



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

TETOVA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON APPLICATION FOR  
SUSPENSION OF ACTION**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Marcus Joyce, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application submitted under article 13 of the Rules of Procedure on 27 June 2011, the Applicant, a staff member of the United Nations Interim



of which read “Appeal on completion of Appointment with UNMIK”. The Applicant pointed out that he had “already followed the chain of command inside UNMIK and [had] not [found] a concrete answer” to his situation. He reiterated his opinion that the letter of 21 February did not reflect his situation, for the abolition of the Architect posts had not gone through the CRP but was an ad hoc decision, and that his request for criteria, standards and reasons used for the abolishment of the Architect post had still not been given an answer. He asserted that he had received “promises” by the Administration which were not upheld.

12. Following a reminder by the Applicant, on 23 May 2011, the Director, FPD/DFS, advised him that his request was being reviewed in coordination with the mission and that he would revert as soon as possible.

13. On 23 June 2011, the Applicant addressed to the Management Evaluation Unit (“MEU”) a request for management evaluation of the decision of “completion of appointment with UNMIK”. He stated that the remedy he sought was the immediate suspension of action of the memorandum signed on 21 February 2011 by the then CMS, UNMIK.

14. On 27 June 2011, Applicant filed the present application for suspension of action before the Tribunal.

#### **Parties’ submissions**

15.

Applicant himself accepts in his application that his request for management evaluation was out of time.

### **Consideration**

17. As a preliminary issue, the Tribunal has to determine the receivability of the application at hand. Staff rule 11.2 provides:

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

18. It follows from article 2.2 of the Statute of the Dispute Tribunal and article 13.1 of its Rules of Procedure read in conjunction with (g)-5-M the above staff rule that a request for suspension of action during the pendency of the management evaluation may only be receivable if a request for management evaluation has been submitted in due time.

19. The Applicant's request for management evaluation to MEU was submitted after the applicable deadline had already expired. As a matter of fact, the Applicant (g)-5rms having received the notification of the contested decision on 9 March 2011. In light of the 60-day time limit set out in staff rule 11.2(c), the

31. While the Applicant is entitled to argue that the Administration should not be excessively formalistic and insist that every request for review must without fail be addressed to the Secretary-General in order to be treated as such, the request must, on the other hand be sufficiently clear for its recipient to see that it is in fact a request for review, in other words the first mandatory phase of the appeal procedure laid down in ... staff rule 111.2(a), and as such, must be forwarded to the Secretary-General.

22. The Tribunal has therefore found that in very specific circumstances an applicant might be deemed to have complied with the “first mandatory phase of the appeal procedure” even though he or she sent no formal request for review to the competent authority designated to, and entrusted with, its examination.

23. Having said that, this constitutes an exception to the general and well-established rule, embodied in staff rule 11.2(a), that “[a] staff member wishing to formally contest an administrative decision ... shall, as a first step, submit *to the Secretary-General* in writing a request for a management evaluation of the administrative decision” (emphasis added). As such, this exception is to be interpreted in a strict manner.

24. As stated by the Appeals Tribunal in *Diagne et al.* 2010-UNAT-067, “ignorance of the law is no excuse and every staff member is deemed to be aware of the provisions of the Staff Rules”.

25. In the present case the Applicant wrote promptly to many UNMIK officials. He started by requesting reconsideration of the non-renewal of his contract to the very person who signed the memorandum notifying him of the decision. However, as stated in *Behluli*, this can only be seen as a simple request of reconsideration by the decision-maker. The Applicant, nevertheless, conveyed his concerns to higher officials in UNMIK, including the most senior staff member of the mission, the SRSG. Not satisfied by his answer, he later brought the matter to FPD/DFS, in Headquarters.

26. Whilst it is not called into question that the Applicant was active and diligent in bringing his concerns and grievances to higher authorities, and whilst the Applicant did refer to his request as an “appeal” of the impugned decision and specified he sought having the decision changed, after explaining the reasons why

he considered it to be improper, the Tribunal does not consider that the standard required to envisage an exception to the regular sending of a request for management evaluation to the Secretary-General within the statutory time limits is met in the case at hand.

27. Accordingly, the Applicant exceeded the mandatory time limit for requesting management evaluation of the contested decision.

28. For the reasons set forth above, the present application for suspension of action is to be declared irreceivable as time-barred.

### **Conclusion**

29. In view of the foregoing, the Tribunal DECIDES that the application for suspension of action is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 30<sup>th</sup> day of June 2011

Entered in the Register on this 30<sup>th</sup> day of June 2011

*(Signed)*

Víctor Rodríguez, Registrar, Geneva