



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Hafida Lahiouel

CHOLLET

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a former Functional Analyst at the P-4 level, Umoja project, Department of Management, contested the decision not to renew his fixed-term appointment, which expired on 31 January 2014. The Applicant submits that the contested decision not to renew his contract was notified to him on 6 December 2013 and was made in retaliation for his reports of abuse of authority against his supervisors and despite the protections afforded to him under ST/SGB/2005/21 (Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations).

2. The Respondent submits that the application is not receivable because the Applicant did not file his request for management evaluation within 60 days of the date of notification of the contested decision, as required by staff rule 11.2. The Respondent submits that the Applicant was notified of the contested decision on 19 June 2013, but requested management evaluation only on 15 January 2014, well beyond the 60-day period.

## **Facts**

3. On 10 January 2013, the Applicant signed a letter of appointment accepting a one-year fixed-term appointment to work on the Umoja project, which is a UN-wide project aiming to harmonize and streamline the way that the Secretariat manages its human, financial and material resources. The effective date of the Applicant's appointment was 1 February 2013. The letter of appointment stated that the appointment "expire[d] without prior notice" on 31 January 2014. It further noted that "[a] Fixed-Term Appointment, irrespective of the length of service, does not carry any expectancy, legal or otherwise, of renewal".

4. In March and April 2013, the Applicant met the Assistant Secretary-General, Enterprise Resource Planning (“ASG/ERP”), Department of Management, to inform him that he was harassed by his supervisor for having made various reports of alleged improprieties in the office. The Applicant stated that his supervisor had threatened to remove him from the job in retaliation for these reports.

5. On 30 May 2013, the Applicant had a meeting with Ms. ML, Office of Human Resources Management (“OHRM”), who informed him that there would be no further extension of his appointment beyond 31 January 2014. On 30 May 2013, Ms. ML sent an email to the ASG/ERP, apparently copying the Applicant and stating:

[The Applicant] was advised that he is being released on assignment to OHRM on his Umoja post until the expiry date of his current fixed-term appointment (i.e. 31 January 2014). He was further informed that OHRM has no funding to absorb this assignment or any extension beyond 31 January 2014.

6. In an email to the ASG/ERP, dated 10 June 2013, the Applicant stated (emphasis in original):

I am coming back to you further to our meeting of Wednesday 29 May in your office, at your invitation.

You informed me that OHRM had identified a possible position for transfer following my complaint of harassment and retaliation.

You specifically mentioned that OHRM would provide more details of the job description and their conditions. Concerning the contractual aspect you explained that Umoja will fund this position up to 31 January 2014, which is the end of my current contract, as OHRM does not have funding at the moment, and a solution will have to be identified for the future. You stated that your intention was to retain my post in Umoja, in order to open it for new recruitment.

On Thursday 30 May I met with Mrs. [ML] from OHRM ... .

Mrs. [ML] explained that a transfer could be done from Umoja to OHRM immediately; she confirmed that the post will be funded by Umoja up to end of January 2014.

She then stated that there will be *no further extension beyond 31 January as my post will be cut*. Therefore she invited me to look for another job.

...

It now *appears evident that the offer to transfer me to OHRM (and consequently remove me from Umoja) and to then cut my post is a direct and adverse consequence of my complaint of harassment and retaliation*. It does not, however, provide the protection to which I am entitled.

*To protect me from [the Applicant's supervisor] who threatened me explicitly with termination, the solution proposed by the organisation is to cut my post, or at the least to separate me from service at the end of my present contract. Were this option to be implemented, I regret that I would have no choice but to consider this further evidence of retaliation and refer the matter to the competent authorities.*

7. On 19 June 2013, the ASG/ERP wrote an email to the Applicant informing him that the functions for which he was hired in Umoja were not projected to be required in 2014. Specifically, the ASG/ERP stated (emphasis added):

With reference to your e-mail [of 10 June 2013], I note that we have had a series of meetings regarding your work with Umoja.

In the interest of addressing your concerns, I sought the assistance of OHRM on possible solutions. OHRM, sensitive to your request for a move, provided the option to release you on assignment to their Office starting the first week of June until 31 January 2014 against the Umoja funding. ...

Both OHRM and I communicated this option to you. I have requested OHRM to review and finalize the Terms of Reference for the assignment being offered to you, and invite you to

reconsider it. OHRM will be contacting you to arrange a meeting.

