



Judgment No. 2019-UNAT-967



Counsel for Mr. Olowo-Okello: Self-represented

Counsel for Secretary-General: Isavella Vasilogeorgi



7. On 12 July 2018, Mr. Olowo-Okello filed a complaint and request for intervention with the UNHCR Ombudsman's Office. In his complaint, Mr. Olowo-Okello requested to be rehired by UNHCR and to be informed of the reasons why he was being "blocked from rehiring".

8. On 25 July 2018, the UNCHR Ombudsman's Office transmitted to Mr. Olowo-Okello a statement from the UNCHR Legal Affairs Service in response to his complaint. The statement noted as follows:

The eligibility to apply for UNHCR positions is governed by the Recruitment and Assignments Policy (UNHCR/HCP/2017/2) and Administrative Instruction (UNHCR/AI/2017/7/Rev.1). The paramount consideration in the employment of staff is securing the highest standards of efficiency, competence, and integrity pursuant to article 101.3 of the UN Charter, article 11 of the Policy and article 8 of the Administrative Instruction.

In this connection, it has come to the Medical Service's attention that Mr. Okello misrepresented information in his entry medical assessment form at the time of his recruitment by UNHCR in January 2015. In particular, despite his obligation to provide full and accurate medical information to the Medical Service, he failed to disclose that he suffered from an illness. This illness became apparent at a later date. Had he provided full and accurate medical information to the Medical Service, Mr. Okello would not have been declared fit to work and would not have received his appointment.

It appears from the foregoing that Mr. Okello does not meet the highest standards of integrity required for employment with UNHCR. For the sake of fairness, nevertheless, DHR will consider any comments that he might have before reaching a final conclusion.

9. Mr. Olowo-Okello submitted his comments on 6 August 2018. Between 6 August 2018 and 22 March 2019, Mr. Olowo-Okello repeatedly attempted, through the Ombudsman's Office, to obtain a "final conclusion" from the Administration. Finally, on 22 March 2019, Mr. Olowo-Okello wrote to the Ombudsman stating that he was doubtful that writing again to the Administration and waiting any longer for its final decision would serve any useful purpose.

10. On 12 April 2019, Mr. Olowo-Okello filed an application with the UNDT contesting the "termination" of his employment with UNHCR, the decision to block him from being rehired by UNHCR and other United Nations agencies and the placement of adverse material into his personnel file.

11. On 16 May 2019, the UNDT issued Judgment No. UNDT/2019/086 dismissing Mr. Olowo-Okello's application as not receivable *ratione materiae*. The UNDT found that the communication, dated 7 September 2016, constituted an express and complete administrative

**THE UNITED NATIONS APPEALS TRIBUNAL**

Judgment No. 2019-UNAT-967

arbitrary, conclusory presumption that he had

20. Mr. Olowo-Okello has not established any errors warranting a reversal of the UNDT Judgment. As stated in the communication of 7 September 2016, the decision not to renew Mr. Olowo-Okello's temporary appointment was based, *inter alia*, on the receipt of a medical clearance indicating his status as unfit to serve in Ethiopia. The determination that Mr. Olowo-Okello was unfit related to his medical clearance, which was based on a conclusion that his medical condition, had it been disclosed to the United Nations Medical Service, would have precluded his original deployment to Ethiopia. The determination that he was unfit was not related to the observation that he did not meet the highest standards of integrity because he had failed to disclose his medical condition at the time of his initial recruitment to UNHCR in 2015.

21. Even assuming *arguendo* that Mr. Olowo-Okello's arguments were accepted, and he was not required to submit a request for management evaluation, he still failed to file a timely application before the UNDT. Accepting Mr. Olowo-Okello's arguments would mean treating the Ombudsman's communication of 25 July 2018 as the purported decision conveying a disciplinary sanction. Pursuant to Staff Rule 11.4(d) as well as Article 8(1)(d)(ii) of the UNDT Statute, Mr. Olowo-Okello should have submitted his application to the UNDT within 90 days from his receipt of the administrative decision. In other words, Mr. Olowo-Okello would have been required to submit his application to the UNDT on or before 23 October 2018. However, Mr. Olowo-Okello only submitted his application to the UNDT on 12 April 2019, that is 171 days past the deadline. On this basis alone, the Appeals Tribunal should dismiss the appeal and affirm the UNDT Judgment. In view of the foregoing, Mr. Olowo-Okello has not established any error on the part of the UNDT warranting a reversal of the Judgment.

### **Considerations**

22. The issue before this Tribunal is whether the UNDT correctly concluded that Mr. Olowo-Okello's application was non-receivable *ratione materiae*, as he had not submitted a request for management evaluation of the contested administrative decision before filing his application with the UNDT. This Tribunal determines that the Dispute Tribunal's conclusions are correct.





subject(s) of judicial review.”<sup>3</sup> We find no fault with the UNDT’s reasoning when it defined and identified as the administrative decision that triggered the time limits for him to request management evaluation the communication of 9 July 2016<sup>4</sup> to Mr. Olowo-Okello-as conceded by him in his application-that his contract had expired and had not been renewed due to the lack of the requisite medical clearance for Ethiopia. We therefore uphold the UNDT’s finding that the issue of the non-renewal of Mr. Olowo-Okello’s contract was not receivable *ratione materiae*.

27. Mr. Olowo-Okello contends that the UNDT should have ruled that his obligation to submit the contested decision for management ev

constitute a request for management evaluation within the meaning of Staff Rule 11.2 and, therefore, could not substitute his obligation to submit such a request.

30. Further, as correctly argued by the Secretary-General, even if Mr. Olowo-Okello's communication with the Ombudsman's Office on 12 February 2018 were to be broadly construed as a request for management evaluation, which was not the case here, that communication was time-barred since it was submitted after the 60-day deadline from the notification of the non-renewal decision on 9 July 2016.<sup>7</sup>

*The "decision" of the Administration to place adverse material in Mr. Olowo-Okello's official status file and to block him from being rehired*

31. As per the settled jurisprudence, an appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member's terms and conditions of appointment. Further, the date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine.<sup>8</sup>

32. Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organization. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision.<sup>9</sup> What matters is not so much the functionary who takes the decision as the nature of the function performed or the power exercised. The question is whether the task itself is administrative or not.

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 38, citing to *Abu Nqairah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-854, para. 16, in turn citing *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28.

<sup>9</sup> *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 62, citing to *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 50, in turn citing *Bauzá Mercére v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-404, para. 18 and citations therein. See also *Kalashnik v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-661, para. 25.

33.

his application to the UNDT as non-receivable *ratione materiae*, due to him not having submitted a request for management evaluation of the contested administrative decision before filing his application with the UNDT.

39. However, Mr. Olowo-Okello neither made a claim to the competent authority to remove the adverse material from his official status file nor was the Ombudsman's Office the appropriate authority to decide upon such a claim. Mr. Olowo-Okello simply attempted to submit his comments as requested by the Administration. In the premises, and if the latter eventually decides to place such adverse material in his official status file, Mr. Olowo-Okello will not be precluded from raising before the Administration, and if unsuccessful, before the MEU and the UNDT—within the time limits prescribed in the Staff Rules and the UNDT's Rules of Procedure—the possibly negative effects and challenge any explicit or implicit, administrative decision denying the *removal* of it, the non-renewal of his appointment and other administrative decisions taken based on this material.

40. Finally, Mr. Olowo-Okello submits that the UNDT erred on a question of fact and failed to exercise its jurisdiction by declining to recognize that he had been subject to a disguised disciplinary measure and hence a request for management evaluation was not a prerequisite for filing an application with the UNDT in his case.

41. However, as already noted, the case which Mr. Olowo-Okello presented before the UNDT was a challenge to the administrative decision not to renew his contract for lack of the requisite medical clearance. There was no evidence that the non-renewal was the result of any disciplinary proceedings against him. He was therefore required to submit a request for management evaluation of this decision before proceeding with his application to the UNDT. Mr. Olowo-Okello cannot evade the statutory obligation of requesting management evaluation by characterizing the disputed decision as a disciplinary matter.<sup>13</sup>

42. As Mr. Olowo-Okello has not demonstrated that the UNDT committed any error of law or fact, his appeal must fail.

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<sup>13</sup> *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 12.

**Judgment**

43. The appeal is dismissed and Judgment No. UNDT/2019/086 is affirmed.

Original and Authoritative Version: English

Dated this 25<sup>th</sup> day of October 2019 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Neven

*(Signed)*

Judge Sandhu

Entered in the Register on this 20<sup>th</sup> day of December 2019 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar