

UNDT/2016/097, Khan

UNAT Held or UNDT Pronouncements

The UNDT found that the Applicant's claims concerning the two 2010 decision were time-barred under art. 8.4 of the UNDT Statute. The UNDT found that, contrary to his claims, the Applicant had received, in May 2010 and August 2010, management evaluation decisions in response to his requests regarding the refusal to grant special leave and his separation from service. Regarding the 2015 decision not to re-employ the Applicant, the UNDT found that, having been separated from service in May 2010, and not having contested that separation within the prescribed time limits, the Applicant did not maintain any of the terms of his former appointment, including his right to be re-employed, as there was no sufficient nexus between his former employment that ended in 2010 and the impugned decision in 2015 not to re-employ him as a Security Officer. The Applicant has no standing to contest the decision not to re-employ him with the Organization and the application is not receivable *ratione personae*.

Decision Contested or Judgment/Order Appealed

The Applicant, a former Security Officer who had worked with the United Nations Secretariat in 2005-2010, filed an application contesting the decision of the Department of Safety and Security not to "re-employ" him in response to his request made in August 2015. The Applicant also sought a waiver of the time limits to appeal two decisions made in 2010: (i) the decision of 5 April 2010 not to grant him special leave without pay ("SLWOP") and (ii) the decision to separate him from service effective 31 May 2010.

Legal Principle(s)

Receivability: The Dispute Tribunal is competent to review *ex officio* its own competence or jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis*.

This competence can be exercised even if the parties do not raise the issue, because it constitutes a matter of law and the Statute prevents the Dispute Tribunal from considering cases that are not receivable. Three-year cap: Under art. 8.4 of the Dispute Tribunal's Statute, the Tribunal cannot waive the time limit to file an appeal more than three years after the applicant's receipt of the contested administrative decision. Implied decisions, implicit decisions: When the Administration does not issue an express response or decision verbally and/or in writing within a reasonable period, such a non-decision constitutes an implicit decision to refuse or deny the request or claim, which can be subject of a request for management evaluation review by the MEU and of an application before the Dispute Tribunal, if any. Applicability of national laws: Domestic legal provisions invoked by the Applicant are not directly applicable to the United Nations, as these domestic legal provisions have not been incorporated into the internal law of this international organization. Provisions of the United States law would not be directly applicable to the Applicant's employment-related claims with the United Nations.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Khan

Entity

DSS

Case Number(s)

UNDT/NY/2016/003

Tribunal

UNDT

Registry

New York

Date of Judgement

7 Jul 2016

Duty Judge

Judge Greceanu

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Personal (ratione personae)

Applicable Law

Staff Rules

- Appendix C
- Rule 5.3

UNDT RoP

- Article 7

UNDT Statute

- Article 8.1

- Article 8.4

Related Judgments and Orders

UNDT/2012/171

UNDT/2011/047

2010-UNAT-057

2010-UNAT-067