UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/63
UNDT/GVA/2010/069
Judgment No.: UNDT/2010/109
Date: 23 June 2010
Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

LARKIN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Self-represented

Counsel for respondent:
Shelly Pitterman, UNHCR

Introduction

1. By application dated 6 October 2009, registered with the United Nations Dispute Tribunal (UNDT) under case number UNDT/GVA/2009/63, the applicant contested the decision by the Deputy Secretary-General to reject his appeal against the decision "not to comply with the established procedures pertaining to separation from service", filed with the Geneva Joint Appeals Board (JAB) (JAB Case No. 617).

2. On 9 February 2009, the applicant filed an application with the UNDT contesting the decision to pay him 36 instead of 38 days of accrued annual leave upon his separation. The difference amounted to £241.55. The case was registered under Case No. UNDT/GVA/2010/069.

3. These two cases are related to the non-renewal of the applicant's appointment which is the main issue of the Tribunal's judgment UNDT/2010/108.

Facts

4. The applicant entered service at the United Nations in September 2006, as Finance Assistant at the UN High Commissioner for Refugees (UNHCR) Branch Office London (BO London) on the basis of a fixed-term appointment at the G-6 level, which was extended twice, namely in December 2006 and March 2007.

5. In April 2007, the applicant was appointed by the Appointments, Posting and Promotion Committee (APPC) for a six-month probationary period, covered by a fixed-term appointment, as Administrative and Finance Assistant at the BO London. By memorandum dated 5 October 2007, the Representative of the High Commissioner for Human Rights (Representative) – head of the BO London – informed the applicant that he had been granted another fixed-term appointment from 1 October to 30 November 2007, but she specified at the same time that his contract would not be further extended.

6. On 13 November 2007, the applicant wrote to the Representative challenging her purported reasons for not renewing his contract. He sought, on 14 November 2007, the assistance of the UNHCR Mediator, but the latter

informed him by e-mail of 22 November 2007 that he could not assist in the situation, as the applicant's superiors were not prepared to pursue a mediation process.

7. The applicant did not go to the office the next day, 23 November 2007. He forwarded a medical certificate stating that he should be excused from work for the following week. He nevertheless reported to the office during the week to attend to several issues.

8. On 28 November 2007, the applicant submitted concurrently a request to the Secretary-General for administrative review of the decision not to extend his appointment and a request for a suspension of action before the Geneva JAB. An appeal against the said decision was subsequently filed before the Geneva JAB (JAB Case No. 598).

9. The applicant left the office for the last time on the evening of 29 November 2007, one day before the expiration of his appointment.

10. A memorandum of separation was issued by the Representative on 30 November 2007 and received by the applicant on the same date by courier. It listed the separation formalities to be undertaken by him, and enclosed his attendance record card, a check-list for P.35, a certificate of service, a Pension Fund instruction, a Security and Administrative Procedures form, and a request for communication of new mailing address.

11. In December 2007, the applicant was paid 80% of his November salary.

12. By letter dated 7 December 2007, the Deputy Representative invited the applicant to come to the office before 14 December 2007 to complete the required administrative steps in order to conclude the separation procedures. She specifically requested him to review his e-mail inbox and H-drive, sign his attendance record and return office property such as key fobs, manuals, software, CDs and other items he might have in his possession. He was likewise reminded that these steps were necessary in order to expedite the payment of final emoluments by UNHCR.

13. On 14 December 2007, the applicant replied by e-mail to the Deputy Representative (copied to several colleagues), expressing his concerns regarding

the implementation by management of the separation procedures. In particular, he stated that, in accordance with Chapter 7 of the UNHCR Staff Manual, an advance of 80% of final emoluments should be paid to separating staff and that this should include commuted annual leave, which the BO London had refused to pay in his case. He also held that, whereas it is standard separation procedure to afford staff an opportunity to extract personal data from the professional e-mail and files, on 30 November 2007, the password for his professional e-mail account had been changed by BO London management, locking the applicant out of his e-mail and invading his privacy.