As to the situation of your Umoja functions, the Umoja project is now progressing to new phases leaving behind the design and build stages, with different, emerging requirements, which demands the need to re-purpose the teams to support deployment and post-implementation, assigning all funds available to that endeavor. With this in mind and given the sparse resources available to Umoja, *the functions for which you were hired in Umoja are not projected to be required in 2014. Thus the guidance provided from OHRM and myself, to encourage you to apply to any vacancy announcements of your interest, both within and outside the Secretariat.*

I wish to assure you that *the conclusion regarding your functions*, as in all other cases we manage, has been arrived at in the best interest of the Organization after a review of the critical needs of the Project so as to ensure it moves forward in an efficient and proper manner.

8. On 25 July 2013, the Applicant submitted to the Ethics Office a request for protection from retaliation. In this request for protection, the Applicant alleged that his report of misconduct to the ASG/ERP on 26 March 2013 had led “to the decision of not renewing his contract”. The Applicant also stated (emphasis omitted):

This can be perceived as a clear act of retaliation for the following reasons: the list of emails exchanged between [the ASG/ERP] and myself shows very clearly the succession of facts and the direct link between my complaint of harassment and retaliation, and the decision to terminate my appointment (confirmed on his email dated 19 June 2013).

9. On 8 November 2013, the Director of the Ethics Office provided a report to the Applicant detailing the Ethics Office’s evaluation of his request for protection from retaliation. The Ethics Office found that there was insufficient evidence to support a *prima facie* case of retaliation against the Applicant.

10. On 21 November 2013, the ASG/ERP emailed the Applicant stating:

Following meetings with me and OHRM in May 2013, when your assignment to OHRM was proposed, and as reflected in my email to you dated 19 June 2013, this is to reconfirm that your fixed-term appointment with Umoja expires on 30/01/2014.

11. The ASG/ERP further noted in his email that he had designated a staff member as a focal point to assist the Applicant and “all other affected staff members in Umoja” with aspects related to career advancement, including, for example, interviewing workshops.

12. On 6 December 2013, the Applicant received a letter from the Executive Officer, Department of Management, stating:

Reference is made to the email notifications of 19 June 2013 and 21 November 2013 from [the ASG/ERP], informing you that your Fixed-Term Appointment will not be extended beyond 31 January 2014. The reason for the non-extension of your appointment is due to the impending completion of your tasks associated with the project functions as the project moves to a different phase as per its mandate. This letter thus serves as advance notice for the non-extension of your fixed-term appointment.

13. On 15 January 2014, the Applicant requested management evaluation of the decision not to renew his fixed-term appointment beyond 31 January 2014. In his request, the Applicant stated that he became aware of the “final decision” to separate him from service only on 6 December 2013.

14. On 20 January 2014, the Applicant filed an application for suspension of action, pending completion of management evaluation, of the decision not to renew his appointment.

15. By Order No. 21 (NY/2014), dated 27 January 2014, the Tribunal rejected the application for suspension of action, finding that it failed to meet the test of urgency under art. 2.2 of the Dispute Tribunal's Statute.

16. By letter dated 31 January 2014, the Chief of the Management Evaluation Unit ("MEU") informed the Applicant that his request for management evaluation was not receivable because it was not filed within 60 calendar days of notification of the contested decisions.

### **Procedural background**

17. On 30 April 2014, within 90 days of MEU's response of 31 January 2014, the Applicant filed an application with the Tribunal. As his application was missing a number of annexes, he was directed by the Tribunal to file the missing documents, which he did on 1 May 2014.

18. On 2 May 2014, the Registry transmitted the application to the Respondent. On 2 June 2014, the Respondent filed a reply to the application.

19. By Order No. 132 (NY/2014), dated 4 June 2014, the Tribunal ordered that this case join the queue of pending cases to be assigned to a Judge in due course.

20. The case was assigned to the undersigned Judge on 22 July 2015.

21. On 28 August 2015, the Tribunal issued Order No. 203 (NY/2015), directing the parties to file, by 18 September 2015, a joint submission replying to the following instructions:

- a. A consolidated list of agreed facts in chronological order;

b. A list of, if any, agreed legal issues, including the receivability *ratione materiae* of the application;

c. Does any party require the production of additional evidence or the case can be decided based on the documents already filed before the Tribunal;

d. Whether the parties are amenable to resolve the matter informally either through the Mediation Division or through *inter partes* discussions.

