



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

YASIN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT ON RECEIVABILITY**

---

**Counsel for the Applicant:**  
Nicole Washienko, OSLA

**Counsel for the Respondent:**  
Stephen Margetts, ALS/OHRM

### **Procedural history**

1. The Applicant is a Senior Administrative Officer with the Department of Peacekeeping Operations (DPKO). In her Application dated 6 May 2015, she contests “the decision to curtail her mission assignment with the United Nations Assistance Mission in Iraq (UNAMI) prior to the expiration of her contract; the decision not to extend her assignment with UNAMI and the attendant decision to transfer her to a P-5 level post.”

2. The Respondent filed a Reply on 5 June 2015 and raised a preliminary issue arguing that the Application is not receivable *rationae materiae* and ought to be dismissed.

3. On 8 September 2015, the Tribunal issued Order No. 277 (NBI/2015) notifying the Parties that, pursuant to art. 16.1 of the Dispute Tribunal’s Rules of Procedure, an oral hearing was not necessary to determine the preliminary objection on the ground of receivability and that it would rely on the Parties’ written pleadings for that purpose. The Applicant was also invited to file submissions on the issue of receivability by 30 September 2015.

4. The Applicant filed the said submissions on 30 September 2015.

### **Facts**

5. The Applicant has been working for the United Nations for over 25 years.

6. On 1 August 2008, she was appointed to the position of Senior Administrative Officer at the P-5 level with DPKO at the United Nations Headquarters in New York (UNHQ).

7. On 12 November 2010, she was placed on a roster for the position of Chief Administrative Services, at the D1 level, after undergoing a written examination, a competency-based interview and review by a Central Review Board.

8. The Applicant was selected by the Head of Mission of UNAMI for the post of Chief of Mission Support, UNAMI in late 2012 at the D-1 level.

9. On 8 January 2013, the Director, Field Personnel Division, Department of Field Support (FPD/DFS), addressed a memorandum to the Executive Officer, DPKO, requesting the Applicant's release to UNAMI. The memorandum stated that the Applicant's assignment to UNAMI would be limited to a maximum of two years. The Applicant accepted these terms of assignment on 28 January 2013.

10. On 10 February 2013, the Applicant was assigned to the post of Chief of Mission Support in UNAMI, at the D-1 level, while maintaining a lien on her post of Senior Administrative Officer at the P-5 level with DPKO. The Applicant's assignment to UNAMI was due to expire on 9 February 2014.

11. In February 2014, the Applicant's assignment to the post of Chief of Mission Support in UNAMI at the D-1 level was extended for a subsequent year, until 9 February 2015. She continued to maintain the lien on her post with DPKO.

12. In November 2014, the Under-Secretary-General, DFS (USG/DFS) called the Applicant by phone. During this call, the USG/DFS informed the Applicant that the Government of South Sudan had recently requested the removal of another United Nations staff member "MM" from the country. The USG/DFS further stated that she needed to place MM on another post prior to her retirement at the end of January 2015 and asked the Applicant whether she would be willing to leave her post in UNAMI prior to the expiration of her assignment. The Applicant informed the USG/DFS that she would be in New York in early December 2014 and suggested that it would be preferable to discuss the matter in person then.

13. On 2 December 2014, the Applicant met in person with the USG/DFS. During this meeting, she indicated to the USG/DFS that she would be willing to move laterally, at the D-1 level, to any post in New York. She also told the USG/DFS that she had personally been trying to find a post for herself at the D-1 level and that if she did not succeed, she would consider extending her assignment with UNAMI. The Applicant asked the USG/DFS if there were any posts at the D-1 level in DFS to which the Applicant could be laterally transferred and the USG/DFS responded that there were none.

14. During the said meeting on 2 December 2014, the USG/DFS again proposed that the Applicant consider ending her assignment with UNAMI early to facilitate the USG/DFS's efforts to place MM prior to her retirement. The USG/DFS indicated that if the Applicant were to accept this, she would be placed on Daily Subsistence Allowance (DSA) status until the expiration of her current contract on 9 February 2015, at which time the Applicant would then return to her P-5 post with DPKO, where she would assist with a special project.

15. The Applicant told the USG/DFS that she was surprised by this request and that she had taken the assignment with UNAMI which was one of the most dangerous duty stations in the world and had remained there for almost two years, for the purpose of serving the mandate of the Organization. She added that she had done so voluntarily, irrespective of the hardship and obvious attendant stress, mindful of the Organization's goal to promote and implement mobility among its staff members and with the thought that this movement would be appreciated and recognized by the Organization.