14. On the same day, the Senior External Affairs Officer of the BO London sent a letter by courier to the applicant, conveying his regret that he had not responded to the management request and offered him a second opportunity to attend to outstanding matters, including signing his attendance record and P.35 form. He was asked to report to the office for this purpose no later than 18 December 2007 and was advised that "failure to complete the separation procedures will affect payment of final emoluments by UNHCR".

15. By registered letter dated 4 January 2008, the Deputy Representative invited the applicant anew to "finalize without further delay the separation procedures" by 9 January 2008. The Deputy Representative added that, should the applicant not respond to "this final invitation", UNHCR would have no choice but to proceed with the following actions on 9 January 2008: 1) deleting the applicant's e-mail account; 2) sending administrative documents such as the P.35 and the attendance record to the relevant sections of the Service Centre in Budapest for processing; 3) informing the Medical Unit of the pending exit medical examination; 4) replacing the office locks and de-activating the key fobs.

16. The applicant replied by e-mail on 8 January 2008. He explained, *inter alia*, that he attributed this situation to the late issuance of his separation memorandum and that after having refused to extend his contract, the management requested him to return to the office and to effectively work without a contract or remuneration for the time required to attend to the separation procedures, which he estimated to amount to three to five days. He then proposed that a bloc of days be agreed with the management, which could be taken as leave,

for him to complete such procedures, and that an agenda and sequence of tasks be also agreed in writing in advance.

17. The Deputy Director, Department of Human Resources Management (DHRM), sent a registered letter dated 21 January 2008 to the applicant, indicating, *inter alia*, that the BO London stood ready to finalise the separation process as soon as he had completed the required formalities. It furthermore stated that an advance against final payment could be given to the departing staff member, provided that he/she was medically cleared for separation; however, in the applicant's case, he had been paid 80% advance on his last salary.

18. The applicant replied to this letter by e-mail sent on 7 March 2008, pointing out that "[a]s the situation had been created by the failure of the management to issue the separation memorandum in a timely manner [he] believe[d] [he] should be paid for th[e] days" required to complete the separation formalities.

19. The Deputy Representative informed the applicant, by registered letter dated 7 March 2008, that on 8 February 2008 the BO London had proceeded to 1) de-activate the door and alarm fobs; 2) archive and save e-mail on a DVD, including the content of the applicant's H: Drive (the DVD was sent to UNHCR Global Service Centre in Budapest and his GroupWise ID deleted on 6 March 2008); 3) replace the office locks (this was done on 10 March 2008 at a cost of £485 + VAT, amount which would be deducted from the applicant's final emoluments); 4) send the applicant's Personnel File and personal folder to UNHCR Global Service Centre in Budapest; 5) gather other personal items, that could be collected during working hours at the office until 31 March 2008, date after which they would be destroyed. The applicant did not receive this letter until 12 March 2008.

20. The applicant reported the facts described above to the UNHCR Inspector General by e-mail dated 28 March 2008. The latter answered by e-mail of 8 April 2008 that his mandate covered exclusively cases of suspected misconduct and that the applicant's concerns should be addressed by administrative procedures.

21. By letter of 2 May 2008, the applicant requested the Secretary-General to review the decision to ignore the staff rules relating to separation from service. The Administrative Law Unit (ALU) acknowledged receipt of this letter on 19 May 2008.

22. On 27 May 2008, a copy of the P.35 form and its checklist were received by the Personnel Administration and Payroll Section (PAPS).

23. On 13 June 2008, the applicant's attendance record card for 2007 was corrected to report 36 annual leave days.

24. On 19 June 2008, UNHCR proceeded to pay £3,000 to the applicant, corresponding to 80% of his accrued annual leave days, minus the cost incurred in changing the locks of the office.

25. By letter dated 1 July 2008, ALU informed the applicant that his request for review of the decision to withhold monies from him was considered to have become moot, in light of the payments made by that time by UNHCR.

26. After sending an incomplete statement of appeal dated 6 August 2008, the applicant filed an appeal with the Geneva JAB on 8 September 2008 (JAB Case No. 617).

