



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

MBAA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Jonathan Croft, ALS/OHRM

## **Introduction**

1. The Applicant is a former staff member of the United Nations Mission in the Republic of South Sudan (UNMISS). He filed the current application with the United Nations Dispute Tribunal (UNDT/the Tribunal) on 16 May 2017 contesting the decision of the Under-Secretary-General for Management (USG/DM) to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice but without termination indemnity (Contested Decision).

2. The Respondent filed a reply on 25 May 2017 in which he contests the receivability of the application.

## **Relevant facts**

3. The Applicant was employed as an Engineering Assistant at the GL-3 level with UNMISS.

4. On 23 May 2014, the UNMISS Special Investigations Unit (SIU) received a report that the Applicant had tried to steal a generator engine block and two jerry cans of oil by concealing the items in a United Nations vehicle and attempting to drive out of the UNMISS compound with these items.

5. UNMISS SIU conducted an investigation and based on the findings and conclusions contained in the SIU investigation report, UNMISS referred the matter to the USG for the Department of Field Support (DFS) on 7 November 2014 for review and appropriate action against the Applicant.

6. On 22 December 2014, DFS referred the allegation of misconduct against the Applicant to the Assistant Secretary-General for Human Resources Management (ASG/OHRM) for institution of disciplinary action.

7. By a memorandum dated 22 July 2015, the Officer-in-Charge (OIC)/OHRM, informed the Applicant of the allegations against him and provided him with two weeks within which to provide a response to the allegations.

8. The Applicant submitted his comments on the allegations by email dated 4 August 2015.

9. After a review of the documentary record, the USG/DM concluded that only the allegation of misconduct in relation to the generator engine block had been established. He also concluded that the Applicant's actions amounted to misconduct and decided to impose on him the disciplinary measure of separation from service, with compensation in lieu of notice but without termination indemnity. The ASG/OHRM informed the Applicant of the USG/DM's decision by letter dated 28 October 2015. The Applicant received the letter on 2 November 2015.

10. The Applicant submitted an application to the UNDT on 16 May 2017 to contest the USG/DM's decision to impose a disciplinary sanction on him.

### **Issues**

11. The issue for determination here is whether the application is receivable *rationae temporis* pursuant to art. 8.1 of the UNDT Statute.

### **Submissions**

12. The Respondent submits that the application is not receivable because the Applicant failed to provide a timely challenge against the disciplinary sanction imposed upon him by the USG/DM. The Respondent submits that the Applicant specifically states in his application that he came to know about the decision on 28 October 2015 and acknowledged receipt of the separation letter by signing for it on 2 November 2015. Since the Applicant was not required to request management evaluation of the decision, he should have filed an application within 90 days of 2 November 2015 but failed to do so. He filed his application on 16 May 2017.

13. By Order No. 116 dated 20 June 2017, the Tribunal provided the Applicant with an opportunity to provide a response solely on the receivability of his application. On 23 June 2017, the Applicant provided a response on the merits of his case. He did not provide any response on receivability.

## **Considerations**

14. Staff rule 11.2(b) provides that:

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

15. Art. 8.1(d)(ii) of the UNDT Statute provides that in cases where management evaluation of the contested decision is not required, an application shall be receivable if it is filed within 90 calendar days of the applicant's receipt of the administrative decision.

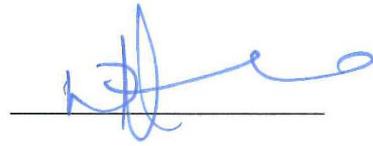
16. Since a disciplinary measure had been imposed on the Applicant, he was not required, as per staff rule 11.2(b), to request management evaluation. However, he was required by art. 8.1(d)(ii) of the UNDT Statute to file his application within 90 calendar days of his receipt of the administrative decision.

17. The record shows that the Applicant acknowledged receipt of the Contested Decision on 2 November 2015 by appending his signature to the receipt form. The Tribunal finds that the receipt form constitutes proper notification of the contested decision on 2 November 2015. Thus, to have been in compliance with art. 8.1(d)(ii) of the UNDT Statute, the Applicant should have filed his application to the UNDT by 31 January 2016 but he did not do so. He waited until 16 May 2017, more than one year after the statutory deadline, to file his application.

18. The Tribunal holds that the application is time-barred as a result of the Applicant's failure to file his application within the established time limits. The Tribunal also holds that the Applicant has failed to articulate any exceptional circumstances justifying the delay.

## **Judgment**

19. The application is not receivable.



Judge Nkemdilim Izuako

Dated this 27<sup>th</sup> day of June 2017

Entered in the Register on this 27<sup>th</sup> day of June 2017



Abena Kwakye-Berko, Registrar, Nairobi