





Applicants enquiring about his availability and a phone number in order to call him. The latter replied by email on 4 April 2011 proposing a date and time and some practicalities concerning the communication. On the same day, the Regional Ombudsman answered; she agreed on the date and spelled out her availabilities in terms of time, asking the Applicant to tell her his preferred time and provide a phone number.

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the contested decision on 9 March 2011, did not request management evaluation until 23 June, otherwise said, over six weeks late;

b. The Respondent does not dispute the Applicants' allegation that they consulted the Ombudsman concerning their claim. However, whereas staff rule 11.2(c) provides that "[t]he deadline [for management evaluation] 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", the matter was never submitted by the parties to the Ombudsman, nor did the Secretary-General extend the deadline for management evaluation. Hence, the deadline was not extended and the Applicants' request for management evaluation was filed out of time (see

the Applicants affirm having received the notification of the contested decision on 9 March 2011. In light of the 60-day time limit set out in staff rule 11.2(c), the deadline for presenting the corresponding request for management evaluation—the mandatory first step in the formal contestation of an administrative decision—ended on 9 May 2011. The Applicants did not submit their request to MEU until 23 June 2011.

17. In this context, the question arises of whether the condition of submitting a request for management evaluation could be regarded as fulfilled, considering that the Applicants addressed a series of requests for reconsideration or review to various officials in the Administration.

18. The Tribunal has ruled in UNDT/2011/052 that:

31. While the Applicant is entitled to argue that the Administration should not be excessively formalistic and insist that every request for review must without fail be addressed to the Secretary-General in order to be treated as such, the request must, on the other hand be sufficiently clear for its recipient to see that it is in fact a request for review, in other words the first mandatory phase of the appeal procedure laid down in ... staff rule 11.2(a), and as such, must be forwarded to the Secretary-General.

19. The Tribunal has therefore found that in very specific circumstances an applicant might be deemed to have complied with the “first mandatory phase of the appeal procedure” even though he or she sent no formal request for review to the competent authority designated to, and entrusted with, its examination.

20. Having said that, this constitutes an exception to the general and well-established rule, embodied in staff rule 11.2(a), that “[a] staff member wishing to formally contest an administrative decision ... shall, as a first step, submit

21. As stated by the Appeals Tribunal in 2010-UNAT-067, “ignorance of the law is no excuse and every staff member is deemed to be aware of the provisions of the Staff Rules”.

22. In the present case the Applicants wrote promptly to many UNMIK officials. They started by requesting reconsideration of the non-renewal of their contracts to the very person who signed the memorandum notifying them of the decision. However, as stated in , this can only be seen as a simple request of reconsideration by the decision-maker. The Applicants, nevertheless, conveyed their concerns to higher officials in UNMIK, including the most senior staff member of the mission, the SRSG. Not satisfied by his answer, they later brought the matter to FPD/DFS, in Headquarters.

23. Whilst it is not called into question that the Applicants were active and

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efforts for informal resolution conducted by the Office of the Ombudsman ...”.

The Tribunal thus needs to ascertain whether the above-mentioned deadline has been preserved in the instant case as a result of the Regional Ombudsman’s intervention.

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Conclusion

29. In view of the foregoing, the Tribunal DECIDES:

The application for suspension of action is rejected.

( )

Judge Thomas Laker

Dated this 30<sup>th</sup> day of June 2011

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