27. In October 2008, UNHCR approved the payment of remaining 20% of the applicant's final emoluments, amounting to £1,212.73.

28. The JAB Panel entrusted with examining the appeal issued its report on 27 May 2009. It concluded:

> "the [applicant] was in fact given ample opportunity to attend the separation formalities in due time. Indeed, he could have finalized them either within the last two months of his contract, since he had been duly made aware of the forthcoming end of his appointment, or in the following months, as the Organization created favourable conditions for him to do so. … if relevant procedures have not been completed, this is largely due to the lack of cooperation by the [applicant] … the Organization demonstrated a much more flexible and conciliatory approach than the staff member. Loss, damage or inconvenience resulting from his own behaviour, may not be attributed to the Organization. Accordingly, the Organization should not be considered as having failed to respect the final formalities required upon separation of a staff member".

29. On these grounds, the Panel recommended that the appeal be rejected and that no further action be taken in the case. The Deputy Secretary-General endorsed the above recommendation, as notified to the applicant by letter dated 5 June 2009.

30. On 4 September 2009, the then counsel for applicant filed an "application to extend the time to file an application" concerning the final decision further to JAB Case No. 617, pursuant to article 35 of the Tribunal's rules of procedure. The applicant was granted until 6 October 2009 to submit his application.

31. On 6 October 2009, the applicant wrote to the Tribunal confirming that he wished to submit his application in this case and requested a further extension until 12 October 2009, which was not granted.

32. On 6 October 2009, the applicant filed with the Geneva Registry of the Tribunal an application challenging the final decision on JAB Case No. 617. It was registered under case No. UNDT/GVA/2009/63.

33. The respondent submitted the reply thereto on 11 November 2009.

34. The applicant transmitted supplementary comments on 3 March 2010. The respondent submitted his observations thereon on 18 March 2010.

35. On 27 July 2009, the applicant had contacted PAPS and requested to be provided with a copy of his P.35 form. On 7 August 2009, PAPS sent the said copy to the BO London and asked to deliver it to the applicant. The applicant claims to have received it by ordinary post in mid-August 2009.

36. On 29 September 2009, the applicant requested management evaluation regarding the payment of 36 instead of 38 days of accrued annual leave, which was received by the Office of the Deputy High Commissioner on 21 October 2009.

37. By memorandum dated 5 January 2010, the Assistant High Commissioner for Refugees – Protection (who discharged the duty of carrying out management evaluation pending the arrival of the new Deputy High Commissioner) wrote to the applicant in "response to [his] letter dated 29 September 2009 requesting management evaluation of [his] P.35 form", further stating:

> "The Administration processed your P.35 form in October 2008 and you received the remaining 20% of your unused annual leave balance amount in your bank account. Pursuant to Staff Rule 111.2 (a), this constitutes the administrative decision that you wish to challenge.
>
> You were aware, or should have been aware, in October 2008 of the processing of your P.35. Any request to review the processing of your P.35 form should therefore have been filed within two months following such processing. However, it was not until 27 July 2009 that you requested a copy of your P.35 form and not until 29 September 2009 that you challenged the said form".

38. The request for management evaluation was hence found not to be receivable.

39. On 10 January 2010, the applicant replied to the Assistant High Commissioner for Refugees – Protection that the decision he was challenging was the "apparent reduction in his entitlement to pay in respect of commuted annual leave from 38 to 36 days", which he only came to know when he received a copy of his P.35 form in mid-August 2009. He recalls that he had previously requested access to this form, in order to counter the assertion that he could have requested it beforehand.

40. Case No. UNDT/GVA/2010/069 was filed by application dated 8 February 2010 and received by the Geneva registry of the Tribunal on 9 February 2010.

41. An oral hearing concerning the two cases, as well as two additional applications filed by the applicant, took place on 13 May 2010.

Contentions of the parties

42. Concerning Case No. UNDT/GVA/2009/63, the applicant's contentions are:

a. The Secretary-General's decision was based on the JAB report. However, the Panel which issued it refused the applicant's requests for discovery of documents or access to files on which he could have built his case, whereas the respondent had access to all files;

this placed the applicant at a disadvantage. The Panel's failure "to ensure basic fairness taints the whole process and the decision";

b. The Panel, which the applicant finds biased in favour of the respondent, drew conclusions contrary to the evidence. He disagrees with all its findings and conclusions except possibly those related to the loss of accumulated pension funds; yet, this loss should be taken into account when assessing an appropriated level of compensation;

c. The applicant was not authorized to initiate the separation procedures prior to receiving the separation memorandum; the contrary would have been a usurpation of the Representative's powers. In addition, several surrounding circumstances, including the fact that the Deputy Representative never mentioned this decision and the promise by his supervisor to engage into mediation, led the applicant to think that the decision not to renew his appointment could be easily reversed;

d. The applicant was the victim of a campaign of retaliation for exercising his rights in the internal justice system.

43. In his submissions dated 3 March 2009, the applicant referred to the arguments submitted on his behalf in the context of JAB Case No. 617, which may be summarized as follows:

a. The non-issuance of the separation memorandum until 30 November 2007 constitutes an abuse of the applicant's contractual rights, as it created a situation whereby he was required to continue working without a contract or remuneration, as exit requirements would have required a minimum of three and more likely five working days. This amounts to a denial of his rights to remuneration and to a proper notice period;

b. The actions and general behaviour of his supervisors during most of the months of October and November 2007 let him believe that the Representative's memorandum of 5 October 2007 was merely a

statement of intent, which could be easily reversed. Only on 22 November 2007, after the Representative's refusal to cooperate with the Mediator, did the applicant have the impression that his position was at significant risk;

c. Because he received the separation memorandum only after the close of business on the last day of his contract, he had no opportunity to retrieve personal e-mails and electronic files, remove personal effects from his desk, complete his own PAR and that of the staff member he supervised, prepare a P.35, and attend to other matters important to his interest, such as obtaining information relevant to his two appeals. Moreover, the management refused to pay the 80% advance against final emoluments and changed the password on his UNHCR e-mail, as retaliation for his exercise of his right to appeal to the internal justice system. While he appreciates the payment of 19 June 2008, the concerned amount had been deliberately withheld for over six months;

d. In sum, management had breached the separation rules and procedures to take advantage of his work in bad faith and in order to penalize him for having availed himself of the appeal procedure.

44. Based on the above, the applicant requests the following remedies:

i. Payment of salary in full, rejecting the claim in respect of the lock;

ii. Refund of pension contributions, and compensation for loss of pension wealth;

iii. The posting out of his personal property;

iv. The restoration of his passwords so that he can access files to prepare his PAR;

v. The issue of a contract for one week so that he can be insured and paid for the time it would take to attend to these matters;

vi. Compensation for the distress deliberately inflicted;

vii. Finally, compensation for victimization and retaliation for exercising his rights in the internal justice system.

45. Concerning Case No. UNDT/GVA/2009/63, the respondent's contentions are:

a. The applicant failed to substantiate that he was placed in disadvantage by the JAB in terms of access to files. It is recalled that the JAB concluded that there was no evidence of any improper use by the respondent of the applicant's e-mail and files. Moreover, given the JAB procedures, any material submitted by the respondent in the framework of JAB Case No. 617 would have been transmitted to the applicant;

b. The claim that the applicant was not authorized to deal with the separation procedure before receiving the separation memorandum does not stand. The memorandum simply outlined the required formalities, drawing the staff member's attention to the fact that they should be completed prior to separation from service in order to receive any further emolument. The applicant was informed of his separation nearly two months in advance and he was well aware of the separation formalities. The non-renewal letter of 5 October 2007 actually invited the applicant to complete his PAR, which was one of the pending formalities;

