

UNITED NATIONS DISPUTE TRIBUNAL

Case No. UNDT/NBI/2021/095

Order No.: 245

Gao.²

ACCEPTANCE

Parties' submissions

Receivability

Applicant

13.

a. She is not a current staff member despite having served the Organization on many previous contracts, from 2011 to 2020. However, as she unconditionally accepted and signed a letter of offer and had already met all requirements including being medically cleared to work in MINUSMA (just not for Gao), the challenge is receivable *ratione personae*.

b. The decision to withdraw the letter of offer is a challengeable administrative decision. Therefore, as per art. 2(1)(a) of the UNDT Statute, the application is receivable *ratione materiae*.

c. She was notified of the decision on 25 October 2021. Therefore, the challenge of the decision is receivable *ratione temporis*.

d. She submitted a request for management evaluation on 28 October 2021. The Management Evaluation Unit (MEU) has not yet replied. The MEU response is not due until 12 December 2021. Consequently, her request for management evaluation is still pending and the contested decision is the subject of an ongoing management evaluation.

e. Despite being informed of the decision, the decision has not yet been implemented and can be suspended.

f. For all those reasons, the Applicant submits that, as per art. not f 792 reW*ⁿBT/F1 12 Tf1 0

of a decision that has not yet been implemented and which is pending management evaluation. Rescission and specific performance are available only under art. 10.5 of the Statute following an adjudication of the merits. The application should be rejected for lack of personal and subject matter jurisdiction.

Considerations

15. The Applicant _____ to the reply is granted.

16. The Respondent argues that the Applicant not being a staff member within the meaning of staff regulation 4.1 has no right of access to the system of administration of justice. The Applicant maintains that the fact that she unconditionally accepted and signed a letter of offer⁶ and had already met all requirements including being medically cleared to work in MINUSMA (just not for Gao), created *quasi* contractual obligations and rights which clothed her with the right to access the system of administration of justice in line with the Appellate jurisdiction guidance in *Gabaldon*.

17. The Tribunal, however, determines that the mere fact that the Applicant _____ dated 8 September 2021 did not create any *quasi* contractual obligations. In the first place, the offer letter was for a Human Rights Officer position in Gao, Mali and not in MINUSMA generally. The generic medical clearance for MINUSMA is therefore irrelevant to the offer in issue.

18. More important is that the offer was subject to satisfactory medical clearance. The offer letter is clear that the mission Chief Medical Officer or the designated medical officer was the one to determine whether or not the medical clearance was satisfactory. In this regard, the Medical Officer determined that it was not. This left a major condition of the offer unfulfilled.

19. The fact that a condition of the offer was not fulfilled places this application

⁶ Application, annex 5.

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