



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/061

Judgment No.: UNDT/2023/131

Date: 29 November 2023

Original: English

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**Before:** Judge Solomon Areda Waktolla

**Registry:** Nairobi

**Registrar:** René Vargas, Officer-in-Charge

SAHYOUN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is a Property Control and Inventory Assistant at the United Nations Economic and Social Commission for Western Asia (“ESCWA”). She holds a permanent appointment at the G-6 level, and is based in Beirut, Lebanon.

## **Procedural History**

2. On 6 August 2023, the Applicant filed an application with the United Nations Dispute Tribunal sitting in Nairobi to impugn the decision to not shortlist her for the competency-based interview (“CBI”) in the selection process for Job Opening 199994 (“JO199994”). The Applicant submits that the impugned decision “relinquished [her] eligibility” for selection to JO199994.

3. The Respondent filed his reply to the application on 6 September 2023. He submits that the application is not materially receivable, that the selection exercise was properly conducted, and that nothing about the process was unlawful.

4. Upon assignment of this matter to the undersigned Judge, the Applicant was afforded the opportunity to respond to the Respondent’s reply, particularly on the point of receivability.

5. The Applicant responded to the Respondent’s reply on 17 September 2023. On the question of receivability, she made submissions only in respect of the timeliness of her application. She did not address the Respondent’s position on the material receivability of this application. In other words, the Applicant did not respond to the argument that the Tribunal does not have jurisdiction to adjudicate on the decision(s) she seeks to challenge as a matter of substance rather than time.

## **Facts and Submissions**

6. The Applicant joined UNESCWA on 14 May 2001 as a G-3 Personnel Clerk on a short-term appointment. She was reappointed on a fixed-term appointment on 15 April 2002.

7. On 20 January 2023, UNESCWA advertised JO#199994. The Applicant applied for it on 5 February 2023.

8. Twenty-nine candidates, including the Applicant, were shortlisted for a written technical assessment. The test took place on 3 April 2023.

9. The test comprised two written questions and two video questions. The pass mark for the exam, as a whole, was set at 80%.

10. Eighteen candidates, including the Applicant, scored above 50% in the first part, and proceeded to have their video answers graded.

11. On 4 May 2023, the Applicant requested management evaluation *of the decision not to invite her to the CBI* (emphasis added). On 10 May 2023, she received the official notification that she was not selected for the position.

12. On 26 May 2023, the Management Evaluation Unit (“MEU”) determined that the Applicant’s request for management evaluation was premature and not receivable because the Applicant did not contest a final selection decision. The Applicant was advised that she may challenge the non-selection decision once she receives it. She did not.

### **Consideration**

*Receivability of the application against the decision not to invite the Applicant to the Competency-Based Interview.*

13. Having reviewed the application, the Tribunal considers that the primary issue to be determined is its receivability. The issue of receivability is one that in appropriate cases, such as this one, the Tribunal may determine on a priority basis with or without the Respondent’s reply.<sup>1</sup>

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

14. In this case, the Applicant was given the opportunity to respond to the Respondent's challenge to the receivability of the application and she did.

15. Art. 2.1(a) of the UNDT Statute provides that the Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual against the Secretary-General

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 "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

16. Art. 8.1(a) of the UNDT Statute stipulates that an application shall be receivable if "[t]he Dispute Tribunal is competent to hear and pass judgment on the application, pursuant to article 2 of the present statute".

17. The administrative decision specified in art. 2.1(a) of the UNDT Statute refers to the final administrative decision. The Dispute Tribunal assumes jurisdiction to review an administrative decision only if it is a final decision. A final decision is the outcome of the entire decision-making process of the Administration, which has direct legal consequences for the Applicant's terms of appointment. The Dispute Tribunal may only adjudicate an appeal against the final outcome of an administrative decision.

18. In *Ishak* 2011-UNAT-152, the Appeals Tribunal held that:

29. The UNDT also correctly held that *Ishak's* case was not receivable. *Ishak* may feel that the decisions of which he sought administrative review denied him a fair consideration for promotion or were discriminatory. But since he was promoted the contested decisions remain inconsequential. A selection process involves a series of steps or findings which lead to the administrative decision. These steps may be challenged only in the context of an appeal against the outcome of the selection process, but cannot alone be the subject of an appeal to the UNDT. In the event of *Ishak's* non-promotion continuing after the recourse session, those decisions may well have become grounds to challenge the administrative decision of non-promotion.

19. In *Abdellaoui* 2019-UNAT-928, the Appeals Tribunal held:

17. As the decision not to short-list Ms. Abdellaoui is an internal step within the selection process, it is not an administrative decision. The only appealable decision in the present case is the decision not to select Ms. Abdellaoui for the position in question. Only this decision is final and bears direct legal consequences. The UNDT, consequently, should have only received Ms. Abdellaoui's application against the selection decision, but not against the decision not to short-list her. The decision not to short-list Ms. Abdellaoui will be examined as a part of the final non-selection decision.

