

Introduction

1. The Applicant is a former

20. It is the Applicant's case, therefore, that she was properly notified of the decision not to renew her appointment on 30 June 2015, so that time for management evaluation can only begin to run from that date.

Considerations

21. The Statute of the United Nations Dispute Tribunal provides in art. 8:

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running of the deadline to request management evaluation and, consequentially, the deadline for judicial review.

25. It is settled law that for the purpose of appealing an administrative decision it is considered final when the Organisation decides to take a particular course of action, which has direct legal consequences on the rights and obligations of a staff member as an individual.¹⁰

26. The notion of “finality” in the procedure for judicial review of an administrative decision does not collide with the administration’s wide competence to review and reverse its decisions. At this junction, where the decision is withdrawn, even during or after the management evaluation, an application for judicial review becomes moot.¹¹ On the other hand, as long as the impugned decision is not withdrawn, the application for judicial review may proceed, notwithstanding administrative reconsiderations.¹²

27. In situations involving multiple representations from the administration concerning generally the same subject matter, a determination as to when a final decision was made turns on the facts of the case. The jurisprudence has primarily examined whether the communication had the required form¹³ and whether it was issued by the appropriate authority and within the ambit of the powers that that authority has.¹⁴ Further, it has examined whether, pursuant to its content, the decision was categorical or tentative. In applying this criterion, the jurisprudence is consistent in that repeated restatements of the original decision will not alter the deadline for a challenge against the impugned decision and draws a distinction between “simple

¹⁰ UN Administrative Tribunal Judgment No. 1157 *Andronov* (2003).

¹¹ *Gehr* 2013-UNAT-328; *Lackner* UNDT/2016/105, *Castelli* UNDT/2015/057.

¹² Staff rule 11.4 (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 90 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 (emphasis added).

¹³ *Shook* 2010-UNAT-013; *Aliko* 2015-UNAT-539.

¹⁴ *Ryan* UNDT/2010/174 para.58.

separation. The terms of the notice of separation are unequivocal, it indicates that it was based upon the completion of the comparative review and nothing in it suggests that the decision was preliminary or conditional. Any “assumptions” underpinning this decision are irrelevant because they did not enter its content. The circular of 5 March 2015 had instructed of the process for appeal, therefore the Applicant was expected “to ensure that [he] is aware of the applicable procedure in the context of the administration of justice at the United Nations”.¹⁶

33. Whereas the Applicant submits that the email of 25 June 2015 to all RSCE staff constituted “very different circumstances”, this is inaccurate. The email from 25 June 2015 confirms that the nationalization of posts will be implemented. It does not suggest that decisions on separation already communicated were thereby withdrawn or suspended. Moreover, at no place does it suggest that the results of the comparative review were rendered immaterial – clearly, the Administration could not be conducting a comparative review of posts to be abolished as of 1 July 2015 on 25 June 2015. As such, this email does not generate direct legal consequences for individual staff members. Rather, the only conclusion that may have been reasonably drawn from it was about a possibility of postponement of the nationalization exercise, a process that, as noted by the Applicant, may have resulted in a withdrawal or postponement of the separation notices in relation to a group of the staff; unfortunately, it did not encompass the Applicant. As such, in relation to the Applicant the notice from 30 June 2015 merely affirms that the earlier decision remained in force.

34. The Applicant directs her claim against the procedure and results of the comparative review (and even earlier alleged omission to convert her post into a permanent one). With this regard, the process was completed and the Applicant was notified on 13 May 2015 of its results, and time for a challenge of that decision began to run on that date.

¹⁶ *Amany* 2015-UNAT-521.

Judgment

35. The Tribunal finds that the application is late in light of staff rule 11.2(c), not receivable, and therefore dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 3rd day of March 2017

Entered in the Register on this 3rd day of March 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi