UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/132
Judgment No.: UNDT/2011/095
Date: 31 May 2011
Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

PRICE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
George Irving

Counsel for Respondent:
Robert Nadelson, UNDP

Introduction

1. The Applicant contests the decision to reclassify and advertise her post and to place her on a "search period". She says that this decision was communicated to her by letter of 4 May 2009 from the United Nations Development Programme ("UNDP") Deputy Director. She seeks the reinstatement of her permanent status on an assigned post, a "reinstatement of her annual leave balance" and a "withdrawal of the notice of termination". The Respondent contends that the application is out of time and not receivable.

Procedural matters

2. During October and December 2009 the Applicant sought extensions of time to file her application with the Tribunal, on the basis that informal settlement negotiations were being undertaken, which the Tribunal granted. These negotiations being unsuccessful, the application was filed on 5 February 2010, within the extended deadline permitted by the Tribunal. Following the Respondent's reply, filed on 10 March 2010, which raised objections to the receivability of the application on the grounds that it was time-barred, a case management hearing was held.

3. Subsequently, on the basis of the parties' joint request, proceedings were further suspended to allow the parties to seek informal resolution of the matter. The Applicant was directed to respond to the Respondent's objections on receivability in the event the matter was not settled, after which the Tribunal would determine the issue of receivability on the papers.

4. The matter was not settled and the Applicant filed her response to the issue of receivability on 9 July 2010. Accordingly, the present Judgment deals with the issue of receivability.

Facts

5. On 20 April 1981 the Applicant commenced a fixed-term appointment as a staff member at the G-2 level as a statistical clerk/typist and she received a permanent appointment at the G-4 level on 1 November 1985. After various promotions, on 1 November 2003 the Applicant was promoted to the P-3 level as an Operations Specialist in the Administrative Services Division ("ASD"), Bureau of Management of UNDP. Her principal functions included the designation and approval of common premises and leases in Country Offices ("CO"). While remaining a P-3 level Operations Specialist with ASD, from 2006 the Applicant undertook a number of UNDP headquarters-related functions in addition to her other functions as a result of vacancies in ASD.

6. On 28 April 2008 the Applicant was issued with a final overall rating of "3 – Met Expectations" for her performance review (known as an "RCA") for the period 1 February 2007 to 31 January 2008. The Applicant did not agree that this rating reflected the additional responsibilities she had taken on in the period and, accordingly, sought the Career Review Group's ("CRG") review of the RCA.

7. The Applicant went on certified sick leave from 18 July 2008 to 4 May 2009.

8. On 10 September 2008 the CRG panel upgraded the Applicant's 2007 to 2008 RCA, to "2 – Exceeded Expectations". The CRG review was signed by the Applicant on 9 November 2008. In its commentary, the CRG panel added, *inter alia*, that it "strongly recommends that the management of ASD revises the job description of the [Applicant's] post to reflect the actual functions required to be performed".

9. Noting that the job description did not match the actual functions of the post the Applicant occupied, ASD commenced the reclassification of the post. The reclassification process essentially involved the following steps, taken from UNDP's "Rank-in-post" policy, reproduced below. A revised job description was prepared by ASD to reflect the actual functions performed, then was classified by the Office of Human Resources ("OHR"), Bureau of Management of UNDP. On 27 January 2009 a

position matching panel met "to compare the new job description against the old job description to determine whether the new job description [was] the same or if it ha[d] materially changed from the old job description". The panel noted that it did not consider the incumbent (the Applicant), but just the position and functions in question. In its minutes, signed on 2 February 2009, the position matching panel concluded that the job remained classifiable at the P-3 level, but that there had been a significant change in the duties, roles and responsibilities, as well as resulting competencies, of the new job description compared to the old, and that the job description had materially changed. The position matching panel changed the post from Operations Specialist, Common Premises and Services Section, ASD, to Facilities Specialist, Headquarters Services Section, ASD.

10. On 30 January 2009 the Chief, ASD, emailed the Applicant with the subject line of "Confirmation of our telephone conversation on Wednesday, 28 January 2009", stating as follows (emphasis in original):

> I'm glad that we were able to speak on Wednesday morning (28 January 2009) and sincerely hope that you continue to take care of your health.
>
> As we discussed, the minutes to your last RCA/CRG which you signed on 9 November 2008 stated that:
>
> *"The CRG strongly recommends that the management of ASD revises the job description of the post encumbered by the staff member to reflect the actual functions required to be performed"*.
>
> In our conversation I confirmed that ASD management has now fulfilled the strong recommendation from the CRG and reissued the old job description and that even though the new job description has been classified at the P-3 level (the same level as the old job description), it was clear that there has been a significant change in the duties, roles, responsibilities of the new [job description] compared to the old, as well as the skills and functional competencies required to carry out these duties, roles and responsibilities.
>
> I also relayed to you the fact that in order to fully gauge the level of change between the new and old [job descriptions], a position matching panel had been convened, … [which] confirmed … a fundamental change between the new and old job descriptions i.e. that the new job description has materially changed from the old job description … therefore the two job descriptions were not matched.

> Finally I also mentioned that pending confirmation and validation from the Organization Design Unit in OHR the conclusions of the panel mentioned above are correct; in accordance with the new policy of "rank in post", the above actions and decisions would require the organization to readvertise the post that you currently encumber, for competitive selection. This would constitute an abolition of the old post and the creation of a new post.
>
> Please feel free to contact me should you have any questions on the above or on any other matter and I will of course do my best to clarify or assist as best I can.

11. On 9 February 2009 the position matching panel's recommendations were reviewed and approved by a Human Resources Specialist in the Organizational Design Unit, OHR, Bureau of Management, who agreed that the job description had materially changed. The Respondent avers that this resulted in the reclassification of the post, requiring that it be advertised for competitive selection.

12. On 12 February 2009 the Chief, ASD, emailed the Applicant with the same subject line of "Confirmation of our telephone conversation on Wednesday, 28 January 2009" as in his email of 30 January 2009, stating, *inter alia,* as follows:

> Following on from our recent telephone conversation of 28 January, I have just received written confirmation from OHR of their review of the minutes of the position matching meeting as well as the new and old job descriptions of the post you currently encumber.
>
> The conclusion of the OHR review is that "the job description has materially changed from the old job description".
>
> As a result of OHR's review I wish to inform you that ASD will now be required to re-advertise position number 27502, IMIS 8309, for a competitive selection in accordance with the new "Rank-in-Post" policy.

13. On 16 February 2009 the Applicant's reclassified post was advertised for competitive selection with a closing date of 2 March 2009. Under the heading of "qualifications", the subheading "education" stated "advanced university degree in Architecture, Engineering and Facilities Management or closely related field".

14. The Applicant did not apply for the advertised position, but wrote to the Chief, ASD, on 11 March 2009 (after the closing date), stating:

> I understand that [my reclassified post] has now been advertised ... since I do not fit the requirements of the new post, it is best that I do not apply for it, lest be less competitive in the recruitment process [sic]. However, as the selection period may take some time, my plan is to return to my current job until the replacement comes on board … please be advised that I can return to work, the earliest on the 16th of April (Thursday). In the meantime, may I request a one-on-one meeting with you … in order to discuss expectations, etc.

15. The Chief, ASD, replied on 16 March 2009, stating:

> Following my email of 12 February, ASD has indeed advertised [the reclassified Facilities Specialist position] for competitive selection in accordance with the "Rank-in-Post" Policy. I have noted that you have not submitted an application for this position. This means that once your replacement is selected and reports for duty, you will be an unassigned staff member. I am therefore requesting OHR to advise you of the consequences of your expected unassigned status.
>
> I will be pleased to have a one-on-one meeting with you when you feel better … [i]n the meantime, I encourage you to undertake, with OHR's assistance, an active search for job opportunities within UNDP or elsewhere within the UN System.

