



## **Introduction**

1. On 20 February 2018, the Applicant, an Investigator at the P-4 level in the Investigations Division of the Office of Internal Oversight Services

provide his comments, if any, to the Respondent's receivability claims by 3 September 2019. The Applicant filed his observations within the prescribed time limits.

### **Parties submissions**

6. In the Respondent's motion for summary judgment of 27 February 2018, he claims that the application is not receivable because (a) it does not concern an appealable administrative decision (*ratione materiae*) and (b) it is time-barred (*ratione temporis*).

7. The Respondent submits that the application is time-barred because, in accordance with art. 8.1(d)(i)(a) of the Dispute Tribunal's Statute, his application was to be filed within the statutory deadline of 90 calendar days from his receipt of the ~~response~~ request for management evaluation. Since the Applicant received the outcome to his request for management evaluation on 20 November 2017, the 90-calendar-day period for filing an application expired on 18 February 2018, and the application was filed on 20 February 2018, this deadline was not respected.

8. The Respondent further submits that statutory deadlines are to be strictly enforced (*Mezoui* 2010-UNAT-043, *Ibrahim* 2010-UNAT-069, *Christensen* 2012-UNAT-

mutually contradictory and that staff members have the right to be treated with dignity and respect and managers have responsibilities to maintain a workplace free of any form of discrimination, harassment, including sexual harassment, and abuse of authority. The Applicant contends that in view of the management of the Office of Internal Oversight Services' ("OIOS") failure to address documented instances of serious mismanagement, unprofessionalism and unethical conduct in its Investigation Division, the application is based on a legitimate request regarding a matter that affected his rights under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority). Moreover, the Applicant was motivated to make that request for a documented medical reason that was known to the Under-Secretary-General for Internal Oversight Services ("USG/OIOS").

10. The Applicant submits that had the USG/OIOS made a decision whether the Applicant should be transferred, this would have been a decision that impacted the terms of the Applicant's appointment or the contract of employment. The USG/OIOS's failure to address the Applicant's request within a reasonable period of time must be a deemed decision not to take the action requested therein, but the Applicant cannot determine when a deemed decision was made. Even if the Applicant had crystallized such a request by seeking management evaluation, nothing prevented the decision-maker from transferring the Applicant to another post, even after the Management Evaluation Unit ("MEU") had issued their usual dismissal.

11. The Applicant contends that no "last possible date" on which a deemed decision could have been made exists for which reason no 90-day statutory deadline can expire. Had the OIOS wished to do so, the Office could have reassigned the Applicant even after the application had b92 re(c)-5(a)-5(t)C2(ich )-57(re)-2(a.1 0 0 1 447.79 574.18 Tm0





Tribunal on 20 February 2018 at 12:39 a.m. and therefore more than a day after the expiry of the statutory 90-calendar-day deadline.

*Other matters regarding receivability*

20. Having found the application time-barred, it is therefore not necessary for the Tribunal to examine whether the application is not receivable for other reasons, including whether the application does not concern an appealable administrative decision under art. 2.1(a) of the Statute of the Dispute Tribunal or, as submitted by the Applicant, is moot.

**Conclusion**

21. In light of the foregoing, the application is rejected as not receivable.

*(Signed)*

Judge Joelle Adda