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## **Introduction**

**1 On 15 August 2020 the Applicant, a former High Commissioner's Representative, at the P5 step 13 level, working with the United Nations High Commissioner for Refugees ("UNHCR") in Harare, Zimbabwe, filed an application before the Dispute Tribunal.<sup>1</sup>**

**2 He contests three decisions, namely: (i) the decision by the Inspector General's Office ("IGO"), UNHCR, to continue to conduct an investigation while he was on certified service incurred sick leave; (ii) the decision of the Department of Human Resources ("DHR"), UNHCR, to refuse to empanel a medical board to determine his fitness to respond to the claims of misconduct; and (iii) the decision to dismiss him for misconduct.<sup>2</sup>**

**3 The Respondent filed a reply on 16 September 2020 where it is agreed that the contested decisions (i) and (ii) are not receivable, while decision (iii) is without merit.**

**4 On 14 September 2020 the Tribunal rendered its decision.**





health.<sup>16</sup>

19 Following the acknowledgment of receipt of the letter containing the allegations and the investigation report, on 20 December 2019 UNHCR invited the Applicant to respond to the findings by 18 January 2020<sup>17</sup>

20 On 2 January 2020 the Applicant requested an extension

**24** On 6 March 2020 through his Counsel, the Applicant wrote to DHR insisting that he was not medically fit to perform any professional duties including responding to the allegations and that should UNHCR insist that he responds to the allegations by 11 March 2020 while still ill; the Applicant demanded that a medical board be empanelled to address the divergence in opinion concerning his ability to perform any professional duties, including responding to the said allegations<sup>22</sup>

**25** On 8 April 2020 the DHR responded and reiterated, among others, that based on the submitted certificate, and the previously submitted medical reports, as well as Dr. Kituyi's own interactions with the Applicant, Dr. Kituyi's professional medical opinion remained that the Applicant could read, understand and respond to a charge letter containing allegations of misconduct. The DHR further noted that the Applicant was assisted by a lawyer who could assist in finalizing his response. The DHR provided one final extension of time for the Applicant to respond, to 28 April 2020<sup>23</sup>

**26** By a return email, on the same day, the Applicant's Counsel reiterated his request to empanel a medical board<sup>24</sup>

**27** On 21 April 2020 the DHR, recalling Dr. Kituyi's email to the Applicant on 9 December 2019, stressed that the Applicant's administrative status was that of administrative leave with pay and not of sick leave. Accordingly, staff rule 62(j), did not apply as sick leave was not refused, nor the unused portion of sick leave was withdrawn. The DHR reiterated the 28 April 2020 deadline for UNHCR to receive the Applicant's response to the charges<sup>25</sup>

**28** On 28 April 2020 through his Counsel, the Applicant maintained that he was unable to respond to the charges, regardless of his administrative status. The Applicant reiterated his request to empanel a medical board, should UNHCR continue to dispute

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<sup>22</sup> Application, annex 2

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leading to a further decision that produces a negative effect on the terms of appointment.<sup>32</sup>

36 In the present case, neither the decision to continue investigation (refusal to suspend it) despite the claimed medical condition of the Applicant, nor the refusal to convene a medical board to examine it, had produced a decision of direct negative consequences for the Applicant. The impact, if any, of these decisions on the outcome of the disciplinary process will be examined in relation to his application against the disciplinary measure.

#### JUDGMENT

37 The application, in relation to claims described in paragraph 2 as (i) and (ii) is dismissed as not receivable.

Judge Agnieszka Kłomwieda-Milat  
Dated this 24<sup>th</sup> day of May 2022

Entered in the Register on this 24<sup>th</sup> day of May 2022

Eric Muli, Legal Officer, for  
Abera Kwalye Berko, Registrar, Nairobi

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<sup>32</sup> 2014 UNAT-481, para 49

2018 UNAT-814