20. A selection process is composed of administrative processes leading to an administrative decision. The Appeals Tribunal has ruled that such processes are not final decisions, but steps that prepare the way for them. They are preliminary and can only be challenged when the Administration makes a final decision that affects the legal rights of a party.<sup>2</sup>

21. The Applicant requested management evaluation of the decision not to invite her to the CBI. MEU determined that the Applicant's request for management evaluation was premature and not receivable because the Applicant did not contest a final selection decision. MEU also advised the Applicant that, upon formal notification of a selection decision for the position, she may request management evaluation of the selection decision.

22. The Applicant did not heed the advice given to her by MEU. Instead, the Applicant argues that

filing another request for another management evaluation a few days after the first one has no legal bearing and would have led to the same outcome since MEU's response had considered the request for review of the decision on its merits already.

23. This argument is at odds with staff rule 11.2(a) and the jurisprudence of the Dispute and Appeals Tribunals.

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<sup>2</sup> *Nguyen-Kropp & Postica* 2015-UNAT-509, para. 33.

24. Staff rule 11.2(a) provides that

[s]taff members wishing to formally contest an administrative decision alleging non-compliance with their 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.

25. Only a final decision taken after the selection exercise constitutes an administrative decision under art. 2.1(a) of the Statute. The Dispute Tribunal lacks jurisdiction to review a challenge to a preparatory step in a selection process. A staff member may not challenge an administrative decision's intermediate or preparatory steps. Preliminary or preparatory steps in a process are not administrative decisions and can only be disputed in the context of a challenge to a final selection decision at the end of a selection process. Only a final administrative decision taken after the process has direct legal consequences for a staff member's terms of appointment.

26. The Dispute Tribunal is required, *ex proprio motu*, to satisfy itself that an application is receivable under art. 8 of its Statute. The issue of receivability may be adjudicated even without serving the application on the Respondent for a reply, even if the parties did not raise it. A determination on receivability must be made without regard to the merits of the case.<sup>3</sup>

27. In the present case, the Tribunal lacks jurisdiction to review the application because the Applicant does not contest a final administrative decision. She is contesting a preliminary step in the selection process, which can only be challenged in the context of a final selection decision. It is a premature contestation of the administrative decision.

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<sup>3</sup> *Christensen* 2013-UNAT-335; *Gehr* 2013-UNAT-313; *Zoughy* UNDT/2010/204, para.29; *Lee* 2014-UNAT-481, paras. 46-47; *Cooke* 2013-UNAT-380, para. 9.

28. Hence, the Tribunal concludes that this application is not receivable as it does not satisfy the requirements of arts. 2.1(a) and 8.1(a) of its Statute.

*Management evaluation of the final Administrative Decision*

29. Art. 8.1(c) of the Statute of the Dispute Tribunal specifies that an application shall be receivable if “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”.

30. A management evaluation request is not required if an applicant is challenging a disciplinary decision, or one taken by the Administration pursuant to advice obtained from technical bodies, as determined by the Secretary-General. In those cases, an application can be made directly to the Dispute Tribunal.

31. In *Christensen* 2013-UNAT-335, the Appeal Tribunal held:

22. [As] Ms. Christensen did not seek administrative review of the denial of payment of certain entitlements, the appeal before the UNDT was not receivable since the case cannot be accepted in the judicial phase without the prior attempt of administrative review and potential partial or total solution. The Statute clearly favours informal and administrative resolution of cases and only authorizes the entrance to judicial resolution after the failure of the previous one.

32. In this case, the Applicant did not seek management evaluation of the final non-selection decision, which was required to contest it. She only requested management evaluation of the decision not to invite her to a CBI. Consequently, the Dispute Tribunal lacks jurisdiction to adjudicate claims concerning the Applicant’s non selection.

33. The Applicant did not request management evaluation of the final administrative decision, despite the MEU advising her of the option to file a request for management evaluation upon formal notification of the outcome of the selection process. Without a management evaluation request on the final non-selection decision, the Dispute Tribunal lacks the competence to adjudicate this application under art. 8.1(c) of the UNDT Statute.

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34. The Tribunal's determination, in the circumstances, is that the application was filed without being preceded by a timely filing of a request for management evaluation and the subject matter complained of does not include an administrative decision.

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

### **Conclusion**

36. The application is DISMISSED as not receivable.

*(Signed)*

Judge Solomon Areda Waktolla

Dated this 29<sup>th</sup> day of November 2023

Entered in the Register on this 29<sup>th</sup> day of November 2023

*(Signed)*

René M. Vargas M., Officer-in-Charge, Nairobi