



## **Introduction**

1. The Applicant is a former staff member of the United Nations Mission in Liberia (UNMIL). He filed the current application with the United Nations Dispute Tribunal (UNDT/the Tribunal) in Nairobi on 23 March 2017 to challenge the decision by UNMIL's Chief Human Resources Officer (CHRO) to terminate his continuing appointment.

2. The Respondent filed a reply to the application on 24 April 2017 in which he asserted that the application is not receivable.

3. The Applicant filed a motion on 26 June 2017 seeking leave to file a response to the reply. By its Order No. 128 (NBI/2017), the Tribunal granted the Applicant's motion and directed him to submit a response on the issue of

9. In line with the streamlining of UNMIL's structure as the Mission started to draw down, the Secretary-General proposed the abolishment of several posts in the Mission, generally, and JOAC, specifically, including that of one P-4, in his report A/70/719 (Budget for the United Nations Mission in Liberia for the period from 1 July 2016 to 30 June 2017) dated 8 February 2016. The General Assembly endorsed the proposed budget in its resolution 70/278 (Financing of the United Nations Mission in Liberia) dated 17 June 2016.

10. On 26 May 2016, the Applicant received a letter dated 24 May 2016 from the Director of Mission Support (DMS) informing him that his post had been proposed for abolition effective 1 July 2016 because of UNMIL's downsizing and that his contract would not be renewed beyond 30 June 2016.

11. On 30 June 2016, the Under-Secretary-General for Management (USG/DM) approved the termination of appointment for 15 UNMIL staff members, including the Applicant's, effective 30 June 2016.

12. On 12 July 2016, the Applicant received an inter-office memorandum from the UNMIL CHRO informing him that his appointment would be terminated effective 31 August 2016.

13. On 25 July 2016, the Applicant, represented by the Office of Staff Legal Assistance (OSLA), submitted a request for management evaluation to the Management Evaluation Unit (MEU) challenging the following administrative decisions: (i) the general decision to terminate the Applicant from the Organization; and (ii) the decision to terminate the Applicant effective 31 August 2016 rather than on 28 February 2017, as promised by the Administration (Contested Decisions).

14. The Applicant separated from service on 31 August 2016.

15. After MEU failed to respond timeously to the 25 July 2016 management evaluation request, OSLA filed an application with the Tribunal on 7 December 2016. This application was registered as Case No. UNDT/NBI/2016/088 in the Tribunal's records.

16. MEU subsequently responded to the Applicant's request for management evaluation on 21 December 2016.

17. The Respondent submitted a reply to the application in Case No. UNDT/NBI/2016/088 on 6 January 2017.

18. On 20 February 2017, OSLA informed the Tribunal's Registry in Nairobi that it was withdrawing from its representation of the Applicant in Case No. UNDT/NBI/2016/088.

19. On 23 March 2017, the Applicant, represented by Mr. Sètonджи Roland Adjovi, submitted an application to the Tribunal challenging the decision to terminate the Applicant's continuing appointment. This application was registered as Case No. UNDT/NBI/2017/025 in the Tribunal's records.

#### **Issues**

20. The issue for determination here is whether the application filed on 23 March 2017 is receivable pursuant to art. 8.1 of the UNDT Statute. The Respondent contends that the application is not receivable *rationae temporis* and due to the doctrine of *lis pendens*. The Tribunal will examine both of 6 378.24 Tm [rg 0.99

evaluation is received after the 90-day period, it will not reset the deadline for seeking judicial review.

22. Additionally, the Respondent submits that the Applicant requested management evaluation on 25 July 2016. The 45-day management evaluation period expired on 8 September 2016. Thus, the Applicant was required to file his application no later than 7 December 2016, which was the date he filed his first application. The management evaluation response received on 21 December 2016 did not re-set the clock. The Application was filed more than three months late and is therefore time-barred.

23. The Applicant concedes that the current application has been filed outside of the time limit in art. 8.1(d)(i)(b). He submits however that the provision and its interpretation do not do justice to the staff members who often do not have any legal background to navigate the complexity of the applicable law. He asserts that this interpretation favours an administration that would have failed to address the request from a staff member in violation of staff rule 11.2(d).

24. Since the Applicant has conceded that the application in Case No. UNDT/NBI/2017/025 was filed outside of the delay, there is no need for the Tribunal to deliberate on this issue further.

25. In relation to the Applicant's assertion that the interpretation of art. 8.1(d)(i)(b) is unfair to staff members because it favours an administration that has failed to address management evaluation requests in violation of staff rule 11.2(d), the Tribunal wishes to highlight the sage words of the United Nations Appeals Tribunal (the Appeals Tribunal) in *Kalashnik* 2016-UNAT-661 that:

However, Article 8 does not require that the Administration respond to the request for management evaluation in order for an application to be received by the UNDT. To the contrary, pursuant to Article 8(1)(d)(i)(b) of the UNDT Statute, an application shall be received by the UNDT despite the failure of the Administration to respond: "An application shall be receivable if ... [t]he application is filed ... [w]ithin 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided".

26. In view of the foregoing, the Tribunal concludes that this application is not receivable *rationae temporis* because the Applicant failed to comply with the 90-day filing deadline set out in art. 8.1(d) of the UNDT Statute.

*Doctrine of lis pendens*

27. The Respondent also submits that the application in Case No. UNDT/NBI/2017/025 is not receivable due to the doctrine of *lis pendens* because the Applicant has appealed the same administrative decision in Case No. UNDT/NBI/2016/088, which is currently pending before the Tribunal. The present application raises the same legal issues and is predicated on the same management evaluation as Case No. UNDT/NBI/2016/088. The Respondent's case is that the plain meaning of staff rule 11.4(a) is that a staff member may not

openings/administrative decisions challenged under case number  
UNDT/NY/2015/031 filed by the Applicant on 26 May 2015.

34. Since Case No. UNDT/NBI/2017/025 is nothing but a replica of Case No. UNDT/NBI/2016/088, the Tribunal finds that it would be a waste of judicial resources to maintain Case No. UNDT/NBI/2017/025 on its docket.

### **Judgment**

35. The application in Case No. UNDT/NBI/2017/025 is not receivable and is therefore dismissed.