



## **INTRODUCTION AND PROCEDURAL HISTORY**

1.

6 August 2018, UNAMI requested the Applicant's updated Personal History Profile (PHP) for uploading into COSMOS. The Applicant complied.<sup>2</sup>

7. By memorandum dated 26 November 2018, the Chief of Unit of the Kuwait Joint Support Office notified the Applicant of the administrative procedures necessary for his check-out on 31 December 2018.<sup>3</sup>

8. On 26 January 2019, the Applicant emailed the Management Evaluation Unit (MEU) seeking advice and information on two posts he had applied for, Job Openings (JOs) 108789 and 109656.<sup>4</sup>

9. On 5 February 2019, the Applicant sent a request for management evaluation to MEU, which is vague and poorly articulates the decision he sought evaluation of. He appears to be seeking review of his exclusion from the selection processes for JOs 108789 and 109656 and the failure of the Organization to find a new post for him after the termination of his continuing appointment.<sup>5</sup>

10. MEU acknowledged receipt of his request on 6 February 2019 and informed him that the management evaluation would be completed by 22 March 2019.<sup>6</sup> To date, the Applicant has not received said response from MEU.

## **CONSIDERATIONS**

11. The Respondent's case is that the application is not receivable *ratione materiae* because the Applicant failed to timeously request management evaluation of the decision to terminate his continuing appointment. The Respondent submits that since the Applicant was notified of the decision not to renew his appointment when he received the check-out memorandum on 26 November 2018, he ought to have requested management evaluation by 25 January 2019. Given that he waited until 5

---

<sup>2</sup> *Ibid*, paras. 4 and 5.

<sup>3</sup> *Ibid*, annex D.

<sup>4</sup> *Ibid*, annex E.

<sup>5</sup> *Ibid*, annex E-1.

<sup>6</sup> *Ibid*, annex F.

February 2019 to request management evaluation, he is time-barred.

12. When seeking review of an impugned decision by MEU, a staff member is

and unequivocal in its statement of the course of action that UNAMI intended to pursue in respect of the Applicant's post.<sup>7</sup> The Tribunal considers therefore that the 26 November 2018 notification of the check-out procedure was just a mere follow-up on the decision that was communicated to the Applicant on 5 August.<sup>8</sup>

17. Since the Applicant was informed of the decision to terminate his continuing appointment on 5 August 2018, he should have requested management evaluation by 4 October 2018. He did not request management evaluation until 5 February 2019 thus his claim is time-barred.

18. The Tribunal does not consider that an alleged failure by the Respondent to make good faith efforts to place a staff member is a discrete and contestable administrative decision. Should it be the Applicant's case that he had the right to be retained in his position unless and until the Organization found him an alternative post, he should have contested it within the context of the 5 August decision with its unconditional phrasing. This he failed to do timely.

19. In any event, once the Applicant was notified of the checkout procedure on 26 November, he was put on notice that UNAMI had not found him a suitable placement. Therefore, even accepting, for the sake of argument, that his claim relates to a discrete and reviewable decision of not securing him another post prior to separation, it is also time-barred because the Applicant became aware or should have become aware by 26 November 2018 that he was not going to be placed in another position and that he was going to be separated from service. The onus was on him to request for management evaluation by 25 January 2019 but he did not do so until 5 February 2019.

## **JUDGMENT**

20. The application is dismissed as irreceivable.

---

<sup>7</sup> *Auda* 2017-UNAT-746, paras. 31 and 32.

<sup>8</sup> *Aliko* 2015-UNAT-539, para 35, citing *Fiala* 2015-UNAT-516, para. 39 and *Sethia* 2010-UNAT-079, paras. 18-22.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 20<sup>th</sup> day of September 2019

Entered in the Register on this 20<sup>th</sup> day of September 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi