



Case No.: UNDT/NY/2010/087

Judgment No.: UNDT/2012/171

Date: 7 November 2012



7. On 11 January 2010, the Applicant, in response to her inquiries, was provided with additional information regarding the grounds for her non-renewal. The Applicant was also informed of the applicable rules and procedures should she wish to contest her non-renewal.

8. On 31 March 2010, the Applicant submitted a request for management evaluation whereby she requested that UNDP, following the non-renewal of her fixed-term contract “pay [...] [her] social benefits (indemnisation) for [her] 14 and half years of service”.

9. On 24 May 2010, UNDP responded to the Applicant’s request for management evaluation and informed her that they “could not find any legal basis for granting [her] claim”.

10. On 22 August 2010, the Applicant submitted an application with the Tribunal. On 31 August 2010, the Dispute Tribunal i 8.

- a. The non-renewal of the fixed-term contract did not respect the laws of Bolivia which supersede any of the a

b. UNDP is a subsidiary organ of the United Nations and is not subject to the application of national law. Therefore, the non-renewal of the Applicant's fixed-term contract does not give rise to any benefits other than those provided for in the applicable Staff Regulations and Rules.

*Findings of the OAI investigation*

c. The Applicant's submission regarding OAI's findings is a new issue which is not receivable as the Applicant did not, as required by art. 8.1(c) of the Dispute Tribunal's Statute, first contest the findings by filing a claim for management evaluation;

d. Furthermore, the findings of OAI ar

15. Provisional Staff Rule 11.2, applicable at the time, states that:

Rule 11.2 – Management Evaluation

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This 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.

*Receivability of the non-renewal of fixed-term appointment*

16. The Staff Rules and the jurisprudence of both the Dispute Tribunal and the United Nations Appeals Tribunal have consistently stressed the importance of observing the applicable time limits (see *Mezoui* 2010-UNAT-043).

17. In the present case, the Applicant was notified of the UNDP's decision not to renew her fixed-term contract on 1 Oc

the Applicant still submitted her request after the expiry of the applicable time limit which would have been on 11 March 2010.

19. The Appeals Tribunal stated in *Costa* that the Tribunal cannot waive the applicable time limits for requesting the management evaluation of an administrative decision. Consequently, the Applicant's application regarding her appeal of the management evaluation's decision is not receivable.

20. The Tribunal also notes that the Applicant's request for management evaluation was limited to requesting the payment of certain benefits as a result of the non-renewal of her contract following fourteen years of service and did not appear to contest the actual non-renewal of her contract whereas the present application before the Tribunal was expanded to the larger issue of the non-renewal of the said contract.

*Receivability of a review of the decision of AOI*

21. Under art. 8.1(c) of the Dispute Tribunal Statute, the Tribunal will only have jurisdiction to review a contested administrative decision if the "applicant has previously submitted the contested administrative decision for management evaluation, where required". Where the contested administrative decision relates to a disciplinary sanction, a staff member may appeal directly to the Tribunal without first requesting a management evaluation of the said decision.

22. In the present case, the Applicant also seeks to challenge the findings of OAI. These findings do not relate in any way to any type of disciplinary sanction imposed on the Applicant. In *Gehr* UNDT/2012/070 the Tribunal reasserted the established jurisprudence by stating that:

It is settled case law of both the Dispute Tribunal (see, *inter alia*, *O'Neill* UNDT/2010/203, *Leboeuf* et al. UNDT/2010/206, *Znamenski* UNDT/2010/208) and the Appeals Tribunal (see, *inter alia*, *Crichlow* 2010-UNAT-035 and *Planas* 2010-UNAT-049) that requesting a management evaluation is a mandatory first step in the appeal process.

23. Consequently, should the Applicant have wished to challenge the OAI's findings, she should have, as expressed under staff rule 11.2(c), first submitted a request for management evaluation within sixty days from her 3 December 2009 receipt of OAI's findings prior to presenting this issue to the Tribunal.

24.



28. Furthermore, in the case of *Saka* UNDT/2010/007, the Applicant, similarly to the one in the present matter, submitted that the contested decision was contrary to Turkish law. In response to that argument, the Tribunal stated that “it is clear that the internal regulations of the United Nations alone are applicable to disputes involving its staff members”.

29. Finally, the Applicant’s terms and condition of employment, like any staff member within the United Nations, clearly indicated that her employment contract was governed by the rules and regulations of the UNDP and its related judicial system.

30. The Tribunal can only conclude that even if this case were considered to be receivable, there is no place for this Tribunal to take into account the national laws of the State of Bolivia.

### **Conclusion**

31. The application is not receivable and the case is dismissed.

*(Signed)*

Judge Alessandra Greceanu

Dated this 7<sup>th</sup> day of November 2012

Entered in the Register on this 7<sup>th</sup> day of November 2012

*(Signed)*

Hafida Lahiouel, Registrar, New York