

UNDT/2015/124, Lemonnier

UNAT Held or UNDT Pronouncements

The UNDT found that the five cases are not receivable due to the Applicant's failure to comply with the relevant statutory requirements, including with regard to the filing of his management evaluation requests and the deadlines for the filing of an application with the Tribunal. The UNDT found that in the cases concerning separation (Cases No. 011 and 028), the Applicant failed to file an application with the Tribunal within the statutory period of 90 days from the date of expiration of time for a response to his management evaluation request. Pursuant to Neault 2013-UNAT-345, MEU's belated communications after the expiration of the 90-day period did not re-set the applicable time limits. The UNDT found that in the cases concerning non-selection (Cases No. 012, 027, and 029), the Applicant identified the date of 5 February 2015 as the date of notification of the non-selection decision. He failed to file a management evaluation request of this decision. Thus Cases No. 012, 027, and 029 are not receivable. Further, in relation to the Applicant's earlier alternative assertions regarding the relevant dates in Cases No. UNDT/NY/2015/011 and 027 (on non-selection), the Tribunal finds that the Applicant failed to file timely management evaluation requests even with regard to those dates. Even if the Tribunal were to accept the Applicant's submission that he made a purported request for management evaluation by email or "orally" on 10 June 2014, his claims would not be receivable under Neault, as the Applicant failed to file his application within 90 days of the date of expiration of time for the management evaluation response (which expired 45 days after 10 June 2014). Further, even if the Applicant asserted that his Counsel's email exchange of 2 December 2014 (which was referred to in the MEU letter of 5 February 2015) constituted a management evaluation request in relation to his claims that the CISS position should have been given to him as part of the retrenchment process, these claims would still not be receivable. The contested position was advertised on 17 April 2014, and any purported request of 2 December 2014 would have been well outside the statutory 60-day period for the filing of a management evaluation request. The UNDT found that, in a misguided attempt to cure receivability flaws, the Applicant filed multiple applications with

contradictory submissions on receivability and relevant dates. This was a manifest abuse of proceedings warranting an award of costs against the Applicant in the sum of USD1,000.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member of the United Nations Stabilization Mission in Haiti (“MINUSTAH”) filed five applications in relation to the decisions to separate him from service and not to select him for a position of Chief, Integrated Support Services (“CISS”) with MINUSTAH.

Legal Principle(s)

Deadlines for filing of an application with the UNDT: Pursuant to Neault 2013-UNAT-345, if at any point during that 90-day time period for the filing of his application with the Tribunal the Applicant received a belated management evaluation response, it would have re-set the 90-day deadline for the filing of his application. However, receipt of a management evaluation after the expiration of the 90-day period for the filing of an application does not have the same effect. Manifest abuse of process: Claims filed by the Applicant in these cases had fundamental procedural flaws that the Applicant attempted to cure by multiple re-filings of the same claims, making concurrent self-contradictory submissions regarding receivability issues. This resulted in a waste of the valuable resources of this Tribunal. Such conduct is frivolous and constitutes a manifest abuse of proceedings. Costs: OSLA remains Counsel of record and is presumed to have acted on the Applicant’s instructions, in the absence of any indications to the contrary. There is no power to order costs against a representative. The Tribunal considers that costs are properly to be ordered against the Applicant. Deadlines for management evaluation: The Tribunal notes, with regret, the failure on the part of the MEU to have due regard to the policy objectives of having clearly defined time limits, enshrined in the language and substance of staff rule 11.2 and art. 8 of the Statute, as well as MEU’s failure to have due regard to the binding jurisprudence of the Appeals Tribunal, specifically with the pronouncements in Neault. MEU’s non-compliance with the time limits for completion of their management evaluation reviews has been criticized in a number of rulings. It appears that, instead of completing management evaluations within the time limits prescribed by the Staff Rules (30 or 45 days depending on the location of

the staff member), the MEU continues to engage in protracted correspondence with staff well beyond the prescribed time limits, blurring the lines between formal procedures and some form of informal resolution role that it apparently attempts to carry out.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Lemonnier

Entity

MINUSTAH

Case Number(s)

UNDT/NY/2015/11

Tribunal

UNDT

Registry

New York

Date of Judgement

31 Dec 2015

Duty Judge

Judge Meeran

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Abuse of process before UNDT/UNAT

Costs

Manifest abuse

Jurisdiction / receivability (UNDT or first instance)

Non-renewal

Separation from service

Applicable Law

Staff Rules

- Rule 11.2
- Rule 11.4

UNDT Statute

- Article 10.6
- Article 8.1
- Article 8.3

Related Judgments and Orders

UNDT/2010/085

UNDT/2011/098

UNDT/2012/026

UNDT/2012/150

2010-UNAT-049

2010-UNAT-067

2010-UNAT-071

2011-UNAT-108
2011-UNAT-152
2011-UNAT-184
2012-UNAT-191
2012-UNAT-211
2012-UNAT-218
2012-UNAT-220
2012-UNAT-260
2012-UNAT-278
2013-UNAT-293
2013-UNAT-328
2013-UNAT-345
2013-UNAT-349
2013-UNAT-370
2015-UNAT-520