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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/073

Judgment No.: UNDT/2021/117

Date: 13 October 2021

Original: English

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**Before:** Judge Eleanor Donaldson-Honeywell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

KHAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for the Applicant:**

Self-Represented

**Counsel for the Respondent:**

Marisa MacLennan, UNHCR

Zuzana Kovalova, UNHCR

## **Introduction**

1. The Applicant, serves as a Senior Protection Officer at the United Nations
2. This Judgment determines his application filed on 7 September 2020, to contest the following decisions: (i) non-authorization by the UNHCR Medical Section of his medical evacuation when he was acutely ill; (ii) non-authorization by the Medical Section for an escort to accompany him during his medical travel; (iii) PAS ) denial of security evacuation allowance for his family; and (iv) PAS failure to convert his administrative status to security evacuation following his medical travel.
3. The Respondent filed his reply to the application on 12 October 2020 moving the Tribunal to dismiss the application on jurisdictional grounds as it was not timely and in any event the decision was lawful and justified on the merits.
4. The Applicant filed co  
October 2020.
5. On 21 September 2021, after a scheduled case management discussion

Case No. UNDT/NBI/2020/073

Judgment No. UNDT/2021/117

14. Additionally, the said decision made clear that no accompaniment for the  
This was reiterated in an emailed response to

to reconsider the non-accompaniment decision.

15. Thereafter, the Applicant found it necessary, due to his acute ill health and difficulty walking, to make his own arrangements for his wife to accompany him. She could not leave their minor children in Sudan, so they too would travel. He wrote to inform UNHCR and the Medical Section of these arrangements and then they all travelled to Pakistan on 24 May 2019 with a view to the family returning to Khartoum, Sudan on 2 June 2019.

16. There was a turn for the worse in security conditions in Sudan just prior to the expected return date of the voluntary removal of international staff dependents from Khartoum on 30 May 2019. The Applicant was advised by UNHCR that his family should not return. Thereafter, from 3 June 2019, security evacuation was approved with priority for, *inter alia*, dependants of international staff.

17.  
the family remained outside Sudan. He obtained a medical recommendation for partial return to work with continued treatment, as from 1 July 2019.

18. After several weeks of communication attempts by the Applicant with UNHCR Management, approval by the Medical Section of arrangements for the  
f and his dependents remained unresolved. Essentially, they were all treated as not being on security evacuation status and thereby denied the benefit of Security Evacuation Allowances ( SEA ).

19. conveyed to the Applicant on 5 August 2019 and he had been notified of the denial of his own SEA entitlement on 23 July 2019.

20. On 24 September 2019, UNHCR Management appealed to PAS and the Department of Human Resources ( DHR ) to consider the eligibility of the Applicant and his family for SEA between 3 June and 31 August 2019 favourably, because

thereafter restricted from returning due to the security emergency, despite their clear intention to do so on 2 June 2019. This reiterated request for SEA entitlements was rejected by email from the Chief of PAS dated 29 September 2019.

21. There were subsequent reiterations of the decisions but no change from the substance notified initially, with one exception. On 28 January 2020, the Deputy Director of DHR notified the Applicant that, upon review, a decision was made to overturn the prior non-travel. Reimbursement of the cost of one flight ticket for an accompanying family member was then authorised.

22. The Applicant filed his request for management evaluation on 11 March 2020 which was

## Consideration

25. Staff rule 11.2 (c) provides that:

A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. The deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

26. The circumstances of severe illness, travel difficulties and the security issues in Sudan were all worthy considerations duly taken into account by the Organization during efforts made to accommodate the Applicant and achieve partial resolution as aforementioned.

27. \_\_\_\_\_, it was also within the discretion of the Respondent based on staff rule 11.2(c) to extend the 60-day deadline.

28. That discretion, however, does not extend to the Tribunal. The Tribunal has no jurisdiction to waive the management evaluation request deadlines missed by the Applicant.

29. Article 8.3 of the UNDT Statute unequivocally states that the Tribunal shall not suspend or waive the deadlines for management evaluation.

30. It is established by Appeals Tribunal jurisprudence, including *Babiker* 2016-UNAT-672, that the Dispute Tribunal may only review decisions that have been the subject of a proper and timely request for management evaluation. UNAT affirmed that in so doing

Case No. UNDT/NBI/2020/073

Judgment No. UNDT/20





Case No. UNDT/NBI/2020/073

Judgment No. UNDT/2021/117