



Before: Judge Sean Wallace
Registry: Nairobi
Registrar: René M. Vargas M., Officer-in-Charge

ABBAS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Hydar Majook

Counsel for the Respondent:

Maureen Munyolo, AS/ALD/OHR, UN Secretariat

Facts And Procedure

1. On 5 June 2023, the Applicant, a former Supply Assistant working with the United Nations Mission in South Sudan, filed an application contesting

2. On 13 June 2023, edure

evaluation, the application in its entirety is not receivable *ratione materiae* and should be dismissed.

12. On the second point, the Respondent argues that the Applicant contests conduct but not an administrative decision. The Applicant admits that the purposed contested . The application then goes on to describe such alleged conduct. Conduct is not an administrative decision. Challenges to conduct are not receivable

21-22). That means that the application will be receivable up to the period of three years after receiving the administrative decision.

Consideration

16. the Applicant has not clarified the nature of the challenged termination decision nor even submitted a copy of the decision. The termination decision submitted by the Respondent does not 1 April 2022 and arose from an incident in September 2021. Instead, that termination decision was made on 11 March 2022 and rose from an incident on 2 October 2019 in which the Applicant allegedly eoovera United Nations vehicle while under the influence of alcohol and damaged that vehicle.

17. To the extent that the termination decision was for reasons other than disciplinary, the Respondent correctly points out that the Statute of the United Nations Dispute Tribunal requires that, to ebe receivable, tin2

art. 8.1(d)(iii), it seems clear that the term refers to a staff member who is unable to bring a claim on their own behalf, just like if they were deceased. It implies an inability to manage one

25. Furthermore, when directed to submit documentation of his incapacity, the Applicant provided only a report that he suffered a broken leg and dislocated ankle, from which he has made a good recovery. The medical report does not indicate that the Applicant was incapacitated by his leg injury.

26. In addition, the application attaches a Legal Representative Authorization Form signed by the Applicant on 9 May 2023. If he was able to authorize Mr. Hydar Majook to act as his legal representative, he was not incapacitated.

27. Moreover, this Tribunal has examined and rejected a request to apply the extended deadline when the record showed that the staff member was not mentally incapacitated. (*Wenz*, UNDT/2020/020, paras. 11 and 16). Thus, the extended one-year deadline does not apply.

28. Therefore, the 90-day deadline applies in this case and was not met. In conclusion, if the challenged decision was not a disciplinary matter and required management evaluation, it is not receivable for failure to request management evaluation. On the other hand, if the challenged decision was a disciplinary matter, then it is not receivable as time-barred. Either way, the case is not receivable.

Judgment

29. The application is dismissed as not receivable.

(Signed)

Judge Sean Wallace

Dated this 16th day of November 2023

Case No. UNDT/NBI/2023/048

Judgment No. UNDT/2023/126

Entered in the Register on this 16th day of November 2023

(Signed)

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