



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/033

Judgment No.: UNDT/2023/093

Date: 5 September 2023

Original: English

Before: Sean Wallace

Registry: Nairobi

Registrar: Eric Muli, Officer-in-Charge

KIAMA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Yehuda Goor, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a Fuel Officer recruited at the P-4 level with the United Nations Interim Force in Lebanon (“UNIFIL”) is contesting the Administration’s refusal to reinstate his career following his separation from the United Nations Support Office in Somalia (“UNSOS”) and his reappointment to UNIFIL as per conditions by ST/SGB/2023/1 (Staff Regulations and Staff Rules, including provisional Staff Rules of the United Nations) rule 4.17.

Procedural history

2. On 27 March 2023, the Applicant filed the application mentioned above.
3. By motion filled on 29 March 2023, the Respondent requested for the receivability of the application to be determined as a preliminary matter.
4. On 13 June 2023, the Applicant filled his comments on the Respondent’s motion on receivability.

Facts

5. On 4 February 2010, the Applicant was recruited as an Associate Fuel Officer by UNSOS, at the National Professional Officer category at level B (“NPO-B”) based in Mombasa, Kenya.¹
6. On 6 March 2019, the Applicant resigned from his position of NPO-B Associate Fuel Officer with UNSOS.²
7. On 18 March 2019, the Applicant was appointed with UNIFIL on a Fixed-Term Appointment (“FTA”) as a Fuel Officer in the Field Service category at level 6 (“FS-

¹ Application, annex titled *Non- Receivability letter -Case of Mr. John Thami Kiama (MEU043-23R) JAF*. Respondent’s motion, page 1, para.2.

² Respondent’s motion, page 1, para. 3. Application, section VII, page 5, para. 2.

6”) ³. The Applicant’s Personnel Action (“PA”) indicates that his Entry on Duty date (“EOD”) was 18 March 2019.⁴

8. By Interoffice Memorandum (“IOM”) dated 2 March 2022, the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”) acting Director Mission Support wrote to all international and national staff to inform them of a new instruction from the Human Resources Services Division, Department of Operational Support (“HRSD-DOS”), concerning the reinstatement of career appointment for former staff of the General Services category (“GS”) who resigned following selection at the FS/NPO category.⁵

9. By email dated 30 March 2022, the Applicant wrote to UNIFIL’s Human Resources Section (“HRS”) asking if it would be possible to change his EOD to 4 February 2010 when he joined UNSOS as an NPO at the B level, a position for which he resigned on 7 March 2019⁶.

10. On 31 March 2022, HRS replied to the Applicant informing that: “the system resets the EOD automatically after every reappointment.”⁷

11. On 1 October 2022, the Applicant was appointed on a FTA, as a P-4 Fuel Officer with UNIFIL.⁸

12. On 1 January 2023, “the Respondent promulgated ST/SGB/2023/1.”⁹

13. In a broadcast dated 10 February 2023, the Office of Human Resources (“OHR”) Department of Management Strategy, Policy, and Compliance (“DMSPC”) informed all United Nations Secretariat of new changes to (ST/AI/2023/2).¹⁰ The same day, on 10 February 2023, the Applicant wrote to HRS “to be reinstated under

³ Application, section VII, page 5, para. 2. Respondent’s motion, page 1, para. 4.

⁴ Respondent’s motion, page 1, para.4.

⁵ UNDT/NBI/2023/014, application, annex titled: Main and supporting Document.

⁶ Respondent’s motion, page 1, para. 6.

⁷ *Ibid.*, para. 7.

⁸ Application, section VII, page 4, para. 2. See application, annex titled *Non- Receivability letter -Case of Mr. John Thami Kiama (MEU043-23R) JAF*. Respondent’s motion, page 2, para 8.

⁹ Respondent’s motion, page 2, para. 9.

¹⁰ Application, section VII, page 5, para 3.

conditions established by staff rule 4.17” of the Staff Regulations and Staff Rules of 2023.¹¹

14. On 14 February 2023, the HRS replied to the Applicant that “the quoted [Staff Rule] doesn’t apply in [his] case where [he] resigned to take up the FS appointment.”¹² The same day, on 14 February 2023, the Applicant requested management evaluation of the contested decision.¹³

15. In its response dated 15 March 2023, the Management Evaluation Unit (“MEU”) found the Applicant’s request for management evaluation not receivable, since it was time-barred and failed to identify an administrative decision.

16. On 16 February, the Applicant wrote to the MEU “advising not being considered for the 2016-2021 Continuing Appointment Review Exercise since [his] Entry on Duty Date (EOD) has been changed in UMOJA.”¹⁴

Applicant’s submissions

17. According to the Applicant, HRS is wrong in stating that ST/SGB/2023/1 rule 4.17 does not apply to his case since he resigned from a NPO position, which is not stated in rule 4.17.