c. None of the surrounding circumstances which allegedly made the applicant think his separation would be reversed are relevant. Mediation was never promised to the applicant. He sought the assistance of the UNHCR Mediator on 14 November 2007 and the latter informed him, on 22 November 2007, that he could not assist

in his situation. The fact that no one in the office talked about his separation does not mean that senior management did not take it seriously;

d. The application does not contain any ground to affirm that the JAB was biased. It fully considered and scrutinized each issue raised by the applicant and considered that "based on the information available before it, it could not adhere to the [applicant's] pleas to the effect that the Organization had departed in his case from general practice regarding separation of staff members";

e. Former United Nations Administrative Tribunal (UNAT) held in judgement No. 242, *Klee* (1979) that the inability to claim pension benefits as a result of an unlawful failure to renew a fixed-term contract, being a too remote consequence, to the extent the right to a retirement pension could have been affected by a change in personal circumstances;

f. The applicant's request for compensation for victimisation and retaliation is not receivable, as it was put forward in the applicant's supplementary submission dated 3 March 2010, and "does not come within the scope of a claim made in the Application".

46. In view of the preceding arguments, the respondent requests the Tribunal to reject the application as unfounded.

47. Regarding Case No. UNDT/GVA/2010/069, the applicant's contentions are:

a. On receivability, the management evaluation in this case merely seeks to evade accountability by raising incorrect receivability arguments;

b. Regarding the merits, as explained in his request for management evaluation, the applicant joined UNHCR on 11 September 2006, accruing 2 days annual leave that month and 35 days for the

following 14 months. He worked a Saturday and a Sunday in November 2006 and on a Saturday in October [*sic*] 2007. As per e-mail exchanges with his supervisor, it was agreed that this days would be compensated by extra annual leave. Out of this total of 40 days, he took 2 days, leaving a balance of 38. The only other entries in his card should be 2 days of certified seek leave in the last week of November 2007;

c. In view of the above, the applicant was due 38 days' pay. This was never openly disputed. However, Headquarters were secretly told to base his pay on 36 days;

d. His P.35 was concealed from the applicant. The determined efforts to this end prove that this was not a misunderstanding but a malicious act of retaliation. This is part of a wider campaign to inflict distress on the applicant, including financially, because he exercised his procedural rights in the internal justice system.

48. On these grounds, the applicant requests:

i. Payment of the two days' pay, which is £241.55;

ii. 8% interest calculated from the date that this should have been paid, i.e. 30 November 2009;

iii. A full and transparent disclosure of the basis of calculation of his entire earnings from UNHCR which will enable him to satisfy himself that there has not been any other cheating;

iv. A finding that the actions of the Deputy Representative, the BO London Administrative Assistant and any other complicit ought to be the subject of a misconduct investigation.

49. Concerning Case No. UNDT/GVA/2010/069, the respondent's contentions are:

a. The application at hand is irreceivable as the applicant did not exhaust internal remedies in a timely manner. Former staff rule 111.2 (a) provided that "[a] staff member wishing to appeal an administrative decision ... shall ... address a letter to the Secretary-General requesting that the administrative decision be reviewed ... within two months from the date the staff member received notification of the decision in writing". In this regard, the former UNAT stated in its judgement No. 1157, *Andronov* (2003): "the countdown for the deadlines of appeals begins only when the contested decisions and their relevant details are known to the applicant ... if a decision is not made in writing and is unknown to the staff member concerned, the point of time for starting the process is from the time the staff member knew or should have known of the said decision". The former UNAT added in judgement No. 1211, *Muigai* (2004) that: "once it is clear that a decision is made, the time for initiating the appeals process begins to run and, thus further correspondence on the issue would normally not stop it from running ... bringing up an issue on which a decision had previously been communicated to the staff member and which was not the subject of a request for administrative review does not formally start the process anew, i.e. the Administration's response to the renewed request would not constitute a new administrative decision which would restart the counting of time";