22. In response to Order No. 203 (NY/2015), the Respondent filed a submission on 18 September 2015 informing the Tribunal that

[t]his week, counsel for the Respondent sent the Applicant three emails concerning the preparation of a joint statement, including a draft joint statement. The Applicant responded at 3.26 p.m. today and indicated that he did not agree with the draft. Therefore, an agreement on a joint statement with the time ordered by the Dispute Tribunal is not possible.

23. No submission was received by the Tribunal from the Applicant in response to Order No. 203 (NY/2015).

24. By Order No. 254 (NY/2015), dated 30 September 2015, the Tribunal directed that the case would be decided on the papers before the Tribunal, and ordered the parties to file their closing submissions by 23 October 2015, based on the documents already before the Tribunal.

25. On 23 October 2015, the Respondent filed his closing submission. No closing submission was filed by the Applicant.

**Parties' submissions on receivability**

26. In his application, the Applicant submits that he was officially notified of the decision not to renew his fixed-term appointment by letter from the Executive Officer, Department of Management dated 6 December 2013.



He submits that he filed his request for management evaluation on 15 January 2014, which was within the applicable 60-day time limit from the date of notification of the administrative decision. The Applicant further submits that earlier exchanges concerning the date of expiration of his contract did not include a final decision on non-renewal as the issue was still under consideration.

27. In his reply to the application, the Respondent submits that the application is not receivable as the Applicant failed to file a timely request for management evaluation of the decision not to renew his contract. The Respondent submits that the Applicant was first informed that his contract would not be renewed beyond 31 January 2014 in a meeting with OHRM, held on 30 May 2013. He was further notified of the non-renewal of his contract by email dated 19 June 2013 from the ASG/ERP, which should be considered to be the official date of notification of the non-renewal decision. The Respondent further submits that the Applicant's actual knowledge was further demonstrated by his actions following his receipt of the written notification of the contested decision. On 25 July 2013, approximately one month after receiving the email of 19 June 2013, the Applicant submitted a retaliation complaint to the Ethics Office alleging that a report he had made to the ASG/ERP at the meetings on 26 March and 29 April 2013 "directly led the decision of not renewing his contract" and explaining that his goal was to "[o]btain a reversal of the decision on non-renewal of [his] current contract". The Respondent submits that the 60-day time limit for requesting management evaluation expired on 19 August 2013 and the request for management evaluation was filed on 15 January 2014, nearly five months after the expiry of the time limit.

28. The Respondent submits that, even if the 60-day time limit were viewed as running from 25 July 2013, the date of the Applicant's retaliation complaint, the time limit to submit a request for management evaluation expired on 23 September 2013, and on this basis, the Applicant's request for management evaluation was nearly four months late. The subsequent confirmations of the contested decision from 21 November and 6 December 2013 did not constitute new administrative decisions and therefore did not restart the time limits for requesting management evaluation.

29. The Respondent submits that the Tribunal's Order No. 21 (NY/2014) on the Applicant's suspension of action application should not be followed since the additional evidence submitted by the parties demonstrates that the Applicant was notified of the contested decision in writing on 19 June 2013, which therefore represents the starting date for calculating the deadline for the Applicant's management evaluation request.

### **Consideration**

#### *Applicable law*

30. Article 8 of the Dispute Tribunal's Statute states:

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

...

(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.

31. Staff rule 11.2 (Management evaluation) states:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1(a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty 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.

32. Article 8.3 of the Tribunal's Statute provides:

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.

### *Receivability*

33. The United Nations Appeals Tribunal has consistently held that the Dispute Tribunal does not have jurisdiction, pursuant to art. 8.3 of its Statute, to waive or extend the deadlines for management evaluation requests (*Costa* 2010-UNAT-036; *Trajanovska* 2010-UNAT-074; *Sethia* 2010-UNAT-

079; *Ajdini et al.* 2011-UNAT-108). Reiterations or repetitions of the same administrative decision in response to the Applicant's communication do not reset the clock with respect to the applicable time limits in which the original decision is to be contested (*Sethia; Aliko* 2015-UNAT-539).

34. As results from the documents filed by the parties in the present case, the Applicant was informed of the decision not to renew his contract on several occasions in the period of May–June 2013, and including through the written notification of 19 June 2013.

