





investigations and the disciplinary process), the decision would be deemed received on the date it was electronically communicated to him.<sup>3</sup>

8. On 1 April 2022, the UNMISS Special Representative of the Secretary-General and Head of Mission (Special Representative) issued a letter regarding an



18. Second, the UNDT found that even if Mr. Abbas was separated from service for disciplinary reasons, his application was still not receivable because he failed to file it within 90 days from his receipt of the administrative decision as required by Article 8(1)(d)(ii) of the UNDT Statute and Article 7(1)(c) of the UNDT Rules. Indeed, the UNDT highlighted that Mr. Abbas himself stated that he became aware of the contested decision on 30 June 2022. Therefore, the deadline for filing his application was on 28 September 2022. Since Mr. Abbas filed his application on 5 June 2023, the UNDT concluded that it was not receivable *ratione temporis*.<sup>14</sup>

19. The UNDT rejected Mr. Abbas's argument that the time limit to file his application was three years pursuant to Article 8(4) of the UNDT Statute and Article 7(6) of the UNDT Rules. It found that, contrary to Mr. Abbas's contentions, these Articles do not establish a deadline of general applicability but rather "permits the Tribunal, upon written request by the applicant, to suspend or waive 'the deadlines for a limited period of time and only in exceptional circumstances'".<sup>15</sup> In the present case, the UNDT found that since "there [had] been no request to suspend or waive the deadlines nor any presentation of exceptional circumstances", these Articles did not apply.<sup>16</sup>

20. With regard to Mr. Abbas's argument that he was incapacitated and should thus benefit from an extended one-year deadline as provided for in Article 8(1)(d)(iii) of the UNDT Statute and Article 7(2) of the UNDT Rules, the Dispute Tribunal found that neither Mr. Abbas's basic knowledge of English (highlighted in his application), nor his leg injury (mentioned in his medical report dated 9 November 2023) constituted an incapacity.<sup>17</sup> On the contrary, the UNDT, relying on the Merriam-Webster Dictionary as well as on Appeals Tribunal jurisprudence, found that the term "incapacitated" referred to "a staff member who is unable to bring a claim on their own behalf, just like if they

21. Therefore, the UNDT rejected Mr. Abbas's request for an extended deadline on the grounds that he was incapacitated and found his application not receivable.

*Procedure before the Appeals Tribunal*

22. On 22 January 2024, Mr. Abbas filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 21 March 2024.

23. Mr. Abbas requests the Appeals Tribunal "to dismiss the [impugned] Judgment [in] its entirety".<sup>20</sup>

24. Mr. Abbas also requests an oral hearing because witnesses "need to (...) appear before the (...) UNAT to testify because they know about [his] continued [work] for a period [of] three months without pay from April to June 2022".<sup>21</sup>

25. Mr. Abbas submits that the UNDT failed to exercise jurisdiction vested in it by finding that he had "not clarified the nature of the challenged termination decision nor even submitted a copy of the decision".<sup>22</sup> In this regard, Mr. Abbas submits that the UNDT failed to recognize that "the time [he received] the contested administrative decision has three different dates [11 March, 1 April and 30 June 2022]". Mr. Abbas also contends that he could not have known the nature of the contested decision as he received it for the first time on 12 November 2023, when the UNDT informed him that the contested decision had already been sent by the Secretary-General, and not on 30 June 2022, as erroneously determined by the UNDT.

26. Mr. Abbas argues that the Administration failed to attach the sanction letter (i.e., the contested decision) to its correspondence dated 11 March and 30 June 2022. In any event, Mr. Abbas asserts that even if the sanction letter had been attached to the Administration's e-mails, it would still be null as it was sent just minutes before he left the compound, and he therefore never received it.

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<sup>20</sup> Appeal form.

<sup>21</sup> *Ibid.*

<sup>22</sup> Impugned Judgment, para. 16.

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decision” and the UNDT “cannot be held responsible for [Mr. Abbas’s] errors”. The Secretary-General also observes that the sanction letter was sent to Mr. Abbas on 11 March 2022 and, therefore, pursuant to Section 9.3 of ST/AI/2017/1, the contested decision was deemed to be received on the date it was electronically communicated, i.e., 11 March 2022.<sup>23</sup>

35. The Secretary-General also points out that Annexes 12 and 13 to Mr. Abbas’s appeal were not presented before the UNDT and should not be considered.<sup>24</sup> Indeed, the Secretary-General contends that Mr. Abbas did not demonstrate the existence of exceptional circumstances justifying the admission of these documents by seeking leave to file additional evidence, as required by Article 2(5) of the Appeals Tribunal Statute (Statute).<sup>25</sup> Moreover, the Secretary-General challenges the authenticity of Annex 12, which, he contends, has the same content and timestamp as Annex 13.

36. The Secretary-General also notes that domestic laws are not part of the legal framework applicable before the United Nations Tribunals.

37. The Secretary-General submits that Mr. Abbas failed to demonstrate any error in the UNDT’s finding that he was not incapacitated. On the contrary, the Secretary-General argues that the UNDT correctly determined that a broken leg does not meet the definition of “incapacitated” in Article 8(1)(d)(iii) of the UNDT Statute and Article 7(2) of the UNDT Rules.

38. Last, the Secretary-General contends that the UNDT’s reference to “the legal representative authorization and Merriam-Webster Dictionary” is not erroneous.

39. Mr. Abbas requests this Tribunal to hold an oral hearing to hear testimonies intended to prove that he worked for three months without pay, from April to June 2022.

40. We recall that this Tribunal is not a trial court. Under Article 2(4)(a) of its Statute, the UNAT relies on the written record of the case as presented to the lower court. Only where exceptional circumstances are shown to exist, as outlined in Article 2(5) of the Statute, may this Tribunal accept additional documentary evidence. However, when oral testimony is

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55. Mr. Abbas

61. Mr. Abbas's appeal is dismissed, and Judgment No. UNDT/2023/126 is hereby affirmed.

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