16. The Applicant also stated that she recognized the USG/DFS's need to transfer MM, but that she did not believe that it was correct that this should be done at her expense. The discussion between the USG/DFS and the Applicant on 2 December 2014 ended with the Applicant assuring the USG/DFS that she would consider the latter's request, and asked the USG/DFS to also consider her own situation.

17. Following that meeting of 2 December 2014, the Applicant decided that while she would be willing to assist DFS with the special project that the USG/DFS had mentioned, she did not want to leave her mission assignment with UNAMI early if it involved returning to the P-5 level. She thus attempted to contact the USG/DFS on two occasions to discuss this further, but never received a response.

18. On 12 December 2014, the Acting Assistant Secretary-General for Field Support (Acting ASG/DFS) wrote to the Applicant by e-mail, informing her of the decision that she return to New York on 15 January 2015.

19. The Applicant replied to the Acting ASG/DFS that same day, stating that her contract was through 10 Feb 2015 and that she was therefore confused by his email. She indicated that she had been asked whether she would be willing to leave earlier and that she had declined.

20. The Acting ASG/DFS replied to the Applicant on 13 December 2014, stating:

There is no 'basis'. It has been decided that you should return to NY no later than 15 January.

You have a contract with the organization with a separate expiration date and are on a temporary assignment to UNAMI.

Your replacement will be ready by that time so please do work on a good hand over note.

21. On 14 December 2014, the Special Representative of the Secretary-General, UNAMI (SRSG/UNAMI) replied to the Acting ASG/DFS's email of 12 December 2015 stating that he understood that DFS needed the Applicant in New York by 15 January 2015 to undertake a special project, but that for operational reasons, he hoped that the Acting ASG/DFS could agree to a date in the week of 20 January 2015, as the Applicant would need to finalize a few issues in UNAMI before taking up her assignment in New York.

22. On 12 January 2015, the USG/DFS sent a facsimile to the SRSG/UNAMI stating that she was pleased to confirm that MM had been appointed as Chief of

Mission Support of UNAMI effective 21 January 2015 for a period of one year. The USG further stated that the appointment of MM was made pursuant to her authority to move a staff member laterally as per section 11.2 of ST/AI/2010/3 (Staff selection system). The USG also stated that in order to ensure a smooth transition and handover, MM would travel to Baghdad on 18 January 2015 and that his stay in Baghdad from 18 January to 20 January 2015 should be treated as official business travel.

23. On 15 January 2015, the Applicant received an email from the generic address UNAMIServicedesk@un.org. The email stated:

In connection to your end of assignment with UNAMI on 20 January 2015, I hereby attach your check-out memo, which will guide you through the process.

All the best in your future endeavors.

24. The Applicant replied to the email, stating:

Please provide me with the basis for your email below that I am ending my assignment on 20 January. For the record, this is not the case so i ask that you cease any action you have started in this regard. Thank you.

25. On 16 January 2015, the Applicant submitted a management evaluation request contesting the decisions of the USG/DFS to terminate her mission assignment with UNAMI as of 20 January 2015. The Applicant filed a Suspension of Action on 19 January 2015, seeking an injunction against the same decision.

26. On 23 January 2015, the Tribunal issued Order No. 028 (NBI/2015), holding that “the decision not to extend the Applicant’s assignment with UNAMI to have been made in bad faith and tainted by extraneous factors, thus making it *prima facie* unlawful”. The Tribunal ordered that the Applicant remain on her current position of Chief of Mission Support of UNAMI pending management evaluation.

27. On 3 February 2015, the Applicant received an email from the Chief, Office of the USG/DFS, informing her that DFS had decided to rescind the decision that she

return to New York with immediate effect. She was to remain in her then-current assignment of Chief of Mission Support of UNAMI through the end of her contract on 9 February 2015.

28. The Management Evaluation Unit (MEU) issued its decision on 5 February 2015 finding that the Applicant's request for review of the decision to terminate her mission assignment with UNAMI was rendered moot since the Administration had subsequently decided to rescind this decision and to retain the Applicant through the end of her assignment, that is, until 9 February 2015. MEU further found that to the extent that the Applicant was also contesting the administrative decision to end her assignment to UNAMI on 9 February 2015, this request was not receivable since this decision was taken in early 2014 and the Applicant had not contested it in a timely manner.

#### **Respondent's submissions on receivability**

29. On 12 January 2015, in anticipation of the Applicant reaching the two year limit on her mission assignment, the Administration arranged for the Applicant's successor to commence at UNAMI on 20 January 2015, two weeks prior to the formal expiration of the Applicant's assignment. Accordingly, the Applicant's assignment was to be curtailed by two and a half weeks.

30. The Applicant objected to the cutting short of her assignment and submitted a suspension of action request with the Dispute Tribunal. On 20 January 2015, the Administration rescinded the decision.

