



## Introduction

1. The Applicant, a Security Officer with the Department of Safety and Security (“DSS”) of the United Nations Secretariat in New York, filed two cases:

a. Case No. UNDT/NY/2015/023, filed on 13 April 2015 as an application concerning the decision dated 30 October 2014 to issue him a written reprimand;

b. Case No. UNDT/NY/2015/030, filed as a separate case on 22 May 2015 by way of a motion entitled “Motion to re-file application with motion for waiver of deadline for such application”, to address the Respondent’s contention that the first case was not receivable.

2. The Applicant seeks rescission of the decision to place a reprimand on his file; removal of the reprimand; and unspecified damages for the breach of his due process rights in placing the reprimand on his file.

3. There is a dispute between the parties as to whether the Applicant’s claims are receivable. Accordingly, the Tribunal decided to first consider the issue of receivability.

## Procedural history

4. By Order No. 83 (NY/2015), dated 13 May 2015, the Tribunal directed that the Applicant’s first case would join the queue of pending cases for assignment to a judge in due course. The Tribunal further directed the parties in the first case to refrain from filing any further documents until

Cases No. UNDT/NY/2015/023

UNDT/NY/2015/030

## Factual background

### *Events of 8 March 2013*

10. On 8 March 2013, an incident took place between the Applicant, who was manning a UN security entry point, and a female staff member, who was entering the building.

### *Investigation report dated 25 March 2013*

11. The report of the Special Investigations Unit of DSS, dated 25 March 2013, found that the Applicant “acted in an unwarranted hostile manner towards the staff member” and that the matter should

advised that he could avail himself of the assistance of the Office of Staff Legal Assistance (“OSLA”). The memorandum concluded with the following paragraph:

19. For further general information, you are referred to administrative instruction ST/AI/371 as amended (“Revised disciplinary measures and procedures”), which governs the process.

*Retention of OSLA in August 2013*

14. On 14 August 2013, the Applicant retained the services of OSLA and signed the “Consent



contravention of SSS SOP [Standard Operating Procedure] 11 and SOP 46.

The fact finding determined that you acted in a manner which employed an elevated use of force uncalled for by the situation. As OHRM noted, this is not the first incident in which you have been involved that has led to reprimands being issued. As a result, this letter serves as an official written reprimand.

*Management evaluation request of 23 December 2014*

17. On 23 December 2014, OSLA, on behalf of the Applicant, requested management evaluation of the decision “to impose reprimand” on the Applicant. The request for management evaluation stated that the Applicant was notified of the contested decision on 30 October

Cases No. UNDT/NY/2015/023

UNDT/NY/2015/030

Judgment No. UNDT/2016/011

*Filing of Case No. UNDT/NY/2015/023*





Cases No. UNDT/NY/2015/023

UNDT/NY/





...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to sus

- (ii) Recovery of monies owed to the Organization;
- (iii) Administrative leave with or without pay pursuant to staff rule 10.4.

27. Staff rule 10.3 states:

**Rule 10.3**

**Due process in the disciplinary process**

...

(c) A staff member against whom disciplinary or non-disciplinary measures, pursuant to staff rule 10.2, have been imposed following the completion of a disciplinary process may submit an application challenging the imposition of such measures directly to the United Nations Dispute Tribunal, in accordance with chapter XI of the Staff Rules.

28. Staff rules 11.2 and 11.4 state:

**Rule 11.2**

**Management evaluation**

...

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a

the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2 (d), whichever is earlier.

(b) Where a staff member *is not required to request a management evaluation*, pursuant to staff rule 11.2 (b), he or she may file an application directly with the United Nations Dispute Tribunal within 90 calendar days from the date on which the staff member receives notification of





33. Although the language used in staff rules 11.2(b) and 11.4(b) appears permissive—“may” and “is not required”—art. 8.1(d)(ii) of the Statute, which has higher legal authority than the Staff Rules, unequivocally states that, where a management evaluation of the contested decision is not required, an application *shall* (i.e., must) be filed within 90 calendar days of the receipt by the applicant of the administrative decision. The language of ST/AI/371 (Revised disciplinary measures and procedures), as amended by ST/AI/371/Amend.1, is consistent with art. 8.1(d)(ii) of the Statute.

34. Thus, pursuant to art. 8.1(d)(ii) of the Tribunal’s Statute, in such cases—i.e., when management evaluation is not required—an application shall be filed with the Tribunal within 90 calendar days of the applicant’s receipt of the administrative decision. This is in stark contrast to art. 8.1(d)(i) of the Statute, which applies to



40. The Applicant received the letter of reprimand on 30 October 2014. Accordingly, the 90-day period for the filing of his application with the Tribunal expired on 28 January 2015. The application in Case No. UNDT/NY/2015/023 was filed on 13 April 2015, more than two months after the expiration of the deadline. The motion to refile the application out of time, whilst the original application is pending, was filed on 22 May 2015, almost four months after the expiration of the deadline. Accordingly, both the application and the motion to refile the application were filed outside the applicable 90-day time limit as provided for by art. 8.1(d)(ii) of the Statute.

41. Therefore, the Tribunal finds that Case No. UNDT/NY/2015/023 is not receivable due to the Applicant's failure to comply with the statutory deadline stipulated in art. 8.1(d)(ii) for the filing of an application with the Tribunal.

*Consideration of the motion for waiver of time limits*

42.









## Orders

54. The application in Case No. UNDT/NY/2015/023 is dismissed as not receivable.

55. The motion under Case No. UNDT/NCase No.