b. The applicant received a copy of his P.35 in the course of August 2009. Such copy is not the administrative decision but constitutes further correspondence on an issue on which the Administration had already made a decision. Indeed, the Administration processed the applicant's P.35 in October 2008 and he received the remaining 20% of his unused annual leave balance amount. Pursuant to former staff rule 111.2 (a), this constitutes the decision that the applicant would have had to challenge. The applicant was or

should have been aware of the processing of his P.35 at the latest in October 2008. He waited until 27 July 2009 to request a copy of the P.35 form and until 29 September 2009 to challenge same;

c. No exceptional circumstances for the purpose of staff rule 111.2 (f) - defined by former UNAT as "any circumstances beyond the control of the Applicant which prevented him from submitting a request for review and filing an appeal in time" (see Judgements No. 372, *Kayigamba* (1986), No. 713, *Piquilloud* (1995) and No. 913, *Midaya* (1999)) - are found in this case;

d. The applicant was offered opportunities to review and sign the P.35 form on 14 December 2007, 4 January 2008 and 21 January 2008, but he refused to do so. Moreover, the number of accrued leave days in the relevant P.35 form is based on the applicant's attendance record card for 2007, which was communicated to him on 30 November 2007, and which he did not review, sign and return despite several requests to this aim;

e. As to the merits, according to former UNAT jurisprudence, in particular judgement No. 1212, *Stouffs* (2004), staff members have an obligation to sign the P.35 form in order to receive the benefits deriving from their service, and this, even though they disagree with the content of the P.35 form. Also, the Administration is allowed to process the P.35 in cases where staff members refuse to sign it. The applicant failed to comply with his obligation to sign his P.35 form. After numerous unsuccessful attempts, the BO London decided to transmit the applicant's 2007 attendance record card and his P.35 form to PAPS for processing. As a result, the applicant received a total of £4,355.17 for 36 accrued annual leave days;

f. In response to the applicant's allegation that the number of accrued annual leave days reflected in his P.35 form was incorrect, it is

explained that the applicant accrued 37 annual leave days between 11 September 2006 and 30 November 2007 (2 days for September 2006 and 2.5 days per month for the next 14 months). He gained three days compensatory time for having worked on a Saturday and a Sunday in November 2006 and on a Saturday in March 2007;

g. As per paragraph 11 of IOM/076/89-FOM/065/89 on "Overtime Payments and Compensatory Time Off (CTO) – Locally-recruited Staff" of 26 June 1989, "such compensatory time off may be granted at any time during the four months following the month in which the overtime work is done; otherwise, it is forfeited". The applicant took one day compensatory time on 14 May 2007; he did not take his two other days within the four months (which could be taken, for the first worked week-end, in April 2007 and not March 2007, as per a related request of his supervisor). Therefore, those days were forfeited;

h. Finally, the applicant took two days annual leave on 24 October 2007 (while the leave request form reads "1/2 day" the explanation given underneath by the applicant shows that he was away from the office the entire day);

i. Accordingly, the balance of 36 annual leave days accrued by the applicant at the time of his separation is correct;

j. As regards the allegation that the applicant's P.35 form was concealed from him, this argument cannot stand, as the applicant was given ample opportunities to review, correct and contest his P.35 form as well as his 2007 attendance record card. However, he refused/failed to do so;

k. In light of the above considerations, the present application is not receivable as the applicant did not exhaust internal remedies in a timely manner. If, however, the Tribunal finds to the contrary, the calculation of the applicant's entitlements reflected in his P.35

form is correct, and the evidence demonstrates that such P.35 form was not "concealed" as alleged.

50. Based on the foregoing, the respondent requests the Tribunal to dismiss the application as not receivable or, in the alternative, as without merits.

Considerations

51. The two applications at hand arise from the same situation, are directed against related decisions and are largely based on analogous arguments. For this reason, they will be considered jointly.

52. Concerning case No. UNDT/GVA/2009/63, it should be made clear that the separation memorandum is informative in nature. Such a memorandum specifies the formalities to be fulfilled by the concerned staff member and provides guidance in this respect. It can by no means be viewed as an authorization which is required for the staff member to undertake such administrative procedures. It is untrue that the applicant was prevented from taking the necessary steps with regard to the separation formalities until the said memorandum was issued.

