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8. On 1 September 2021, Mr. Lago was informed that his

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conducted, nor conducted the evaluation by the end of his contract on 23 November 2021. He argues that according to the Appeals Tribunal's Judgment in *Rosana*,⁷ the objective date for the implied decision should be his contract end date.

22. Third, Mr. Lago submits that the Dispute Tribunal erred on the facts and law in applying the "continuous wrong" principle to his case, asserting that he has clearly proved that there was an implied decision.

23. Fourth, as for other aspects not addressed in the impugned Judgment, Mr. Lago submits that:

- i) He has standing before the Dispute Tribunal, as he acted on his own behalf, not as a staff representative, which the Appeals Tribunal has previously confirmed.
- ii) The implied decision is a unilateral decision with direct legal consequences, breaching the specific (not general) duty of care as stated in Staff Regulation 1.2(c).⁸

24. Mr. Lago does not request that the Appeals Tribunal take any specific action with respect to the impugned Judgment, rather, he asks that the UNAT make the rulings set forth above in paragraph 18.

25. The Secretary-General requests the Appeals Tribunal to uphold the impugned Judgment and to dismiss the appeal entirely. The UNDT correctly found the application not receivable *ratione materiae* by properly considering the applicable law, the parties' submissions and the facts.

26. First, the Secretary-General submits that the UNDT rightly concluded that "a staff member seeking to challenge an implied administrative decision is required not only to 'clearly identify the administrative decision which is contested' but also 'to provide evidence with

⁷ *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 25.

⁸ Staff Regulation 1.2 (c): "Staff members are subject to the authority of the Secretary-General and to

sufficient particularity of any specific instance in which he or she made a request and the Administrative had denied or ignored such as request.”

27. The Secretary-General submits that the UNDT correctly determined that Mr. Lago did not meet either of these requirements. The Secretary-General argues that Mr. Lago’s submissions to the UNDT consisted only of general references to various discussions at UNDP over the years without detailing a specific request or UNDP’s response. This lack of “sufficient particularity” prevented the UNDT from determining (i) whether an implied administrative decision was taken in response to a specific request, and (ii) whether Mr. Lago’s request for management evaluation was timely submitted. Therefore, the UNDT correctly determined that Mr. Lago’s application was not receivable *ratione materiae*.

28. Second, regarding Mr. Lago’s reference to events where he allegedly made requests, including (i) an all-staff meeting on 24 May 2019, (ii) an all-staff meeting on 27 August 2019, (iii) an e-mail sent on 30 August 2019, and (iv) additional events and exchanges as “reiterated proof” for a clear request, the Secretary-General maintains that these submissions failed to demonstrate any error in the impugned Judgment. In particular, the Secretary-General observes that submissions (i) and (iii) should be dismissed as they are introduced for the first time on appeal. The alleged (iv) “reiterated proof” merely shows general requests for an occupational health assessment rather than specific requests for individual administrative decisions. As for (ii), Mr. Lago’s intervention during the 27 August 2019 meeting, the UNDT did not err by not obtaining and consulting the allegedly publicly accessible recording, or by not extracting arguments from a timeline prepared by Mr. Lago, as it is not the role of the UNDT to make the case for Mr. Lago if the evt 0.9 ((i)2.51 (t)9 (t)14 (h11.1 ((h)11..1 (2)1.5 (id11.9.4 (t) - (f)4.

30. Fourth, regarding Mr. Lago's claims that were not addressed by the UNDT, the Secretary-

UNDT level.¹⁰ According to our consistent case law, we do not permit issues to be raised for the first time on appeal when the circumstances giving rise to such claims were known to a party at the time and should have been presented to the Dispute Tribunal.¹¹

35. However, under Article 2(5) of the UNAT Statute and Article 10(1) of the UNAT Rules of Procedure,

for an occupational health evaluation and whether the UNDT erred in finding that there was

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in *Tabari*,¹⁸ that “not taking a decision is also a decision” subject to judicial review under Article 2(1)(a) of the UNDT Statute. Further, the Appeals Tribunal has consistently held that the absence of a response to a claim or complaint can in certain circumstances constitute an appealable administrative decision where it has direct legal consequences.¹⁹

46. In the case at bar, the alleged implied administrative decision under contention is the implicit and continued denial by the UNDP to conduct an occupational health evaluation

we agree with the Secretary-General's submission that in the absence of any evidence of a clear request capable of giving rise to an identifiable implied administrative decision, the Dispute Tribunal had no jurisdiction to consider Mr. Lago's grievances, and thus correctly rejected his application as not receivable *ratione materiae*.

50. Accordingly, we find that the UNDT did not err in finding that there was no identifiable administrative decision.

51. On the whole, we find that the UNDT did not err when it found Mr. Lago's application not receivable *ratione materiae*.

52. Mr. Lago's appeal is dismissed, and Judgment No. UNDT/2023/052 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.