20. In terms of art. 2.1 of the Dispute Tribunal’s Statute, the Tribunal has jurisdiction to consider applications appealing administrative decisions “when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines”.

21. Pursuant to staff rule 11.2(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.

22. The Applicant was notified of the contested decision on 23 April 2013, and had 60 days thereafter to submit his request for management evaluation, but

only submitted it in November 2013, long past the deadline. Under staff rule 11.2(c), this deadline may be extended by the Secretary-General pending efforts for an informal resolution by the Office of the Ombudsman. The Applicant submitted that he “contested that decision through series of informal and formal communications addressed to the Chief-Operations and sought clarities [sic] as to the criteria of abolishment” which remained unaddressed. However, there is no contention in the instant case that there was any form of informal resolution process being conducted by the Office of the Ombudsman at the relevant time, whereby the Secretary-General’s extension of the deadline for the management evaluation request could be inferred (*Wu* 2013-UNAT-306).

23. Furthermore art. 8.3 of the Tribunal’s Statute states that whilst the Tribunal may, upon written application, suspend or waive the deadlines in exceptional cases, it shall not suspend or waive the deadlines for management evaluation. The Dispute Tribunal “has no jurisdiction to waive deadlines for management evaluation”, or to make any exceptions thereto (*Costa* 2010-UNAT-036, *Sethia* 2010-UNAT-079, *Ajdini et al.* 2011-UNAT-108).

24. Both the Dispute Tribunal and United Nations Appeals Tribunal have consistently stressed the importance of compliance with statutory deadlines (*Mezoui* 2010-UNAT-043, *Christensen* 2012-UNAT-218). Time limits exist for reasons of certainty and expeditious disposal of disputes in the workplace and an individual may by his own action or inaction forfeit his right to be heard by failing to comply with time limits (*Morsy* UNDT/2009/036). Furthermore, staff members are presumed to know the staff rules, particularly those pertaining to their basic rights, such as the right of appeal (*Diagne et al.* 2010-UNAT-060, *Muratore* 2012-UNAT-191, *Christensen* 2012-UNAT-218).

25. The Applicant having failed to comply with the deadline for the filing of his request for management evaluation, his application is time-barred. Accordingly, the Tribunal finds that the present application is not receivable.

**Conclusion**

26. The application is dismissed.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 27<sup>th</sup> day of June 2014

Entered in the Register on this 27<sup>th</sup> day of June 2014

*(Signed)*

Hafida Lahiouel, Registrar, New York