31. The United Nations Appeals Tribunal (UNAT) has held in *Gehr*<sup>1</sup> and *Rahman*<sup>2</sup> that administrative decisions that have been rescinded and bear no legal consequences for a staff member are not contestable *rationae materiae*. The curtailment of the Applicant's assignment was rescinded only eight days after the

---

<sup>1</sup> 2012-UNAT-357.

<sup>2</sup> 2014-UNAT-453.

decision was issued. There are no legal consequences for the Applicant arising from that decision and therefore the said decision is not contestable.

32. The Applicant did not request management evaluation of any decision not to extend her appointment for a third year. On 22 January 2015, two and a half weeks before the end of her assignment to UNAMI, the Applicant requested an extension of her assignment for a third year. On 3 February 2015, the Administration confirmed that the assignment would end on 9 February 2015.

33. On 16 January 2015, the Applicant had requested management evaluation of the decision to cut short her assignment at UNAMI after 20 January 2015. She did not request management evaluation of the decision not to extend her assignment for a third year from February 2015 onwards. The non-extension claim is outside the scope of her management evaluation request and is not receivable.

34. The Applicant did not request management evaluation of the decision to return her to New York at the end of her assignment. On 9 February 2015 when her mission assignment at UNAMI expired, the Applicant was placed against the post at the United Nations Headquarters over which she held a lien. The Applicant has not requested management evaluation of that decision. This claim is outside the scope of the Application.

#### **Applicant's submissions on receivability**

35. The Respondent's argument on receivability regarding the curtailment of her mission assignment is not well-founded because it failed to account for the Applicant's arguments in her Application that this unlawful decision caused her to suffer significant moral damages. Not only did the Applicant suffer reputational damage and stress, she also experienced uncontrolled hypertension to such a degree that she was medically evacuated from the mission area.



36. The rescission of the decision to curtail her assignment as Chief of Mission Support to UNAMI is an entirely inadequate reparation for the harm that was caused her.

37. The decision not to extend the Applicant's post in UNAMI after its expiration on 9 February 2015 is receivable. When the Applicant met with the USG/DFS on 2 December 2014, she specifically indicated that if it would not be possible to move her laterally to another D-1 post, she was interested in extending her assignment with UNAMI. The USG/DFS responded saying that she wished to place MM on the Applicant's post, and that at the end of the Applicant's assignment in UNAMI, she would return to her P-5 post with DPKO, where the Applicant would assist with a special project.

38. The Applicant was surprised at this suggestion and indicated that she never would have taken the necessary measures to be cleared at the D-1 level, and to accept an assignment in one of the most difficult and insecure duty stations in the world, only to move back to her original post at the P-5 level. The Applicant indicated that she would consider the special project that the USG/DFS had proposed, but only if her work on this project would be at the D-1 level.

39. These facts are supported by the testimony of the Acting ASG/DFS at the relevant time, who was a witness for the Respondent in the Applicant's Application for a Suspension of Action on the decision to terminate her mission assignment with UNAMI as of 20 January 2015. In the Order on the Application for a Suspension of Action (Order No. 028 (NBI/2015)), the Tribunal noted:

Mr. Sanchez testified that the Applicant was happy to return to Headquarters but only if there was a position at the D1 level available for her, and that this was not possible.

40. The Applicant submitted that in the light of this sworn testimony from the Respondent's own witness, there can be no doubt that the Administration was well

aware that the Applicant did not wish to relinquish her post in UNAMI if it would entail her being reassigned to a P-5 level post.

41. When the Applicant was informed on 12 December 2014 that MM was being assigned to her post in UNAMI, this constituted an implicit decision on behalf of the Administration to deny her request to remain in UNAMI if she could not be assigned to a post at the D-1 level elsewhere.

42. Contrary to the Respondent's assertions, the Applicant did request management review of the decision not to extend her assignment with UNAMI. In her request, the Applicant asked the Management Evaluation Unit to review two decisions, namely:

the decision to terminate my appointment with UNAMI” and 2) “the appointment of [MM] against the post that I am currently encumbering as [it] prejudices the continuation of my appointment with UNAMI.

43. In framing her request for management evaluation, the Applicant specifically indicated that the decision to assign MM to her post precluded her continuation of her assignment with UNAMI. There can be no doubt that by contesting the appointment of MM to her post, the Applicant was inherently contesting the related decision not to extend her assignment with UNAMI.

