



Case No.:

UNITED NATIONS DISPUTE TRIBUNAL

Original: English

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**Before:**

Judge Vinod Tm0 nj/TT2lell1 Tf-1.8 -1.16 TD0.-6 11Tc-0.009  
5 Tc - NITE3

## **Introduction**

1. On 21 April 2009, the Applicant submitted an incomplete statement of appeal to the Nairobi Joint Appeals Board (JAB) in which he contested a “denial of medical services on 9 January 2009”. On 1 July 2009, this matter was transferred to the United Nations Dispute Tribunal (UNDT) in accordance

level. In March 2003, the Director of the Programme Support Division (PSD) recommended the promotion of the Applicant to the GS-4 level.

5. Thereafter, owing to unsatisfactory performance, the Applicant's contract was extended on shorter than the usual duration, namely six months, from 1 January to 30 June 2006. He was again extended for three months until 30 September 2006, pending the resolution of completion of the Applicant's Performance Appraisal System (PAS).
6. In the course of 2006, the Applicant challenged the fact that his contract had been extended for a shorter duration. He filed his claim with the Secretary-General and subsequently with the Nairobi Joint Appeals Board.
7. At the end of September 2006, the Applicant's contract was renewed for six

given a deadline of 21 December 2007 to sign his new letter of appointment. He was also informed that failure to comply by this deadline would mean that his ground pass would be withdrawn and that he would be prevented from accessing the UN premises.

11. By letter dated 21 December 2007, the Applicant replied that it was a “manifest deliberate distortion of facts and circumstances, discrimination, intimidation, coercion, duress, and retaliation. Such tendencies [were] tyrannical and actually undermine the spirit of promoting ethics, integrity and accountability within the United Nations”. He concluded by suggesting the Chief of HRMS “respect the rule of law by respecting matters that are before the Joint Appeals Board, the Administrative Tribunal of the United Nations, or other legal mechanisms established to sustain the Internal Justice System of the United Nations”.
12. By memo dated 6 March 2008, the Under-Secretary-General and Executive Director of UN-HABITAT confirmed that the Applicant agreed to sign a new three month contract on 25 February 2008 to work in the Human Settlement Financing Division and that another three month contract would be offered to him subject to satisfactory performance and behaviour.
13. The Applicant submitted an incomplete statement of appeal on 21 April 2009 to the Nairobi Joint Appeals Board (JAB) to challenge a “denial of medical services on 9 January 2009”. The Applicant was granted an extension of time to file a complete statement of appeal on the same day. On 20 May 2009, the Applicant requested another extension of time to complete his appeal. His request was granted and he had until 23 June 2009 to do so.
14. On 18 June 2009, the Applicant informed the JAB that he could not file his complete statement of appeal as he was on sick leave. The JAB Presiding

Officer granted a further extension of time and ordered the Applicant to file his claim with the UNDT that would become operational as of 1 July 2009.

15. On 8 July 2009, the Applicant was informed that his appeal, then pending before the Nairobi JAB, had been transferred to the UNDT.
16. On 14 October 2009, the UNDT Registry advised the Applicant that it had still not received his application and that he would have a deadline until 29 October 2009 to enter an application to pursue his claim.
17. By a written motion of 28 October 2009, the Applicant moved the Tribunal to grant him an extension of time due to his extended sick leave. By order dated 30 October 2009, the Tribunal requested the Applicant to file his application by 13 November 2009.
18. On 13 November 2009, the Applicant entered the present application to contest “UNON’s instructions to hospitals in Kenya not to provide medical services to any staff member who produced an expired Medical Insurance Plan (MIP) Card and Grounds Pass”, as notified to him on 14 January 2009.

### **Applicant’s submissions**

19. In support of his Application, the Applicant avers that two authorised hospitals in Nairobi, Kenya refused to give him critical medical services by citing instructions issued by UNON on an unspecified date. The effect of the said instructions was to direct hospitals in Nairobi not to provide medical services to any staff member who produced expired MIP Card and Ground Pass. The Applicant argues that, as a result of such policy, he has suffered and continues to suffer irreparable damage to his health and that of his family to the extent that his life was seriously threatened due to the deliberate acts of the Respondent.

20. The Applicant claims that this situation is the result of the delayed contract extensions and/or failure on the part of the Respondent to inform the Applicant about his contract extension in a timely manner causing actual mental anguish, bodily harm, and other damages to the life and person of the Applicant.

21. The Applicant further argues that the Respondent has refused to disclose to the Applicant the impugned instructions. Applicant avers that the Respondent has ignored and/or neglected to respond to at least two of his requests on this issue, and through its senior management, is responsible for this situation. He argues that this action is in clear violation of Section 1.2 of ST/SGB/2008/5 and a12 99.w[(exthe paTc0.04 patTD0.046 )]T situatife1s situon iTj-2.975 -1.725 TD0 TcTwi

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Performance Appraisal process and to sign Letters of Appointments (LOAs) that were prepared by HRMS/UNON upon request by UN-HABITAT.

