



**Before:** Judge Eleanor Donaldson-Honeywell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

PIERRE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**SUMMARY JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Natalie Puchalka, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is a P-3 Engineer with the United Nations Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”).
2. On 30 August 2021, he filed an application to challenge the decision made on 8 July 2021 to grant him a six-month extension of his fixed-term contract until 31 December 2021. The remedies sought in the application were rescission of the decision as he felt the extension ought to have been for a full year, and moral damages for the toll the surrounding circumstances have taken on his health.
3. The Respondent, by motion filed on 13 September 2021, moved the Tribunal to determine receivability as a preliminary matter.
4. The Applicant filed a response to the motion on 16 September 2021.
5. Having reviewed the application, the motion and the response, the Tribunal considers that the primary issue to be determined is receivability. Accordingly, the Respondent’s motion for primary determination of that issue is granted.

## **Facts**

6. The Applicant’s submissions include a history of events preceding the challenged decision. He claims that, since 2017, he has been subjected to harassment by two individuals in managerial positions who he alleges were retaliating against him for resisting a premature re-assignment.
7. The alleged acts of retaliation according to the Applicant included granting him only very short-term appointment renewals. However, neither these prior short-term renewals nor the allegations of harassment are the subject matter of the instant application.
8. The Applicant explains in his application that he had previously lodged complaints of various types of misconduct with the Special Investigations Unit (“SIU”), the Conduct and Discipline Team (“CDT”), the Management Evaluation Unit (“MEU”) and the Office of Internal Oversight Services (“OIOS”) against the

two individuals he felt harassed him. The information on these prior events provided insight into the Applicant's grievances generally. However, his instant application concerns only the decision dated 16 July 2021, to renew his appointment for only six months.

9. On 16 July 2021, the Applicant requested management evaluation ("ME") of the contested decision, complaining that it was a repeat of prior short-term extensions of his appointment, thereby forming a pattern of harassment and abuse of authority.

10. On 19 August 2021, MEU informed the Applicant that his request was not receivable because he suffered no adverse consequences by having his appointment extended.

11. Shortly after this application was filed, the Respondent on his own volition granted the relief sought in this application by a further extension of the Applicant's appointment to 30 June 2022. Thus, the Applicant's appointment is now effectively on a one-year renewal period.

12. As to the Applicant's claim that he suffered ill health due to the 8 July 2021 decision, the only evidence submitted is a medical report dated 12 June 2021. The report covers a period from March to June 2021 and precedes the decision dated 8 July 2021.

### **Consideration**

13. The Tribunal may in appropriate cases determine the issue of receivability on a priority basis, without awaiting the Respondent's reply.<sup>1</sup>

14. In this case, despite seeking summary determination of this application on grounds of receivability, the Respondent nevertheless filed his substantive reply to it. The Tribunal, having granted the motion, now proceeds by way of summary judgment on receivability without regard to the filed reply.

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<sup>1</sup> *Morales* UNDT/2019/158, *Cherneva* UNDT/2021/101.

15. The Tribunal finds merit in the Respondent's position that the matter complained of does not include an administrative decision for purposes of staff rule 11.2(a) which provides as follows:

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.

16. The well-established jurisprudence on the meaning of an administrative decision is in the former United Nations Administrative Tribunal Judgment No. 1157, *Andronov* (2003), paragraph V, as follows:

It is acceptable by all administrative law systems, that an "administrative decision" is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

17. The Tribunals' jurisprudence, in upholding this long-standing definition, underscores that the key characteristic of an administrative decision is that it must produce adverse consequences for a staff member's employment contract or terms of appointment.

18. Decisions that extend a contract, even on a short-term basis, are in the staff member's favour and do not adversely affect their rights. This was made clear in *Oummih*, UNDT/2013/045. The Tribunal explained that

while there is no automatic entitlement to contract renewal for any term, decisions that extend a contract, even on a short-term basis, are in the staff member's favour and do not adversely affect their rights as derived from their status.

19. It is therefore clear that the decision to extend the Applicant's appointment

for six months did not impact adversely on him. As such, it does not amount to an appealable administrative decision.

20. There is no evidence submitted by the Applicant to support the contention that malice or ill-will motivated the Respondent's decision to extend his appointment for six months rather than a year. In any event he made no formal complaint of harassment as it relates to the 7 July 2021 six-month extension decision. Such a report is a necessary pre-requisite if it is to be implied that the Applicant's challenge as submitted in his ME request encompassed not only the length of his appointment but a failure to address underlying issues of harassment.

21. ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) comprehensively provides a regulatory framework for reporting cases of harassment and abuse of authority. Section 5.6 provides as follows:

Where an affected individual or alleged offender has grounds to believe that the procedure followed in respect of the handling of a formal report of prohibited conduct was improper upon being informed of the outcome of the matter in accordance with section 5.5 (i) above, the affected individual or alleged offender may contest the matter pursuant to chapter XI of the Staff Rules.

22. Thus, it is only after a report has been made and processed that its handling may be the subject matter of a case before the Tribunal. The Applicant's reliance on the Appeal's Tribunal's Judgment in *Messinger* 2011-UNAT-123 is misplaced. In that case, UNAT explained at paragraph 25 that 'the UNDT is not clothed with jurisdiction to investigate harassment complaints under Article 2 of the UNDT Statute.'

23. It was underscored in *Messinger* that the Tribunal can examine harassment allegations if they are relevant background information in determining whether an impugned administrative decision was motivated by ill-will. The important precursor to any such exercise of jurisdiction by the Tribunal remains the existence of an 'administrative decision'. As there is, by definition, no administrative decision in this case, the Tribunal has neither relevant basis nor jurisdiction to examine the prior complaints of harassment.

24. The Applicant has not made submissions supported by any evidence to prove harm suffered health wise or in any other way based on the July 2021 decision.

25. In all the circumstances, the sole matter before me is whether the Respondent acted unlawfully when he extended the Applicant's appointment for six months. That decision, as I have explained, is not receivable. It is also a moot question given that it was resolved by a subsequent decision by the Respondent to renew his appointment through to 30 June 2022.

26. The application is not receivable *ratione materiae*.

### **Conclusion**

27. The application is dismissed as not receivable.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 26<sup>th</sup> day of October 2021

Entered in the Register on this 26<sup>th</sup> day of October 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi