



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

MELBIKSIS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Marisa Maclennan, UNHCR

## **Introduction**

1. The Applicant, a former Associate Public Information Officer at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Stockholm, contests the decision not to select him for the position of External Relations Officer in Pretoria (“JO 18186”) (“the contested decision”).

## **Facts**

2. On 20 November 2020, the Applicant was informed of the contested decision.

3. On 29 January 2021, the Applicant requested management evaluation of the contested decision.

4. By letter dated 24 March 2021, the Applicant was informed of the outcome of his request for management evaluation. The contested decision was upheld.

5. On 23 May 2021, the Applicant requested management evaluation of the outcome of his 29 January 2021 request for management evaluation.

6. By letter dated 9 June 2021, the MEU informed the Applicant that his request for management evaluation dated 23 May 2021 was not receivable as “a management evaluation decision is not a separate administrative decision” that can be challenged.

7. On 9 September 2021, the Applicant filed the present application.

8. On 25 October 2021, the Respondent filed his reply challenging, *inter alia*, the receivability of the application.

9. On 24 May 2022, the instant case was assigned to the undersigned Judge.

10. By Order No. 99 (GVA/2022) of 28 October 2022, the Tribunal informed the parties that it was ready to adjudicate the matter.

## Consideration

11. First and foremost, the Respondent challenges the receivability of the application on two grounds. He claims that the application is not receivable:

a. *Ratione materiae* because the Applicant identified the management evaluation response dated 24 March 2021 as the contested decision, which is not a judicially reviewable administrative decision; and

b. *Ratione temporis*, because the Applicant failed to observe the deadline in art. 8(d)(i)(a) of the Dispute Tribunal's Statute concerning the filing of an application.

12. Having examined the evidence on record against the applicable legal framework, the Tribunal confirms that the application is not receivable *ratione materiae* and *ratione temporis* for the following reasons.

### *Receivability ratione materiae*

13. The Applicant contests his non-selection and non-suitability for the position advertised through JO 18186 and identifies as the contested decision the Respondent's 24 March 2021 response to his 29 January 2021 management evaluation request.

14. Pursuant to art. 2.1 of the Tribunal's Statute, the Tribunal is competent to hear and pass judgment on an application filed:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms of "contract" and "terms of employment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

15. The instant case concerns an alleged violation of the Applicant's rights in relation to a recruitment exercise, and the Tribunal needs to first determine whether the identified contested decision constitutes an administrative decision for the purpose of the art. 2.1 above.

16. According to UNAT's well-established jurisprudence (*Auda* 2017-UNAT-786, para. 25, *Fairweather* 2020-UNAT-1003, para. 36, *Birya* 2015-UNAT-562, para. 44, *Lee* 2014-UNAT-481, para. 49),

[T]he key characteristic of an administrative decision subject to judicial review is that the decision must 'produce direct legal consequences' affecting a staff member's terms or conditions of appointment. 'What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.' (*Maloof* 2017-UNAT-806, para. 34)

17. When a management evaluation response affirms the impugned decision, it only means that the original position that informed the Applicant's resort to litigation remains intact and unaltered, and the staff member can still go to the Tribunal with a merits application to seek remedies (*Nwuke* UNDT/2016/021, para. 27).

18. Pursuant to the evidence on record, however, instead of filing an application following the management evaluation response dated 24 March 2021, the Applicant sought a new management evaluation from that decision. And, from this second response dated 23 May 2021, the Applicant followed with the current application.

19. Yet, the management evaluation response dated 24 March 2021 does not substitute the non-selection decision dated 20 November 2020 and does not constitute a new administrative decision affecting the Applicant's contract or terms of appointment. Thus, as provided by UNAT, it cannot be the subjected to judicial review:

[A] “decision” in response to a grievance or complaint, a Management Evaluation Unit’s “decision”, is not an administrative decision subject to judicial review by the Dispute Tribunal. Rather, the judicially reviewable administrative decision is the underlying decision “that is alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member”. (*Farzin* 2019-UNAT-917, para. 41)

20. Accordingly, the 24 March 2021 response to the Applicant’s management evaluation request is not a judicially reviewable administrative decision. As a result, the application is not receivable *ratione materiae*.

*Receivability ratione temporis*

21. Notwithstanding the above, the Tribunal recalls that it falls under its competence “to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review (*Massabni* 2012-UNAT-238, para. 26). Therefore, “[i]t is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties’ contentions” (*Fasanella* 2017-UNAT-765, para. 20; *Cardwell* 2018-UNAT-876, para. 23).

22. Having examined the application and its annexes, the Tribunal considers that the Applicant is essentially contesting his non-selection for the position of External Relations Officer advertised via the aforementioned JO, which was the object of a management evaluation request on 29 January 2021. The Applicant received a response to this request on 24 March 2021.

23. Art. 8 of the Dispute Tribunal’s Statute provides that the Applicant has 90 days from the management evaluation response to follow with an application before the Tribunal, or 90 days from the expiry of the relevant response period for the management evaluation if no response to the request was provided. Indeed, said article reads as follows in its relevant part:

1. An application is receivable if:

(...)

(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; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices.

24. Considering that the management evaluation response was issued on 24 March 2021, the Applicant had 90 days from that date to file an application before this Tribunal. This deadline expired on 22 June 2021. The instant application, however, was only filed on 9 September 2021.

25. Accordingly, the application is not receivable *ratione temporis*.

### **Conclusion**

26. In view of the foregoing, the Tribunal DECIDES to reject the application.

(Signed)

Judge Teresa Bravo

Dated this 7<sup>th</sup> day of November 2022

Entered in the Register on this 7<sup>th</sup> day of November 2022

(Signed)

René M. Vargas M., Registrar, Geneva