16. On 27 April 2009 the United Nations Medical Services informed UNDP that the Applicant was cleared to return to work full-time on 4 May 2009, which she did. Upon returning to work, the Applicant received a letter from the Deputy Director, OHR, dated 4 May 2009, which stated, *inter alia*:

> As you were advised by [the Director, ASD, on] … 30 January 2009 and … 15 April 2009, the post of the Operations Specialist you previously encumbered has been abolished. We understand that a new post of Facilities Specialist has been created in the Administrative Services Division and you were invited to compete but declined to apply. We would therefore like to take this opportunity to advise you of the options available to you at this point.
>
> As provided for in the applicable policy, from the time it is known that a staff member needs to find a new assignment, the Organization ensures that he or she has at least a three-month horizon to undertake, with OHR's assistance, an active search for job opportunities within UNDP and elsewhere within the UN System. In your specific case, your job search period will start from 4 May 2009 and continue until 3 August 2009.

> …
>
> [I]f you are not placed by the end of your search period on 3 August 2009, the options listed below are available to extend your search. Alternatively, towards the expiry of this period, you could apply for agreed separation without seeking to extend your search.
>
> …
>
> Please keep in touch with [the Career Transition Unit of OHR] and kindly inform us of your preferences at least two weeks prior to the end of your search period (i.e., 15 July 2009) … should you not do so, you will automatically be placed on notice of separation.

17. By way of letter dated 26 June 2009, the Applicant sought administrative review of what she referred to as the "'abolition of [her] post: (a) while on medical leave and (b) without due process". The Respondent answered this request for review on 24 July 2009, stating that it was time-barred, as the Applicant had been notified of the abolition in January 2009. Notwithstanding the Respondent's position that the Applicant's request was time-barred, he also responded substantively to the Applicant's claims in the response to the request for review, holding that there was no factual or legal basis for overturning the decision to abolish the post the Applicant held. The Respondent also reiterated that while the Applicant's post had been abolished, this was not a termination and she retained the options explained in UNDP's letter of 4 May 2009.

18. The Applicant remained a staff member with an assignment and funding at least through 31 January 2011, as a result of subsequent assignments found for her by UNDP during the course of proceedings.

Applicant's submissions

19. The Applicant's primary contentions relating to the issue of receivability may be summarised as follows:

a. The email of 30 January 2009 from the Chief, ASD, to the Applicant did not explain how the change in the duties, roles and responsibilities of the Applicant's job description and readvertisement would affect her permanent

appointment. An informal email keeping a staff member abreast of on-going developments that might affect her or him is a preliminary communication, not a formal notification of abolition of post or termination of appointment. The 30 January 2009 email should be seen as a courtesy email as it does not conform to the standard notification of abolition of post sent by Human Resources to permanent staff members—it is not until the letter of 4 May 2009 that this requirement was satisfied. Former staff rule 109.1(c) pertaining to abolition of posts is not cited in either letter;

b. The Applicant is contesting the termination of her appointment and not just the abolition of her post. Her request for review focused on the process leading up to her notice of separation from service;

c. The Applicant received the alleged notifications of the contested decision during her sick leave. Certified sick leave suspends the operation of any applicable statute of limitations until the return of the staff member to active service, as it does any applicable notice periods. It cannot be considered reasonable to expect a staff member who is ill and not physically present at work to follow the intricacies of a reclassification exercise or be required to initiate legal proceedings;

d. The redesigned job description was submitted without the signature of the incumbent in her absence. It was not until her return to work that her status was determined;

e. The Applicant acted within 60 days of her return to work to challenge the decision that affected her status. Alternatively, should the Respondent's assertions concerning the abolition of her post be accepted, any applicable time limits affecting her claims should be waived in light of the exceptional personal circumstances of the Applicant at the time; and

f. The termination of a "career staff member" is a matter that calls for transparency and is specifically required to be notified in accordance with staff rule 109.3, not hidden within piecemeal communications.

