



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

PLANAS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for Applicant:**

None

**Counsel for Respondent:**

Shelly Pitterman, DHRM/UNHCR

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 31 of the rules of procedure of the United Nations Dispute Tribunal.

## **Introduction**

1. The application deals with the decision of the High Commissioner for Refugees not to promote the Applicant to the P-5 level in the “*2008 Promotions of International and National Professional Officers following the recourse session*”. The applicant refuses to comply with management evaluation which she believes is not useful in her case.

## **Facts**

2. By memorandum dated 28 July 2009 (IOM-FOM No. 035/2009), the Applicant was informed of the decision not to promote her to the P-5 level in the “*2008 Promotions of International and National Professional Officers following the recourse session*”.

3. By e-mail dated 15 September 2009, the Applicant submitted directly an application to the Geneva Registry of the United Nations Dispute Tribunal.

4. On the same date, the Geneva Registrar informed the Applicant that “*the first step in the formal procedure is to write to the Secretary-General requesting a management evaluation of the administrative decision*” as per Staff Rule 11.2 (a).

5. By letter dated 29 September 2009, the Chief of the Management Evaluation Unit confirmed to have received the Applicant’s letter to the Secretary-General on 28 September 2009. However, he informed her that the UN Secretariat was not competent to review her case because effective 1 July 2009, the United Nations High Commissioner for Refugees (UNHCR) conducts its own review of managerial decisions. Hence, he suggested she should address her request to the Deputy High Commissioner, UNHCR.

6. By e-mail dated 27 October 2009, the Applicant submitted again an application to the Geneva Registry of the Dispute Tribunal. She stated *inter alia* that she had already requested a management evaluation of the administrative decision to the Secretary-General and that “*bringing the matter to the attention of the Deputy HC carries null expectations of an objective/unbiased/factual*

*examination of the request". She further added that "Article 7 of the UNDT [r]ules of [p]rocedure refers also to an application to the UNDT after having written to the SG requesting a management evaluation. In view of the response obtained from the SG's office ... [she was] therefore submitting [her] request to the UNDT, which [she] hoped [was then] considered valid".*

7. By letter dated 29 October 2009 addressed to the parties, the Dispute Tribunal informed them that in accordance with Staff Rule 11.2 (a), article 8 paragraph 1 of the its statute and the applicable jurisprudence, the Tribunal was not in a position to examine the present case before the mandatory evaluation procedure has been completed. Accordingly, the judge entrusted with the examination of the case recommended that the Applicant withdraw her application by Thursday, 5 November 2009 and advised her to continue with the management evaluation procedure. The parties were also informed that the Tribunal intended to decide on the case by summary judgment if the application was not withdrawn.

8. By letter dated 4 November 2009, which was received by the Dispute Tribunal on 5 November 2009, the Respondent confirmed that no request for management evaluation from the Applicant has been received by the Deputy High Commissioner's Office. The Applicant did not respond at all.

### **Considerations**

9. According to article 9 of the rules of procedure of the United Nations Dispute Tribunal (UNDT RoP), which are based on article 7.2 of the statute of the United Nations Dispute Tribunal (UNDT statute), the Dispute Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may usually happen when there is no dispute as to the material facts and judgment is restricted to a matter of law. It may be even more appropriate for issues with reference to whether an application is receivable. The crucial question in this case - the absence of a management evaluation decision – is such matter of law.

10. According to Staff Rule 11.2 (a) a staff member wishing to formally contest an administrative decision shall, as a first step, submit to the Secretary-General a request for management evaluation of the administrative decision. The

Dispute Tribunal in its jurisprudence has declared that “[*this provision*] must be interpreted in such a way as to give effect to the underlying philosophy embodied in [*it*]. The Tribunal takes the view that the underlying philosophy of [*this provision*] is to allow management the opportunity to rectify an erroneous, arbitrary or unfair decision... [*This provision*] cannot be interpreted to mean that management evaluation is optional. It is not”. (UNDT/2009/054, *Nwuke*, citing UNDT/2009/035, *Caldarone*)

11. The Article 8 paragraph 1 of the UNDT statute states that:

*“An application shall be receivable if... (c) an Applicant has previously submitted the contested administrative decisions for management evaluation, where required; and (d) the Application is filed within the following applicable deadline:*

*(i) In cases where a management evaluation of the contested decision is required:*

*a. Within 90 calendar days after the applicant’s receipt of the response by management to his or her submission; or*

*b. Within 90 calendar days after the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for another offices...”*

12. By memorandum dated 24 July 2009, the Under-Secretary-General for Management delegated the authority to the Deputy High Commissioner, UNHCR, to carry out the functions of management evaluation governed by Staff Rule 11.2, effective 1 July 2009.

13. The IOM-FOM No. 034/2009 dated 1 July 2009 on the new administration of justice system, in its paragraph 1.1 states that “*within UNHCR, the management evaluation will be carried out by the Executive Office under the responsibility of the Deputy High Commissioner*” and that “*the decision of the Deputy High Commissioner will constitute the management evaluation*”.

14. In the present case, the Tribunal notes that the Applicant, a staff member of UNHCR, requested management evaluation of the administrative decision according to Staff Rule 11.2 (a) on 28 September 2009. According to the clear words of the rule, the requirements are fulfilled if the request is addressed to the Secretary-General. Therefore, the Applicant's letter to the Secretary-General has to be considered as a valid request for management evaluation. However, in terms of receivability of an application before the Tribunal it is not sufficient merely to initiate the management evaluation procedure. Applicants have to await, in general, the outcome of this administrative review before they may submit an application to the Tribunal. Only when no response to a request for management evaluation is provided within the time limits of article 8.1 (d) (i) (b), a direct application to the Tribunal is receivable. A "response" in that sense is characterized by a decision from the Management Evaluation Unit which obviously has not yet been taken.

15. In the present case, the Applicant -unfortunately- declines to proceed with the management evaluation because in her view "*it is a well established international principle that decisions are to be revised by a different body from the one issuing the first decisions. The promotions (implicitly the non-promotions) carry the signature of the HC. It can, therefore, only be more than doubtful that a Deputy HC would revert the HC's decision*". Without entering in the reasoning behind the delegation of authority given to the Deputy High Commissioner to conduct management evaluations in UNHCR, it is clear that the Applicant is not entitled to evade the legally prescribed preconditions for judicial review. Therefore, considering that the Applicant failed to meet the mandatory management evaluation, the Tribunal finds that the application is not receivable.

### **Conclusion**

16. For the reasons described above the application has to be dismissed.

*(Signed)*

Judge Thomas Laker

Dated this 6<sup>th</sup> day of November 2009

Entered in the Register on this 6<sup>th</sup> day of November 2009

*(Signed)*

Víctor Rodríguez, Registrar, Geneva