53. Furthermore, the applicant was notified of the decision not to renew his appointment beyond 30 November 2007, by memorandum dated 5 October 2007; this is nearly two months before his effective separation from service. It seems to the Tribunal that the applicant was thereby afforded more than sufficient time to attend the separation formalities during the time still covered by his contract. Consequently, the argument to the effect that the late issuance of the separation memorandum created a situation such that he was bound to work beyond the date of expiration of his appointment does not stand.

54. The applicant was, in addition, particularly well aware of the procedures to follow in case of separation, having been the person in charge thereof in the office. In any case, the Administration did transmit to the applicant, although only on the last day of his service, a memorandum detailing the different procedures to be followed and advising him of the possible consequences if he did not fulfill them in a timely manner. He subsequently received numerous reminders,

expressly pointing out that failure to complete the separation procedures could result in a delay in the final payments due upon separation. Despite this fact, the Administration eventually proceeded to pay the amounts due, even though the applicant had not taken the measures incumbent on him in this regard.

55. It appears from the circumstances described above, that the Administration offered a reasonable chance to the applicant to finalize the different separation formalities, both, during the last two months of service, and after his separation. Accordingly, the Administration did not contravene the rules regarding the advance on final emoluments, the calculation of same, or any other matter arising upon a staff member's separation. Nor has it applied them in a harsher manner to the applicant without any reason. If the applicant sustained some delays, loss or harm, they are rather imputable to his own lack of responsiveness in fulfilling the prerequisite conditions (see judgement No. 1212, *Stouffs* (2004) of the former UNAT).

56. In case No. UNDT/GVA/2010/069, the application is irreceivable *ratione temporis*. In accordance with former staff rule 111.2 (a), in force at the time of the facts, any staff member intending to appeal an administrative decision must request the Secretary-General, within two months, to review the decision in question. The former UNAT stated, in its judgment No. 1157, *Andronov* (2003), that deadlines for appeal start running only "when the contested decisions and their relevant details are known to the applicant". It further clarified that if a decision is not communicated in writing to the concerned staff member the point of time for the deadline to start running is that on which "the staff member knew or should have known of the said decision".

57. On 19 June 2008, the applicant received in his bank account, the amount corresponding to 80% of his accrued annual leave (minus the cost of changing the locks of the office). At that point, he was given clear indication of the calculations eventually made by the Organization regarding the outstanding sums due to him further to his separation from service; the last correction of the applicant's attendance record card for 2007 had already been made and taken into account in determining the sum paid. In any event, the applicant received, in October 2008, the outstanding 20% of his final emoluments. As from this moment, the applicant

came to know, with no room for uncertainty, what was the exact amount he would be paid on this account. Therefore, the relevant time limits for contestation are to be counted from this point in time. The request of 27 July 2009 to PAPS and transmittal to the applicant of his P.35 merely constitutes subsequent correspondence on a decision already made. As such, they do not change the fact that the applicant was already informed since October 2008, at the latest, of the decision to compute 36 and not 38 days of accrued annual leave (see judgement No. 1211, *Muigai* (2004) of the former UNAT).

58. Yet, it was not until almost one year later, on 29 September 2009, that the applicant submitted his request for management evaluation in this connection. Moreover, the applicant did not allege any exceptional circumstance justifying such a delay, which might have allowed to waive the two-month time limit in his particular case, under former staff rule 111.2 (f).

59. In view of the foregoing, the Tribunal cannot but reject case No. UNDT/GVA/2010/069 as time-barred.

Conclusion

60. In view of the foregoing, the Tribunal DECIDES:

The applications in cases No. UNDT/GVA/2009/63 and UNDT/GVA/2010/069 are hereby rejected.

(*Signed*)

Judge Thomas Laker

Dated this 23rd day of June 2010

Entered in the Register on this 23rd day of June 2010

(*Signed*)

Víctor Rodríguez, Registrar, UNDT, Geneva