

Facts

1. On 30 April 2008, the Chief Civilian Personnel Officer of the United Nations Mission in Sudan (UNMIS) sent the Applicant an offer for a six-month Appointment of Limited Duration (ALD, 300 series of the former Staff Rules) as Humanitarian Affairs Officer at the P-3 level. The offer of appointment stipulated that it was “subject to [the Applicant] being medically cleared by the United Nations Medical Doctor” and that it “automatically elapse[d] in the event that the results of [the Applicant’s] medical examination prove unsatisfactory”. It further provided that: “This offer of appointment is subject not only to medical clearance but also to the verification of references in support of [the Applicant’s] qualifications or mission service.”

2. The Applicant accepted the offer of appointment on 1 May 2008, indicating that he would be available “30 days from

7. By email dated 21 August 2008, copied to the Applicant, an Officer from the HRSS confirmed that the Applicant would be able to report for duty contingent upon a medical report from his attending doctors.
8. On 16 December 2008, the Applicant provided a medical report from his treating physician – in Spanish – to the HRSS, which stated that the Applicant was in full remission and that he could “retake his duties in his usual job”.
9. On 17 December 2008, the UNMIS Medical Unit assessed the Applicant as “not fit” under classification 2B (i.e. candidates with reduced life expectancy, or reduced work capacity, who are ineligible for employment).
10. By letter dated 21 December 2008, the Officer-in Charge, HRSS, informed the Applicant of the formal withdrawal of the offer of appointment on the grounds that the Applicant was not medically cleared.
11. On 22 December 2008, the Applicant requested the UNMIS Medical Unit to review its decision to deny him medical clearance, request which UNMIS Medical Unit forwarded the same day to the Medical Services Division (MSD) at UN Headquarters.
12. On 24 December 2008, the Applicant sent a copy of a sworn translation of the report of his treating physician to a Doctor of the UNMIS Medical Unit.
13. The MSD confirmed on 31 December 2008 that the Applicant was unfit for deployment to UNMIS. This was confirmed by MSD, again, on 30 January and 23 February 2009 respectively.
14. The Applicant requested administrative review of the decision to withdraw the offer of appointment on 29 January 2009.
15. By letter dated 20 February 2009, the Administrative Law Unit of the Office of Human Resources Management, UN Secretariat, advised the Applicant that since he was not a staff member, the internal justice system was not available to him.

21.

IT IS ORDERED THAT

1. The motion to dismiss is rejected.
2. The Respondent submits, by Tuesday, 9 February 2010, additional particulars in reply to the application.

(Signed)

Judge Thomas Laker

Dated this 8th day of January 2010

Entered in the Register on this 8th day of January 2010

(Signed)

Víctor Rodríguez, Registrar, Geneva