25. The Respondent states that, further to internal discussions at UN-HABITAT, the Applicant was granted an extension of contract and, subject to satisfactory performance, his contract would be renewed for a period of two years. Nevertheless, the Applicant refused to sign the LOAs that were prepared on 16 April 2008 for the period of 1 April to 30 June 2008 and on 11 August 2008 for the period of 1 July to 31 December 2008. However, the practice of issuing LOAs for extension was discontinued by HRMS/UNON in September 2008. Staff members now receive copies of the Personnel Action that is recorded in the electronic staff management system, namely the Integrated Management Information System (IMIS).
26. The Respondent avers that the Applicant continued to discuss the duration of his contract extensions with his managers in UN-HABITAT, which led repeatedly to situations where the Applicant did not have valid contractual documents or MIP Card. This was also the case at the end of December 2008 and the beginning of 2009.
27. On 9 January 2009, the Mater Hospital refused to extend credit facilities to the Applicant as he did not have a valid MIP Card and could not provide proof that he was a staff member of UNON. However, on 20 January 2009 HRMS UNON issued a Personnel Action showing an extension of appointment for the month of January 2009, pending a decision from UN-HABITAT concerning the duration of the Applicant's contract extension. This allowed the Joint Medical Service (JMS) to issue a letter of guarantee as an exception to standard procedures on 3 February 2009. Eventually, the Applicant's contract was extended for two months effective the beginning of February 2009 to keep the staff member on the payroll.

28. On 21 February 2009, the Applicant contacted the JMS at UNON requesting another Letter of Guarantee, this time for the Nairobi Hospital. JMS ascertained that the Applicant had a valid contract and requested the Applicant on 24 February 2009 to request that a new MIP Card be issued to him. The Applicant said that he was too ill to do this. A letter of guarantee was issued by JMS and a colleague of the Applicant delivered it to him. JMS faxed this letter on 24 February 2009 to the accounts department. The Applicant was admitted to the Nairobi Hospital on 27 February 2009.
29. On 4 March 2009, the Applicant's contract with UN-HABITAT was extended to 31 April 2009. Yet, on 17 March 2009, after he had been discharged from the Nairobi Hospital, the Applicant had still not made arrangements for a MIP Card to be issued to him and requested



produced an expired MIP Card and Grounds Pass”. The Respondent submits that the Applicant’s submission does not allege non-compliance with the staff member’s terms of appointment. He has failed to show how the agreement is not in compliance with his terms of appointment or other rules of the Organization.

33. Should the Tribunal deem UNON policy not to extend credit to staff members not holding valid MIP cards as an administrative decision, the Respondent avers that the Applicant has failed to abide by the rules which regulate the access to medical care on credit. He did not make arrangements for the issuance of the MIP Card when he was able to do so and deprived himself of the possibility to receive medical treatment on credit.
34. Finally, the Applicant has failed to show how he suffered any prejudice by the agreement between JMS and the Medical Service Providers in his rights as a staff member. He has the right to receive health insurance on the terms negotiated with the Medical Service Providers. He is, however, not entitled to extraordinary treatment that is not available to all staff members who carry the MIP Card. He should have carried one but failed to do so.
35. The critical issue is that staff member who wants to benefit of this facility need to be able to demonstrate that he is indeed a staff member and – this can be done either through a valid Identity Card (ID) or through a valid Letter of Appointment/Contract.
36. In order to support staff access to care in situations where staff members are unable to make deposit or pay up-front for treatment, UNON issued in 2003 photo ID cards which allow staff to benefit from direct billing arrangements between selected service providers and, based on these arrangements, service is given free of charge and bills are sent directly to UNON for settlement. 20 per cent of the salary is deducted directly from the staff member’s payroll.

## **Review of the Case by the Tribunal**

37. The Respondent challenges the jurisdiction of this Tribunal to entertain this application. The Respondent has submitted that the impugned decision was not an administrative decision falling within the purview of Article 2 of the UNDT Statute and Staff Rule 11.4 (a).

38. This argument of the Respondent is in line with the reasoning in the case of *Andronov*<sup>2</sup> in which the United Nations Administrative Tribunal (UNAT) stated that in order for an administrative decision to be open for appeal under Chapter XI of the Staff Rules,

- “(i) it must have been unilaterally taken by the Administration;
- (ii) it must be of an individual application; and
- (iii) it must have created direct legal consequences for the terms of employment of a particular individual.”

38. The opening words of Article 11.4 of the Staff Rules read, *A staff member may file an application against a contested administrative decision.*

39. Further, Article 2.1 (a) of the UNDT Statute reads:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an Application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

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<sup>2</sup> UNAT Judgment No. 1157, *Andronov* (2003).



43.

48. However, when the Applicant was awaiting the extension of his contract, he received a letter of guarantee in order to be provided medical services on credit from five specific hospitals in Nairobi with whom UNON had finalized credit agreements.
  
49. The crux of this matter is whether a staff member can be provided medical services without showing evidence that he is a subscriber of the MIP, by means of a MIP Card, a Ground Pass or a valid contract.
  
50. The MIP system works on the basis of contributions by subscribers. If a staff member no longer contributes to the scheme, or fails to show a MIP Card or any evidence showing that he or she is employed by the UN and participate in

53. In the light of the foregoing, it is the finding of the Tribunal that there was no