

Case No.: UNDT/GVA/2011/046

Judgment No.: UNDT/2012/031

Date: 29 February 2012

English



*Translated from French*

6. On 1 April 2011, the Applicant filed his first request for a management evaluation of the decision of 2 February 2011. That request was incomplete. On 8 April 2011, he sent a complete request.

7. On 23 May 2011, the Applicant was advised that in response to his request for a management evaluation, the Secretary-General had decided to uphold the contested decision.

8.



United Nations Common System of Salaries and Allowances stipulates that service in the releasing organization will be counted for all purposes as if it had been made in the receiving organization.

14. The Respondent's contentions are:

a. The application is not receivable since the Applicant made his request for a management evaluation on 1 April 2011. Whereas, under staff rule 11.2(d), the response to his request should have been provided no later than 16 May 2011 and he had 90 days from that date—until 14 August 2011—to file his application, he did not file his application until 19 August 2011;

b. UNRWA was established as a subsidiary body of the United Nations by a General Assembly resolution of 8 December 1949. The Office has its own rules, which permit the Commissioner-General to promulgate the organization's own staff rules and regulations. The Secretary-General's administrative decisions and bulletins do not automatically apply to UNRWA, and it is the responsibility of the Commissioner-General to determine whether they will be applicable;

c. The Applicant is not eligible for conversion to a permanent appointment because he does not meet one of the requirements, that is, five years of continuous service on fixed-term appointments under the 100 series of the Staff Rule;

d. The Applicant cannot invoke unequal treatment of staff members as he is not in the same situation as the staff members to whom he refers. In fact, while at UNRWA he did not hold an appointment under the 100 series of the Staff Rule, and UNRS 1(W)-3(A J)-5(t).6(as amended)—staff members are subject to their own rule.

### **Consideration**

15. The Tribunal considers itself sufficiently well-informed to judge the present case without requesting additional documents or information.

16. With regard to the argument based on the irreceivability of the application, the Tribunal concluded in *Vangelova* UNDT/2010/179:

20. Staff rule 11.4 provides that:

a) A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within ninety calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2(d), whichever is earlier.

21. Article 8, paragraph 1, of the UNDT Statute provides that:

1. An application shall be receivable if:

...

d) The application is filed within the following deadlines:

i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

22. On the assumption that the two above-mentioned legal instruments are contradictory, it cannot be challenged that the legal force of the Statute of the Dispute Tribunal is superior to that of the Staff Rules; thus, the Tribunal shall assess the receivability of the application only in light of its own Statute.

23. Although the above-mentioned provisions of the Statute require staff members to file their application with the Tribunal within 90 days of the expiry of the response period of 45 days for the management evaluation if no response to the request was provided, when the management evaluation is received after the deadline of 45 days but before the expiry of the next deadline of 90 days, the receipt of the management evaluation in this case will result in setting a new deadline of 90 days for challenging it before the Tribunal.

17. It follows that the present application was filed with the Tribunal within the relevant deadlines.

18. To dispute the decision of 2 February 2011 by which his request for

21. It is therefore apparent that the Applicant was not employed for five years under the type of contract required, and since it is not the role of the Tribunal to interpret provisions that are clear, the Tribunal can only conclude that the Applicant does not meet one of the eligibility criteria for conversion to a permanent appointment.

**Conclusion**

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

The application is rejected.

*(Signed)*

Judge Jean-François Cousin

Dated this 29<sup>th</sup> day of February 2012

Entered in the Register on this 29<sup>th</sup> day of February 2012

*(Signed)*

Anne Coutin, Officer-in-Charge, Geneva Registry