



5. Pursuant to Order No. 008 (NBI/2014)¹, on 23 January 2014, the Applicant submitted a response on the receivability issues raised by the Respondent in his Reply and at the case management hearing.

6. The Tribunal indicated in Order No. 008 (NBI/2014) that it would specify the issues for determination upon receipt of the Applicant's response on receivability.

Facts

7. The Applicant was appointed to the post of SPO on a fixed-term appointment (FTA) at the P-5 level with UNMIS in Khartoum on 31 August 2009. His FTA was limited to service with UNMIS and was renewed from 1 July to 30 August 2010 and again from 31 August 2010 to 30 August 2011.

8. Effective 4 December 2010, the Applicant was reassigned within UNMIS to the post of State Coordinator in Aweil, South Sudan.

9. On 9 July 2011, UNMISS was established by Security Council resolution 1996 (2011) and on 26 July, the Chief Civilian Personnel Officer (CCPO), informed the Applicant that he was being reassigned from UNMIS² to UNMISS at the Aweil duty station.

10. On 25 August 2011, the Applicant signed an offer of appointment to transition from UNMIS to UNMISS³. His FTA was extended to 30 August 2012.

11. On 26 August 2011, the position of Head of Office/State Coordinator, UNMISS, was advertised. The Applicant applied and was interviewed on 4 October 2011. The Applicant was not selected for the position.

¹ Dated 16 January 2014.

² UNMIS wound up its operations on 9 July 2011 with the completion of its mandate.

³ The Applicant's personnel action (PA) form raised on 9 October 2011 stated that he was provisionally reassigned from UNMIS to UNMISS effective 7 July 2011 as a Senior Planning Officer at the P-5/4 level.

12. By a fax dated 13 December 2011, UNMISS requested authorization from the Office of Human Resources Management (OHRM) to separate the Applicant and eight other staff members from service effective 15 January 2012 due to the abolishment of their posts as of 31 December 2011. The Under-Secretary-General for Management (USG/DM) approved this request on 28 December 2011.

13. On 3 January 2012, the Applicant received a letter dated 29 December 2011 from the Director of Mission Support (DMS), UNMISS, indicating that he had not been transitioned from UNMIS to UNMISS and that his contract would be terminated with effect from 31 December 2011 in accordance with staff rule 9.6.

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18. Between 1 January and 18 June 2012, the Applicant performed the duties of the UNMISS State Coordinator pending the completion of the recruitment of the selected candidate. On 19 June 2012, the Applicant assumed the functions of SPO, against the post of Deputy Chief of Staff, in the Office of the UNMISS COS.

19. On 31 August 2012, the UNMISS COS requested the extension of the Applicant's contract from 31 August to 21 September 2012 due to "compelling operational reasons". His contract was subsequently extended to 30 September 2012 at which time he was separated from service.

20. On 29 September 2012, the Applicant submitted a request for management evaluation of the decision to terminate his contract.

21. By a letter dated 30 November 2012, the USG/DM informed the Applicant that the Secretary-General had decided to uphold the decision not to extend his FTA beyond 30 September 2012.

22. The Applicant filed the current Application on 11 February 2013.

Parties' submissions

Respondent's submissions

23. The Respondent submits that the Applicant is precluded from challenging the following decisions because he failed to request management evaluation of them

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24. Further, the Respondent submits that the Applicant's challenge against the termination of his appointment as of 31 December 2011 is not receivable because: (a) he withdrew his request for management evaluation regarding this issue; and (b) the Administration never implemented the decision since his appointment was renewed until 30 September 2012.

Applicant's submissions

25. At the 31 October 2013 case management hearing, the Applicant submitted that the following are the issues for determination by the Tribunal:

- a) Whether his movement from the post of SPO to State Coordinator in UNMISS was lawful;
- b) The status of the SPO post when he was assigned to the post of State Coordinator;
- c) Whether he had a right of return to the SPO post upon the expiry of his tenure and/or the abolition of the UNMIS State Coordinator post;
- d) Whether it was lawful for UNMISS to terminate or fail to renew his contract based on his unsuccessful interview for the State Coordinator post;
- e) Whether it was lawful for UNMISS to advertise the SPO post when he was still engaged as such but was on a provisional/temporary assignment as State Coordinator;
- f) Whether it was lawful for UNMISS to communicate his termination on or about 29 December 2011 without giving him a month's notice prior to termination;
- g) Whether there is a difference in the job description in the post of State Coordinator either at UNMIS or UNMISS;

- h) Whether the post of State Coordinator was in actual fact abolished;
- i) Whether it was lawful for UNMISS to advertise the post of State Coordinator when he was still incumbent;
- j) Whether UNMISS abused its discretion and acted unlawfully in terminating his contract on 31 December 2011; and

26. In his 23 January 2014 response on receivability, the Applicant submitted on one hand that while his December 2010 and July 2011 reassignments were submitted for management evaluation, the reassignments are not the Contested Decisions. This was merely an averment supporting his challenge of the Contested Decision. The issue of his reassignment was pleaded *res gestae* to explain the systematic prejudices he was subjected to. He seeks no redress on this issue. On the other hand, he submits that this issue is a pleaded and relevant issue for determination.

27. The Applicant asserts that his challenge against the selection process for the State Coordinator post was the subject of a management evaluation request and that MEU addressed the issue in its response of 30 November 2012.

