



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

PLANAS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
None

**Counsel for Respondent:**  
Shelly Pitterman, DHRM/UNHCR

## **Introduction**

1. By application submitted to the United Nations Dispute Tribunal (UNDT) in Geneva on 12 August 2009, which was completed on 14 September 2009, the Applicant, a staff member of the United Nations High Commissioner for refugees (UNHCR), contests the non-implementation of paragraph 48 a) of the Appointments, Postings and Promotion Board (APPB) Procedural Guidelines in her case.

## **Facts**

2. The Applicant, in her submission to the Tribunal, claimed to have sent a letter to the Secretary-General requesting management evaluation on 3 June 2009. In her application and in her request for management evaluation, the Applicant explained that she had not been considered as an eligible candidate for several posts because of the non-application of paragraph 48 a) of the APPB Procedural Guidelines. She alleged that “non implementing [this provision] implied a disproportionate concentration in a certain type of duty stations and non recognition of the massive rotation and exposure obtained”. She added that “non implementation of the indicated paragraph [had] consistently restricted her options” and that “fairness [had] not prevailed”.

3. By order dated 29 September 2009, the Tribunal requested the Applicant - *inter alia* - to specify “in clear terms the administrative decision that she contest[ed] in her application”. The parties were informed that the Tribunal intended to decide on the case by summary judgment if the Applicant failed to provide the requested information by 6 October 2009.

4. On the same day, the Tribunal transmitted the order to the Applicant by e-mail and received an out-of-office message. Hence, she was informed of a new deadline - 26 October 2009 - to provide the requested information.

5. By e-mail dated 20 October 2009, the Applicant replied to the order issued by the Tribunal. She stressed that “the administrative decision [is] that due to the fact that [she had] been posted in Cyprus, which is considered as category H, at the completion of [her] standard assignment length (SAL), [she could] only rotate

to posts in countries categories C, D, E and not to posts in countries category H, A and B". She emphasized that "as a result of this decision [she had] been deprived of numerous opportunities ... to be considered for posts H, A and B".

6. By letter dated 26 October 2009, the Tribunal sent to the Respondent a copy of the Applicant's submission, including her e-mail dated 20 October 2009.

7. On 25 November 2009, the Tribunal received the Respondent's reply.

### **Considerations**

8. According to article 9 of the rules of procedure of the United Nations Dispute Tribunal (UNDT RoP), which are based on article 7 of the statute of the United Nations Dispute Tribunal (UNDT statute), the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may happen when there is no dispute as to the material facts and judgment is restricted to a matter of law. The crucial question in this case - whether the Applicant contests an administrative decision - is such matter of law.

9. In accordance with article 2, paragraph 1 (a), of the UNDT statute, the Tribunal has jurisdiction to hear and pass judgement on an application filed by an individual to appeal "an administrative decision" that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

10. According to the jurisprudence of the United Nations Administrative Tribunal (UNAT), an administrative decision is defined as follows:

"a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences." (Judgement No. 1157, *Andronov* (2003), quoted in Judgement No. 1213, *Wyss* (2004)).

11. Furthermore, the International Labour Organisation Administrative Tribunal in its jurisprudence stated that:

“As was held in Judgment 112 (in re Capron de Caprona), a plea to quash may be directed only against a decision, that is, 'an act deciding a question in a specific case'. And in Judgment 532 (in re Devisme) the Tribunal constructed the term to mean 'any action by an officer of the organization that has a legal effect'. In sum, a decision is any act by the defendant organisation that has an effect on an official's rights and obligations.” (Judgment No. 1203, *Horsman, Koper, McNeill and Petitfils* (1992)).

12. Although the above-mentioned jurisprudence does not bind the Tribunal, it may be used as a valuable reference in the present case.

13. The Tribunal in its recent jurisprudence has identified an administrative decision as “a unilateral act by the Administration of a conclusive and individual nature.” (Judgment UNDT/2009/077, *Hocking, Jarvis, McIntyre* (2009)).

14. In light of the foregoing, the Tribunal deems that an administrative decision can only be considered as such if - *inter alia* - it has direct legal consequences (effects) on an individual's rights and obligations. In the present case, the Applicant contests the “[non-implementation of] paragraph 48 a) [which] implies a disproportionate concentration in a certain type of duty stations and non recognition of the massive rotation and exposure obtained”. She points out that the “non implementation of the indicated paragraph has consistently restricted [her] options”. She alleges that, despite the fact that her last duty station was a “H” one, she must be considered as a eligible candidate for duty stations on category H/A taking the totality of her rotation history into account.

15. Paragraph 48 of the APPB Procedural Guidelines provides that:

“[the] rotation eligibility requirements are introduced, taking into account the periods already served under the current SAL. For purposes of appointments, postings and promotions, duty stations will be grouped into three categories, i.e. H/A, B/C and D/E.

a) A maximum of five years may be served in category H/A, i.e. one four-year SAL with a possible one-year SAL extension. Staff members who are currently serving in a category H/A duty station will be eligible to apply for posts in categories B/C or D/E categories. Consistent with the rotation framework, however, staff members will also be considered eligible for one further consecutive assignment in H/A posts where, taking the totality of their rotation history into account, they have already served on balance more frequently already in posts in B to E category duty stations throughout their career...”

16. While the alleged non-application of paragraph 48 a) above may have an impact on the Applicant’s chances to be selected for a specific post, it remains that the Applicant in her submission is not contesting an administrative decision. A selection process, being a decision-making process, involves a series of steps or findings which lead to an administrative decision. These steps may be challenged only in the context of an appeal against the outcome of the selection process but cannot be, alone, the subject of an appeal to the Tribunal. Only if the Applicant contested the outcome of a selection process for a specific post (the administrative decision), would the Tribunal be competent to hear and pass judgement on her application as per article 2 of its statute.

17. Having said the above, it is noteworthy that the Applicant refers, in her submission, to several posts, e.g. Representative in Venezuela and other posts in Brazil, Mexico and Ecuador, in which she expressed an interest. However, she did not contest in precise terms her non-selection for any of them. In this regard, the Tribunal recalls the long-standing jurisprudence of the UNAT which states that:

“It is a general principle of procedural law, and indeed of administrative law, that the right to contest an administrative decision before the Courts of law and request redress for a perceived threat to one’s interest is predicated upon the condition that the impugned decision is stated in precise terms.” (Judgement No. 1329 (2007)).

18. In the case at hand, the Tribunal, considering that the Applicant's submission was not clear enough, issued an order dated 29 September 2009 to request her *inter alia* to specify "in clear terms the administrative decision that she contest[ed]". By the same order, the parties were informed of the Tribunal's intention to decide on the case by summary judgment should the Applicant fail to provide the requested information. Unfortunately, despite the Tribunal's request, the Applicant did not identify any administrative decision.

### **Conclusion**

19. For the foregoing reasons it is DECIDED that :  
the application is rejected in its entirety.

*(Signed)*

Judge Thomas Laker

Dated this 10<sup>th</sup> day of December 2009

Entered in the Register on this 10<sup>th</sup> day of December 2009

*(Signed)*

Víctor Rodríguez, Registrar, Geneva