

n o n

1. On 27 April 2015, the Applicant filed an application by which she contests

Case No.

UNDT/GVA/2015/125

11. The Applicant left her post on 31 March 2014. As of 3 April 2014, she took up a one year temporary assignment as Senior Adviser to the Executive Coordinator and Deputy Executive Coordinator, United Nations

commitments from Norway and other donors—and undertaking of a classification process. Hence, no recruitment process had been initiated. He further noted that any request with regard to the abolition of the post of Director, OGC, was time-barred.

18. On 7 November 2014, a vacancy announcement for a D-1 Director, OGC was issued. The classification of that position had been approved by OHR on 6 November 2014.

19. On 7 December 2014, the Applicant sent a new request for management evaluation against the decision to reinstate her previous post of Director, OGC, further to its alleged abolition earlier that year, in light of the publication of the above-mentioned vacancy announcement.

20. On 28 January the Assistant Administrator and Director, BOM, UNDP, responded to the Applicant's request for management evaluation of 7 December 2014, noting that the new post of Director, OGC, was substantially different from the post of Director, OGC, previously encumbered by the Applicant. He reiterated that her claim about that post having been reinstated was, thus, unfounded, and noted that she had elected not to apply for the new position.

21. On 12 February 2015, the Applicant was provided with written notification that since she remained without regular placement following the closure of the structural change job fairs, during which she had not competed for a position, her appointment would be terminated on 30 June 2015.

22.

24. Pursuant to directions made during a case management discussion held on 15 March 2016 and Order No. 50 (GVA/2016), the Applicant filed clarifications as to the precise administrative decision being challenged together with particulars thereof.

25. The Respondent filed his comments on the Applicant's submission on 28 March 2016, and asked the Tribunal to examine the receivability of the application as a preliminary matter.

~~AS IS~~ ~~PERSONS~~

26. The Applicant's principal contentions are:

- a. She is not contesting the decision to abolish her post, but contends that it was never truly abolished by 31 March 2014, and that it was merely a pretext to get rid of her;
- b. Time limits start to run from the date the staff member knew or should have known of the decision in question;
- c. Prior to the advertisement of the post of Director, OGC, on 7 November 2014, the Respondent had claimed that "no decision had been made to re-create the position of Director, OGC", although this was clearly untrue, since the OIC of the Centre had been given the title of Director, a.i. shortly after he arrived;
- d. The Applicant became aware of the contested decision only on 7 November 2014, when the vacancy announcement for the post in question was advertised. She requested management evaluation of the decision on 7 December 2015, and received a response on 28 January 2015;
- e. In cases of restructuring or abolishment of posts, the Organization is obliged to act conscientiously and fairly towards the affected staff;

I. She requests the Tribunal to refer the issue of accountability to the UNDP Administrator. She seeks compensation for the material and moral damages she suffered as a direct consequence of an unlawful termination of her employment contract.

27. The Respondent's principal contentions are:

a. Although requested by the Tribunal to do so, by Order No. 50 (GVA/2016), on 23 March 2016, the Applicant failed to clarify the contested administrative decision;

b. The application is not receivable *ratione materiae*, since the decision to advertise the new post of Director, OGC, or the purported decision to

e. The foregoing arguments on receivability notwithstanding, the D-1 position advertised in November 2014 was not the same as the one formerly encumbered by the Applicant, which was abolished following a valid exercise of managerial discretion, taken on the basis of serious funding constraints and the need to reconsider the OGC's mission in consultation with the Donor. The new position of Director, OGC, is different from the post previously encumbered by the Applicant; and

f. The application should be rejected as non-receivable and, in any event, as unsubstantiated and devoid of merit.

Conclusion

Receivability

Contested administrative decision

28. In light of the broad terms used by the Applicant in her application, in which she identified the contested decision as "the decision to reinstate the abolished post of Director, [OGC], and advertise it as a vacancy after having removed and replaced the Applicant on the pretext of reorganization", the Tribunal sought clarification from her with respect to the decisions she was contesting.

29. The Applicant informed the Tribunal that she was not contesting the decision to abolish the post she had encumbered, but rather the implied decision *not* to abolish her post, of which she became aware only upon the publication of the vacancy announcement.

30. In response to guidance given at the CMD and in Order No. 50 (GVA/2016), the Applicant failed to provide the necessary clarification of the contested decision that was described in rather confused terms in the application. The Tribunal agrees with the Respondent's submission that the reformulated claim does not provide the clarification requested.

31.

which the restructuring was being carried out. These emails included the email of 26 February 2014 to the Chief, Office of Human Resources, UNDP, and the email of 10 April 2014 to the Administrator, UNDP, soon after she had been informed that the post of Director, OGC, was going to be abolished. Her concern about t,70:wC20urF:,h25:w0p;Ntw/