28. The Applicant submits that his challenge against the termination of his appointment as of 31 December 2011 is also receivable because he sought management evaluation of this decision in his requests of 3 March 2012 and 29 September 2012. The Applicant submits that “despite the clarity in the application [...], the Management Evaluation dated 30th November 2012 by itself purports to address a different issue so far as the decision is concerned. The Management Evaluation addresses a decision not to extend the Applicant’s engagement beyond 30 September 2012. This was not the decision for which Management Evaluation had been sought”.

Issues

29. The issues for determination in this judgment are the receivability of the Applicant's claims regarding: (a) his reassignment to the State Coordinator post in December 2010 and July 2011; (b) his non-selection for the UNMISS State Coordinator post in June 2012; and (c) the termination of his appointment as of 31 December 2011.

Considerations

Did the Applicant submit a request for management evaluation of the decision to reassign him from the UNMIS SPO post to the position of State Coordinator in December 2010 and July 2011?

30. Under article 8.1(c) of the UNDT Statute, the jurisdiction of the Dispute Tribunal can only be invoked in this matter if the contested administrative decision has been previously submitted for management evaluation. Staff rule 11.2(a) provides in relevant part that a staff member wishing to formally contest an administrative decision is required to submit a written request for management evaluation to the Secretary-General. Such a request is a mandatory first step for an applicant prior to the submission of an application to the Dispute Tribunal and it is not open to the Tribunal to waive this requirement or make any exception to it.⁴

31. Pursuant to staff rule 11.2(c), a request for management evaluation "shall not

reassignment on or before 18 February 2011 to comply with staff rule 11.2(c) but he did not do so.

33. Further, on 26 July 2011, the UNMISS CCPO informed the Applicant of his provisional reassignment from UNMIS to the UNMISS State Coordinator post and that “depending on the final approval of the structure and funding of your programme, this post may be subject to review and eventual competitive selection”. Consequently, the Applicant had until approximately 24 September 2011 to submit a request for management evaluation of the July 2011 decision to reassign him to UNMISS as the State Coordinator but he did not do so.

34. It was not until 3 March 2012 that the Applicant submitted a request for management evaluation but then he effectively voided the document by requesting that MEU put it on hold indefinitely whilst he tried to amicably resolve the issue. He never requested reinstatement of this request so the Tribunal cannot deem this to be a proper request for management evaluation.

35. Even if the Tribunal was minded to accept the 3 March 2012 document as a request for management evaluation, it is noteworthy that the Applicant only indicated that the Mission’s failure to return him to the SPO post after he was not selected for the State Coordinator post violated his rights as a staff member. The Tribunal cannot stretch this to mean that he was contesting his December 2010 and July 2011 reassignments to the State Coordinator post.

36. On 29 September 2012, the Applicant submitted another request for management evaluation challenging only the decision to terminate his contract. Once again, the Applicant indicated that his right to return to the SPO post had been violated.

37. The Tribunal finds that the Applicant did not request management evaluation of the decisions to reassign him from the UNMIS SPO post to the UNMIS and UNMISS State Coordinator posts, in December 2010 and July 2011 respectively.

Since he failed to comply with staff rule 11.2(a), the Tribunal holds that these claims are not receivable.

Did the Applicant request management evaluation of the decisions to conduct a selection exercise for the position of UNMISS Head of Office/State Coordinator in Aweil and not to select him for this position?

38. As noted earlier, staff rule 11.2(a) provides in relevant part that a staff member wishing to formally contest an administrative decision is required to submit a written request for management evaluation to the Secretary-General.

39. The record shows that the post for the UNMISS Head of Office/State Coordinator was advertised on 26 August 2011. The Applicant applied for the post and was interviewed on 4 October 2011. Between 1 January and 18 June 2012, the Applicant provisionally performed the duties of the UNMISS State Coordinator pending the completion of the recruitment of the selected candidate. He was not the selected candidate thus on 19 June 2012 he was reassigned to the Office of the UNMISS COS as the SPO.

40. The Applicant has not proffered any evidence to the Tribunal that he requested management evaluation of the August 2011 decision to conduct a selection exercise for the position of UNMISS Head of Office/State Coordinator. Additionally, although he submitted a request for management evaluation in September 2012, this request made no mention of his non-selection for the State Coordinator post nor did it purport to challenge any procedural defects in the selection process. The request challenged the termination of his contract and the failure of UNMISS to return him to the SPO post after his unsuccessful bid for the UNMISS State Coordinator post.

41. The Tribunal finds that the Applicant did not request management evaluation of the decisions to conduct a selection exercise for the position of UNMISS Head of Office/State Coordinator in Aweil and not to select him for this position. Since he failed to comply with staff rule 11.2(a), the Tribunal holds that these claims are not receivable.

Is the Applicant's challenge against the decision to terminate his appointment as of 31 December 2011 receivable?

42. Article 2.1 of the Tribunal's Statute states:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for

to hold its evaluation of the contested decision in abeyance until further notice nullified the request because he did not later seek reinstatement.

46. The Tribunal concludes that the Applicant's challenge against the decision to terminate his appointment as of 31 December 2011 is not receivable because: (a) the contested decision was reversed by the Mission prior to implementation; and bi) the Applicant's management evalua

- b) Whether the Applicant had a right to be re-assigned to another position upon expiry of his appointment outside the normal staff selection process; and
- c) Whether the Applicant is entitled to the remedies he is seeking.

(Signed)

Judge Vinod Boolell
Dated this 22nd day of July 2014

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