

**UNITED NATIONS DISPUTE TRIBUNAL**

## **Introduction**

**1.**

6. By email of 24 February 2015, a Human Resources Officer, OHRM, responded to the Applicant, explaining the reasons why OHRM did not consider her to be eligible for reinstatement under staff rule 4.18. The Applicant sought further clarification from OHRM by email of the same day, noting that she was seeking reinstatement from her previous fixed-term contract with UNAKRT, and not from her temporary appointment with UNGSC/UNLB.

7. The Human Resources Officer, OHRM, responded to the Applicant on 25 February 2015, noting that “she [had] fully understood [her] request” and that “since [the Applicant] held a temporary appointment between the two fixed-term appointments, it [was] not possible for [her] to be reinstated.”

8. By email of 27 February 2015, the Applicant drew OHRM attention to a Dispute Tribunal and Appeals Tribunal judgment, issued respectively in 2012 and 2014, noting that “she was trying to understand [her] rights and the Organization’s position on this point”. By email of the same day, the Human Resources Officer,

12. The Applicant filed the present application on 18 August 2015. The case was registered by the Tribunal's New York Registry under Case No. UNDT/NY/2015/050, and served on the Respondent, who was granted until 21 September 2015 to submit his reply, which he did.

13. By Order No. 190 (NY/2015) of 19 August 2015 on Change of Venue, the case was transferred to the Tribunal's Geneva Registry, where it was registered under Case No. UNDT/GVA/2015/155.

14. By Order No. 184 (GVA/2015) of 1 October 2015, the Tribunal asked the parties to file objections, if any, to a judgment being rendered on the papers. Both parties informed the Tribunal that they did not have objections thereto.

#### Parties' submissions

15. The Applicant's principal contentions are:

- a. Section 1.2 of ST/AI/2010/4/Rev.1 and Staff Rule 4.17 read together do not of themselves necessarily allow the conclusion that reinstatement is precluded only by having held a temporary appointment. Moreover, the rules do not support an interpretation that for the purpose of reinstatement, the reference in staff rule 4.18 to a fixed-term or continuing appointment has

c. She does not seek reinstatement from the end of her temporary appointment with DPKO, but from the end of her fixed-term appointment with UNAKRT to her current fixed-term appointment, pursuant to staff rule 4.18, and implementation of ensuing rights pursuant to the Staff Regulations and Rules.

16. The Respondent's principal contentions are:

a. The application is not receivable since the Applicant failed to file a timely request for management evaluation; the Appeals Tribunal has consistently emphasized the need to strictly adhere to statutory deadlines; it is mandatory to file a request for management evaluation within 60 days of notification of the contested decision;

b. The Applicant was notified of the contested decision on 5 January 2015, when she signed her letter of appointment for her current fixed-term appointment, which did not stipulate that she was reinstated; furthermore, the Applicant was not asked to return any monies she had received on account of her separation, as required in cases of reinstatement (cf. staff rule 4.18 (b)); ignorance of the law is no excuse for missing deadlines;

c. From 5 January 2015, the Applicant had 60 days to submit her request for management evaluation in accordance with staff rule 11.2(c), that is, until 6 March 2015; by submitting it only on 21 April 2015, the Applicant's request for management evaluation is time-barred;

d. The reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines; and

e. Therefore, OHRM emails of 24 and 25 February 2015 did not constitute new and separate administrative decisions, but rather a confirmation of the initial decision of 5 January 2015; hence they did not restart anew the time limit to request management evaluation; the Dispute

**Tribunal has no power to suspend or waive the deadlines for management evaluation under art. 8.3 of the Statute; it follows that it has no competence to hear the application.**

#### **Consideration**

**17. Pursuant to art. 2.1 of its Statute, the Tribunal has jurisdiction to consider applications only against an administrative decision for which an Applicant has, first, timely requested management evaluation, and, second, filed an application within the statutory time limit (see Eggesfield**

22. Finally, according to the longstanding jurisprudence of the Appeals Tribunal, “staff members have to ensure that they are aware of Staff Regulations and Rules and the applicable procedures in the context of the administration of justice in the United Nations’ internal justice system and that ignorance of the law is no excuse for missing deadlines” (Kazazi 2015-UNAT-557; Amany 2015-UNAT-521, citing Kissila 2014-UNAT-470, Christensen 2012-UNAT-218 and Jennings 2011-UNAT-184).

23. The Appeals Tribunal also held in Rosana 2012-UNAT-273 that “the date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine”.

24. To determine the relevant date from which the 60-day deadline under staff rule 11.2(c) started to run in the case at hand, the Tribunal first has to assess when

to the legal obligation to do so (“ ... shall be so stipulated ...”), it would and should have been explicitly mentioned in the letter of appointment.

27. In comparison, the Tribunal notes that if a letter of appointment e.g. places a staff member on a certain category and level, said staff member is on notice, as of the date of signature of the letter of appointment, of the Administration’s decision to put him/her on that category and level. The same applies if a letter of appointment, despite the explicit wording of a relevant rule, does not provide for a certain legal position (e.g. reinstatement). Indeed, the content of the letter of appointment, detailing the legal position and rights of a staff member, complies with the criteria of an administrative decision in that it is unilateral, taken by the Administration in a precise individual case, and produces direct legal consequences to the legal order.

28. As such, in the present case, and since the letter of appointment did not refer to a reinstatement, the Applicant was—as of 5 January 2015, that is the day she signed her letter of appointment—on notice that she would not be reinstated. The Tribunal notes that ignorance on the part of the Applicant, if any, with respect to staff rule 4.18(c), does not change this.

29.



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31. By email of 25 February 2015, upon a further request of the Applicant, the Human Resources Officer, OHRM, explained, yet again, that reinstatement was not possible, "since [the Applicant] held a temporary appointment in between the two fixed-term appointments".

32. Thereafter, on 27 February 2015, the Applicant sought a further review of

**Conclusion**

**35. In view of the foregoing, the Tribunal DECIDES:**

**The application is rejected.**

**(Signed)**

**Judge Thomas Laker**

**Dated this 3<sup>rd</sup> day of November 2015**

**Entered in the Register on this 3<sup>rd</sup> day of November 2015**

**(Signed)**

**René M. Vargas M., Registrar, Geneva**