35. The ASG/ERP's email of 19 June 2013 stated clearly that the Applicant's functions were "not projected to be required in 2014" and referred to "the conclusion regarding [his] functions". This email followed two previous discussions between the Applicant and the ASG/ERP and OHRM. The email of 19 June 2013 was in direct response to the Applicant's email of 10 June 2013, in which he stated that OHRM had informed him that there would be "no further extension beyond 31 January as [his] post will be cut".

36. The Applicant's awareness that his appointment would not be renewed is confirmed by the Applicant's actions following his receipt of the email dated 19 June 2013. On 25 July 2013, the Applicant submitted a retaliation complaint to the Ethics Office, in which he stated that the ASG/ERP's email of 19 June 2013 confirmed the decision to "terminate [his] appointment". The Applicant stated in his retaliation complaint of 25 July 2013 that there was a "direct link between [his] complaint of harassment and retaliation, and the decision to terminate [his] appointment (confirmed on [ASG/ERP's] email dated 19 June 2013)".

37. In his complaint of 25 July 2013, the Applicant alleged that reports that he had made to the ASG/ERP in March and April 2013 "directly led to

the decision of not renewing [his] contract”. The Applicant further stated that one of the purposes of his complaint to the Ethics Office was to “[o]btain a reversal of the decision on non-renewal of [his] current contract”.

38. Notably, the Applicant’s complaint to the Ethics Office, dated 25 July 2013, was not provided to the Tribunal by any party in the context of the suspension of action proceedings that were closed by Order No. 21 (NY/2014), dated 27 January 2014. Accordingly, the Tribunal could not have taken it into consideration when making a pronouncement in Order No. 21 (NY/2014) regarding the date of notification of the contested decision.

39. The complaint to the Ethics Office was made available to the Tribunal for the first time as part of the Applicant’s application on the merits, filed on 30 April 2014 and completed on 1 May 2014. The language of the Applicant’s complaint makes it clear that the Applicant himself considered that the non-renewal decision was notified to him by email of 19 June 2013. The Applicant’s averment in the application on the merits that the application is receivable because the contested decision was notified to him on 6 December 2013 is a reiteration of his position expressed in his suspension of action application and is based on the preliminary conclusions in Order No. 21 (NY/2014), which are no longer relevant as they have been contradicted by the Applicant’s own recognition in the complaint to the Ethics Office that the non-renewal decision was notified to him on 19 June 2013.

40. Thus, from the documents before the Tribunal, there is no doubt that the Applicant was notified in writing, by 19 June 2013 at the latest, that his contract would end on 31 January 2014 and he clearly understood the nature and the effect of the contested decision on that date. As correctly stated by the Respondent, the 60-day time limit for requesting management evaluation

expired on 19 August 2013 (see staff rule 11.2(c)). However, the Applicant filed his management evaluation request on 15 January 2014, nearly five months after the expiry of the applicable time limit.

41. The Tribunal further finds that the communications sent to the Applicant after the email of 19 June 2013, including the letter of 6 December 2013, were mere reiterations of the decision not to renew his contract. As such, they did not reset the time limits for the filing of his management evaluation request (*Sethia; Aliko*).

42. Finally, the Tribunal notes that the Applicant did not reply to Orders No. 203 (NY/2015) and No. 254 (NY/2015). Accordingly, the Respondent's final submissions on receivability stand uncontested, particularly in view of the language of the Applicant's complaint to the Ethics Office.

43. It follows from the above that the Applicant failed to submit a timely request for management evaluation, and, as a result, one of the mandatory and cumulative conditions of art. 8.1 of the Statute has not been fulfilled. The Tribunal does not have jurisdiction, pursuant to art. 8.3 of its Statute, to waive or extend the deadlines for management evaluation requests (*Costa; Trajanovska; Sethia; Ajdini et al.*). The application before the Tribunal is not receivable *ratione materiae* and is to be rejected. Accordingly, the Tribunal will not further analyze the parties' submissions on the merits.

**Conclusion**

44. In the light of the foregoing, the Tribunal DECIDES:
45. The application is not receivable and is rejected.

*(Signed)*

Judge Alessandra Greceanu

Dated this 4<sup>th</sup> day of November 2015

Entered in the Register on this 4<sup>th</sup> day of November 2015

*(Signed)*

Hafida Lahiouel, Registrar, New York