18. When he separated with UNSOS, the Applicant was holding a FTA and was reemployed within 11 days in accordance with the conditions established by rule 4.17 for reinstatement.

19. The new instruction from HRSD-DOS concerning the reinstatement of career appointment for former staff in the GS category who resigned following selection to the FS or NPO category applied to the Applicant’s case.

¹¹ *Ibid.*, annex titled *Non- Receivability letter -Case of Mr. John Thami Kiama (MEU043-23R) JAF*. Respondent’s motion, page 2, para. 10.

¹² Application, annex titled *Non- Receivability letter -Case of Mr. John Thami Kiama (MEU043-23R) JAF*. Respondent’s motion, page 2, para. 11.

¹³ Application, section VI, page 4, paras 1-2. Application, comment’s to the Respondent’s motion, section VI, page 4, paras 2-3.

¹⁴ *Ibid.*, section VII, page 5, para. 6.

20. The decision not to reinstate him will affect the benefits of mobility incentives and his termination indemnity related to the length of service.

Respondent's submissions

21. In establishing the Applicant's EOD, the stipulated rules and policies were correctly applied. Furthermore, on 31 March 2022, UNIFIL-HR advised the Applicant that the EOD resets after every reappointment.

22. The instruction from HRSD-DOS does not apply to the Applicant who resigned as an NPO and not as a GS category staff member.

Considerations

23. In accordance with staff rules 11.2(a) and 11.2(c), an application is receivable, when the applicant submitted a request for management evaluation within the applicable time limit, which is: "60 calendar days from the date on which the staff member received notification of the administrative decision to be contested".

24. Article 8.1(c) of the UNDT Statute also provides that an application shall be receivable if an applicant has previously submitted the requested administrative decision for management evaluation where required.

25. Article 8.3 of the UNDT Statute provides that the UNDT may not waive the management evaluation deadline. The UNDT Statute forbids the waiving of time limits for management evaluation.¹⁵ The Appeals Tribunal also affirms that an untimely request for management evaluation bars applications before the Tribunal even if management evaluation was actually received.¹⁶

26. On 30 March 2022, the Applicant was aware of the change in his EOD. Accordingly, he should have challenged the change in his EOD 60 calendar days from that date, on or before 29 May 2022. As he submitted a request for a management

¹⁵ *Rosana* 2012-UNAT-273, paras. 4, 25, 26.

¹⁶ *Awan* 2015-UNAT-588, paras 13-14.

evaluation on 14 February 2023, after the expiry of the 60 calendar-day time limit, his application is not receivable pursuant to staff rule 11.2(c).

27. The Applicant argues that his “request for reinstatement” was based on the 2023 revision to staff rule 4.17 and thus the 14 February 2023 request for management evaluation was timely. However, this argument is unavailing.

28. This Tribunal has held that “[reiterations of the same decision in response to a staff member’s repeated requests to reconsider the matter do not reset the clock. Therefore, the Applicant’s subsequent communications with the Administration seeking reconsideration of the decision do not render this application receivable.”¹⁷

29. If the 2023 staff rule revision had substantively altered the Applicant’s rights and given him rights that he did not have previously, then his argument might have merit. However, that is not so in this case.

30. As the Respondent points out¹⁸, the revision was linguistic only, and not a substantive change. With respect to the provision at issue, the revision renumbered the Rule from 4.18 to 4.17, which is obviously not substantive.

31. It also changed the wording of (a) slightly. In its original language, the Rule said: “A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within 12 months of separation from service may be reinstated if the Secretary General considers that such reinstatement would be in the interest of the Organization.”¹⁹

32. As revised, the Rule said: “A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within 12 months of separation from service may be reinstated under

¹⁷ *Said* UNDT/2017/041, para. 29 (citing *Ryan*, UNDT/2010/174). See also *Sethia* 2010-UNAT-079, paras. 19-20.

¹⁸ Respondent’s motion, page 2, para. 9.

¹⁹ ST/SGB/2018/1/Rev.2. (emphasis supplied).

conditions established by the Secretary General.”²⁰

33. This revision was not substantive and thus did not alter the Applicant’s rights in any way.

34. Perhaps the clock might be reset if the Secretary-General had issued “conditions” which gave the Applicant rights that he did not have previously have (say, for example, by expanding the scope of the 2022 HRSD-DOS instruction to include those who resigned as an NPO in addition to those from the GS category). However, there is nothing in the record that indicates that happened.

35. Accordingly, the Tribunal finds that this application is not receivable *ratione materiae* because the management evaluation request was time-barred.

JUDGMENT

36. The application is dismissed.

(Signed)

Judge Sean Wallace

Dated this 5th day of September 2023

Entered in the Register on this 5th day of September 2023

(Signed)

Eric Muli, Officer-in-Charge, Nairobi

²⁰ ST/SGB/2023/1 (emphasis supplied).