44. The fact that the Applicant sent the Administration a Request for Extension of Appointment Form on 22 January 2015 and that the Administration confirmed on 3 February 2015 that the Applicant's assignment with UNAMI would end on 9 February 2015 has no bearing on receivability. Throughout the course of December 2014 and into January 2015, the Applicant had made it clear to the Administration that she only wished to return to New York if she could return at the D-1 level and that if this was not possible, she wished to stay on her D-1 post in UNAMI. Further, this request was implicitly denied on 12 December 2014 when MM was assigned to the Applicant's UNAMI post. The fact that further communications on this matter

occurred after the Applicant filed her request for management evaluation does not render the prior decision not to extend her assignment with UNAMI without effect.

45. The direct result of MM's assignment to the Applicant's UNAMI post was that the Applicant was compelled to return to New York at the P-5 level. Thus, by requesting management review of the decision to assign MM to the post that she was encumbering in UNAMI, the Applicant was inherently contesting the related decision to return her to New York to assume functions at the P-5 level.

46. At the time that the Applicant submitted her request for management evaluation, she was self-represented and therefore, she could not be expected to articulate her requests as artfully as counsel might. Nonetheless, even if her requests were not articulated with as much precision as professional legal counsel may be expected to do, the contested administrative decisions were clear, namely: i) the decision to curtail the Applicant's assignment with UNAMI; ii) the decision not to extend the Applicant's assignment with UNAMI upon its expiration; and iii) the attendant decision to return the Applicant to New York to resume P-5 level functions.

47. MEU's decision makes clear that it understood that the Applicant's request "could also be interpreted as contesting the administrative decision to end your assignment to UNAMI on 9 February 2015", which is another way of phrasing the decision not to extend the Applicant's appointment with UNAMI beyond its expiration and the attendant decision to return the Applicant to New York. Although MEU did not find in the Applicant's favour, it is clear that the Administration understood the requests that the Applicant was seeking review of.

### **Considerations**

48. In her request for management evaluation dated 5 February 2015, the Applicant described the administrative decisions to be evaluated as: (i) a decision to terminate her appointment with UNAMI; and (ii) the decision to appoint MM to the post she was encumbering at that time.

49. The Respondent objected to the receivability of this Application on the grounds that: (i) The day after the Applicant had filed a suspension of action challenging the cutting short of her mission assignment by about two and a half weeks, the decision to do so was rescinded by the Respondent. As a result, there were no legal consequences of the rescinded decision; (ii) The Applicant did not request management evaluation of a decision not to extend her mission assignment for a third year. This fact renders that aspect of her claim non-receivable by the Tribunal; and (iii) The Applicant did not request management evaluation of the decision to return her to New York at the end of her mission assignment.

50. Two critical questions that arise are: (i) when was the decision to restrict the Applicant's appointment to UNAMI to two years made; (ii) was the non-extension of the Applicant's appointment in UNAMI a termination?

51. The evidence before the Tribunal is that on 8 January 2013 the Director, Field Personnel Division, DFS, addressed a memorandum to the Executive Officer, DPKO, requesting the Applicant's release to UNAMI. The memorandum stated that the Applicant's assignment to UNAMI would be limited to a maximum of two years. The Applicant accepted these terms of assignment on 28 January 2013. The decision to restrict the Applicant's appointment to UNAMI to two years was made on 8 January 2013.

52. Although the Applicant characterized the non-extension of her assignment to UNAMI as a termination, it can be seen from the 28 January 2013 interoffice memorandum from the Director FPD/DFS which she signed in acceptance that the conditions for her mission assignment to UNAMI were clearly set out. There is no doubt that the said mission assignment was governed by the relevant Administrative Instruction ST/AI/404 (Assignment to and return from mission detail). The non-extension of the Applicant's appointment in UNAMI was not a termination. Her mission assignment simply came to an end after the maximum two years spelt out in the 8 January 2013 memorandum.

53. Even if by any stretch of reasoning it was open to the Applicant to challenge the conditions of her mission assignment which she had accepted on 28 January 2013, time began to run for her to challenge that decision from the said 28 January 2013.

54. An Applicant is required to request management evaluation within 60 days of the receipt of the administrative decision complained of.

55. The Applicant cannot accept a mission assignment which is properly spelt out under the relevant governing legislation and turn around two years later and deign to challenge the same having failed to seek a management review within the prescribed times set out in the applicable law.

### **Decision**

56. The crux of the Applicant's case is that having served at the D-1 level on Mission assignment in UNAMI she should return to her post in New York at the same level. The non-extension of the Applicant's appointment in UNAMI was not a termination but her mission assignment simply came to an end after the maximum two years. The Applicant's challenge of the administrative decision to restrict her mission assignment to the maximum of two years is not receivable.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 31<sup>st</sup> day of May 2016

Entered in the Register on this 31<sup>st</sup> day of May 2016

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi