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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/015

Judgment No.: UNDT/2022/100

Date: 5 October 2022

Original: English

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**Before:** Judge Eleanor Donaldson-Honeywell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

NEGA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for the Applicant:**

Self-represented

**Counsel for the Respondent:**

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Maureen Munyolo, AS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant is a former D-1 Chief of Service, Political Affairs with the United Nations African Union Hybrid Operation in Darfur ( UNAMID ).
2. On 8 February 2022, he filed an application contesting the decision not to pay him termination indemnity following the termination of his continuing appointment ( contested decision ).
3. The Respondent filed a reply on 10 March 2022 urging the Tribunal to find that the application is irreceivable *ratione temporis*.
4. On 3 October 2022, the Applicant filed submissions on the issue of receivability.

## **Facts**

5. The Applicant had been employed with the United Nations since 16 October 2001 and was granted a continuing appointment effective 28 October 2016. Before he separated from service on 7 June 2021, the Applicant had been serving in UNAMID in Khartoum as a D-1 Chief of Service.<sup>1</sup>
6. On 31 December 2020, the Applicant reached 62 years of age but opted to continue his service until the new normal retirement age of 65 years established under United Nations General Assembly Resolution 70/244.<sup>2</sup>
7. By letter dated 14 January 2021 from the UNAMID Director of Mission Support (

It is with regret that I have to inform you that your functions are among those no longer required following the termination of

The Joint Special Representative (JSR) in UNAMID has accordingly approved the termination of your Continuing appointment on the grounds of staff reduction in line with Staff Regulation 9.3 (a)(i) and Staff Rule 9.6 (c)(i).

Your separation will be effective on 13 April 2021. This notice is being issued in line with Staff Rule 9.7.

8. By letter dated 27 February 2021, UNAMID offered the Applicant an exceptional termination indemnity (the offer). In that letter, the DMS informed the Applicant that he was not entitled to a termination indemnity pursuant to staff rule 9.8(c) because he was entitled to a retirement benefit under article 28 of the Regulations of the United Nations Joint Staff Pension Fund ( UNJSPF ). However, the DMS further explained that UNAMID had sought and received approval from the Under-Secretary-General for the Department of Management Strategy, Policy and Compliance ( USG-DMSPC ) to pay him a termination indemnity as an exception to staff rule 9.8(c) on the condition that he would not contest the termination decision.<sup>4</sup>

9. On 10 March 2021, the Applicant requested management evaluation of the decision to terminate his continuing appointment without appropriate evaluation and lack of good faith efforts on the part of the Organization to place him in a suitable/available position.<sup>5</sup>

10. By letter dated 11 March 2021, the Management Evaluation Unit ( MEU ) informed the Applicant that they had granted his request for a suspension of action pending management evaluation.<sup>6</sup>

11. On 17 May 2021, a UNAMID Human Resources Officer sent an email to the Applicant requesting him

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<sup>4</sup> Reply, annex 1.

<sup>5</sup> Application, annex 3; reply, annex 4.

<sup>6</sup> Application, annex 4.

indemnity.<sup>7</sup> The Applicant responded to the email on 27 May 2021 stating, *inter alia*, that he did not exercise his acquired rights and that his appointment was terminated by the Organization as expressly stated in the letter from the DMS dated 14 January 2021. He argued that he was entitled to termination indemnity and that he was willing to consider accepting exceptional termination indemnity, if offered in accordance with staff rule 9.3(d).<sup>8</sup>

12. On 7 June 2021, the MEU issued its determination letter upholding the decision to terminate the Applicant's continuing appointment.<sup>9</sup> The letter included a response refuting the Applicant's claim to entitlement to termination indemnity.

13. On 20 September 2021, the Applicant received final payment which did not include payment of termination indemnity.<sup>10</sup>

14. He submitted another management evaluation request on 27 October 2021 challenging the fact that his final pay did not include the payment of termination indemnity and requested that he be paid termination indemnity as a staff member with a continuing appointment whose appointment was terminated by the Secretary-General due to abolishment of his post.<sup>11</sup>

15. On 13 December 2021, the MEU issued a determination letter that the case was not receivable according to *res judicata*.<sup>12</sup>







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*(Signed)*

Judge Eleanor Donaldson-Honeywell

Dated this 5<sup>th</sup> day of October 2022

Entered in the Register on this 5<sup>th</sup> day of October 2022

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi