

4. On 7 May 2012, Mrs. Mpacko requested a management evaluation of the decision to redeploy her back to Haiti.¹ On 29 May 2012, Mrs. Mpacko filed with the Dispute Tribunal an application for suspension of action of the contested decision, pending the management evaluation.²

5. In June 2012, Mrs. Mpacko's fixed-term appointment was extended for one year from 1 July 2012 to 30 June 2013. From 28 June 2012, she was absent from work. She requested

confidential (.)-4.3a)1.21c-09(s)05mdepe6(o 3t Tw -18.962 -1.727 Td (((e)1.1 (0 o)-0.8k.158 0 l(ti)6-0-5)1

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2020-UNAT-990

19. On 30 November 2018, Mrs. Mpacko requested a management evaluation of the contested decision to separate her from service for abandonment of post, claiming that she had not received any “prior and formal notice” of the separation decision. She asserted that she first saw the separation letter only on 5 November 2018 and that nobody from MINUSTAH had contacted her or sent a registered mail to her contact details.

20. In a letter dated 13 December 2018, the Chief of the Management Evaluation Unit (MEU) informed Mr

rv.7251(l)-4.7 (s)-0.7 (.)TJ 0 Tc 7.3210 0 Td ()Tj E0 Tc 0 Tw 39.2-15.076 >>BDC -0[[(m)

24. On 20 September 2019, Ms. Paule Audrey Mpacko Ntoubas, Mrs. Mpacko's elder daughter, filed an application for intervention by a person not party to a case "in order to guarantee [her] fundamental right to an education" "so that [she] can complete the Baccalaureate studies that [she] was forced to suspend four years ago" allegedly caused by the withholding of the education grant for the 2010 -2011 school year and the refusal to reimburse her school fees for the school year 201-2012.

25. On 30 September 2019, the Secretary General filed an answer to Mrs. Mpacko's appeal as well as comments, wherein he objected to Paule Audrey's application for intervention. On the same date, Mrs. Mpacko filed comments in support of Paule Audrey's application for intervention.

26. On 21 October 2019, Mrs. Mpacko filed a motion for additional pleadings, to which the Secretary-General filed his response on 31 October 2019.

27. On 10 March 2020, Ms. Ann Steffi Mpacko, Mrs. Mpacko's younger daughter, filed an application for intervention by a person not party to a case "in order to guarantee her 'inalienable right to education' ". On 17 March 2020, the Secretary-General filed his response objecting to Ann Steffi's application for intervention. On the same date, Mrs. Mpacko filed comments in support of Ann Steffi's application for intervention.

Submissions

Mrs. Mpacko's Appeal

28. The Dispute Tribunal erred in fact and in law by declaring Mrs. Mpacko's application was not receivable. Mrs. Mpacko never received any official information or notification of her separation from service in any form. The Administration must prove that it provided the notification in one of the forms stipulated in section 16 of ST/AI/400, including the dispatch of a registered letter with a return receipt or communication via her emergency contact. It was unjust to invoke a statute of limitations against her application since the Administration did not provide her with notice of her separation.

29. The Dispute Tribunal committed a procedural error by failing to hold a hearing for the parties to face each other in person or by videoconference, in violation of the principle of adversarial court proceedings.

30. The Dispute Tribunal erred by examining the substance of the case after it had found Mrs. Mpacko's application was not receivable. The Judge's analysis of the facts was riddled with prevarications, doubts and assumptions. As the appeal is a re-adjudication, Mrs. Mpacko is submitting the facts anew to the Appeals Tribunal and presenting her arguments to counter the UNDT Judge's factual findings, in order to prove her position that she has not received the notice of separation from service for abandonment of post in accordance with sections 11 and 16 of ST/AI/400 and consequently she still considers herself to be a serving staff member of the United Nations.

31. Mrs. Mpacko requests that the Appeals Tribunal find her case receivable, vacate the UNdndt (r)-7.3 eo-

without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

47. In the present case, the Appellant does not identify any exceptional circumstances justifying the need to adduce documents. The “template of an acknowledgement of receipt” was readily available when the Appellant filed her application with the UNDT and could have been presented at the level of the Dispute Tribunal.

48. The motion for additional pleadings is denied and the document adduced by the Appellant in her motion is rejected.

49. The Appellant does not establish that the UNDT erred in finding that she had been informed of her separation for abandonment of post and that her claim was time-barred.

50. Article 8 of the UNDT Statute provides:⁷

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed _____ of the contested administrative decision.

The Appeals Tribunal has consistently held:⁸

Article 8(4) is an “absolute restriction on [the UNDT’s] judicial discretion”. Put differently, “under Article 8(4) of the UNDT Statute, the UNDT cannot waive the time limit to file an appeal, more than three years after the applicant’s receipt of the contested administrative decision.

⁷ Emphasis added.

⁸

51. On appeal, the Appellant claims that she was not properly informed of the separation from service due to abandonment of post, because the separation was not sent by “registered mail” at her most recent address “with an acknowledgement of receipt”.

52. This means of communication is, however, not required by the regulations the Appellant refers to. Paragraph 16 of ST/AI/400 states :

Upon approval of separation for abandonment of post, the personnel officer concerned will process the separation action and will notify the staff member at the address most recently provided by him or her, advising of the Secretary-General's decision and the effective date in accordance with paragraph 12 above. Separation for abandonment of post is not termination and therefore the staff member will not be entitled to any notice of termination or the payment of termination indemnity, and no repatriation grant is payable ...

53. This provision does not provide an obligation to use registered mail to notify a staff member of separation from service for abandonment of post. The French version of this provision does not refer to registered mail either.

54.

56. The UNDT did not err in fact in deciding that “the contested decision, namely the separation for abandonment of post, was sent to the Applicant’s personal email address on 7 January 2013” and that “[e]ven if the

Judgment

58. The appeal is dismissed and Judgment No. UNDT/2019/096 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of March 2020.

Judge Neven, Presiding
New York, United States

Judge Knierim
Hamburg, Germany

Judge Halfeld
Bournemouth, United Kingdom

Entered in the Register on this 19th day of June 2020 in New York, United States.

Weicheng Lin, Registrar