Respondent's submissions

20. The Respondent's primary contentions relating to the issue of receivability may be summarised as follows:

a. The Applicant's claim relating to termination of her appointment is moot as no such decision or action has been initiated by the Organisation;

b. This application is time-barred, as the request for review was not made within two months of the written notification of the decision, in accordance with former staff rule 111.2(a). The Applicant was informed in writing of the decision to reclassify the post she held on 30 January 2009 and should have submitted a request for review by 30 March 2009. Even if the 12 February 2009 date by which the Chief, ASD, informed the Applicant that the conclusions of the position matching panel had been confirmed is taken as the operative date for the decision, the Applicant would have needed to submit her request by 12 April 2009, but did not until 26 June 2009. In Judgment *Costa* UNDT/2009/051, the Tribunal noted that the terms of article 8.3 of the Statute are clear on their face, and that the Tribunal had "no jurisdiction to extend the deadlines for the filing of requests either for administrative review or management evaluation";

c. In exchanges with the Chief, ASD, in January through March 2009, the Applicant gave no indication of an opinion on her part, much less opposition, to the decision to revise the job description. The changes in function were something she had previously sought. The 4 May 2009 letter, by its own terms, constituted information as to the Applicant's options going forward in light of

the fact that the Applicant declined to apply to the new post. It was not the written notice of the decision against which the Applicant now appeals; and

d. Should the Tribunal find it is empowered to waive the time limits for administrative review or management evaluation, the Applicant has failed to demonstrate any basis for finding the existence of exceptional circumstances that could justify a waiver of the statutory time limits. Neither has the Applicant demonstrated the existence of circumstances beyond her control. In her message of 11 March 2009 to the Chief, ASD, the Applicant was fully capable of deciding on a course of action for the future regarding her employment. The Applicant has not cited reasons justifying an exception from the prescribed time limits for filing a request for review, much less claimed such an exception in her application.

Consideration

Issue to be determined by the Tribunal

21. In her application the Applicant states that she challenges the "post abolition and … search period process". This reflects the decision challenged in her request for review of 26 June 2009. In her submission on receivability the Applicant indicated that she also challenged "the termination of her appointment". These claims will be examined in turn to determine whether they are receivable.

22. It is not disputed that the Applicant filed her application with the Tribunal within the required time limits (as extended by the Tribunal). In determining the preliminary issue of receivability, what is being examined therefore is whether the Applicant adhered to the prescribed time limits for filing a request for administrative review.

23. According to former staff rule 111.2(a), applicable at the time of the events in question, a staff member wishing to appeal an administrative decision must first send a

letter to the Secretary-General requesting a review of the decision "within two months from the date the staff member received notification of the decision in writing". Since the Appeals Tribunal's decision in *Costa* 2010-UNAT-036, upholding *Costa* UNDT/2009/051, regardless of the circumstances, the Dispute Tribunal does not have the power to suspend or waive the deadlines for either a request for administrative review or management evaluation.

24. The Tribunal must therefore determine whether the Applicant received written notification of the decision by 12 February 2009 at latest, as contended by the Respondent, or not before 4 May 2009, as argued by the Applicant.

Receivability of challenge of "abolition of post"

25. On 30 January 2009 the Chief, ASD, sent an email to the Applicant confirming an earlier phone conversation on 28 January 2009. This email recalled that the CRG had recommended that the job description of the post occupied by the Applicant be revised, and that, when this was done, a position matching panel had confirmed the existence of a fundamental change in the job description. Indeed, the Applicant herself had raised with her superiors and admitted in her pleadings that the functions of her job had changed considerably since she had commenced in it. Then, in this same email 30 January 2009, the Chief, ASD, stated that *if OHR confirmed* the position matching panel's conclusion that the functions had fundamentally changed, the Organisation would have to advertise the post then occupied by the Applicant for competitive selection, resulting in an abolition of the Applicant's post and the creation of a new one.

26. On 12 February 2009 the Chief, ASD, again wrote to the Applicant. This email followed the email of 30 January 2009, and, having the same subject and title, it was clearly meant to be read in the context of the 30 January 2009 email. The Applicant did not seek to argue that there was any uncertainty that the communications were related, and one would reasonably interpret them to be. This second email informed the Applicant that *OHR had confirmed* the conclusions of the position matching panel that

the revised job description was materially different from the then existing job description and that ASD was required to advertise the position for competitive selection. The terms in which this was stated were not uncertain: "As a result of OHR's review I wish to inform you that ASD will now be required to re-advertise Position number 27502, IMIS 8309, for a competitive selection".

27. The relevant extract of the UNDP Rank-in-post policy, which the Applicant had been referred to in the emails from the Chief, ASD, of 30 January and 12 February 2009, states as follows:

> 2.5 Post reclassifications
>
> All posts reclassified on or after 1 July 2008 must be advertised for competitive selection.
>
> …
>
> If the reclassification … concerns an individual post or a few individual posts in the 100-series, the following applies:
>
> – Upon receipt of the budget clearance and reclassification decision, the hiring unit is required to advertise the position without delay with the view of completing the recruitment process within three months.
>
> …
>
> – However, if the post which has been reclassified is occupied by a 100-series staff member and is advertised, the incumbent will be invited to apply for the reclassified post, his/her application will receive priority consideration and if he/she is found suitable, he/she will be selected for the post irrespective of his/her ranking in the selection process.
>
> – If the incumbent is not selected for the reclassified post, the hiring unit will be required to provide substantiated reasons for not considering him/her suitable for the post, and the procedures related to abolition of post (i.e. abolition of the post, previously encumbered by the 100-series staff member, which has been replaced by the reclassified post) will apply.

28. The email of 30 January 2009 put the Applicant on notice that the OHR review would take place, resulting in one of two things: (1) the conclusion that the post's functions had changed would be upheld, upon which the old post would be reclassified and consequently abolished (whether she then applied for the new post or not); or (2)

the conclusion would not be upheld, the post would not be reclassified, and it would not be abolished. As the outcome was conditional on a subsequent event (the OHR review), it could not be said that this email constituted definitive written notification that the Applicant's post was to be reclassified, advertised and/or abolished.

29. However, the 30 January email was followed by the 12 February 2009 email, which confirmed in no uncertain terms that the reclassification had been approved, and the position would be advertised. The precise date that the reclassification itself occurred is uncertain, but is not important, as it must, at all events, have preceded the advertisement. Most importantly, the consequences of the reclassification resulting from section 2.5 of the Rank-in-post policy, foreshadowed by the 30 January email and confirmed by the 12 February 2009 email, were clear: the Applicant's position would be advertised for competitive selection and filled. Were it to be filled by someone else, it is (and would have been) obvious that the Applicant would no longer be undertaking the functions attached to the position. Therefore, her contention that the consequences were unclear is also without merit. In this regard, the Tribunal notes that, in her email of 11 March 2009, the Applicant herself referred to the fact that she would be replaced in the position by someone else.

30. As a separate matter, the Tribunal notes that the Rank-in-post policy states that the incumbent of the post will be "invited to apply for the reclassified post". Although the emails of 30 January and 12 February 2009 from the Chief, ASD, did not contain an express invitation to apply, the Applicant was informed of the advertisement, the vacancy announcement number, and the fact the selection would be conducted in accordance with the Rank-in-post policy. Indeed, she acknowledged her decision not to apply for the post by email of 11 March 2009, due to her understanding that she "d[id] not fit the requirements of the new post". She also stated in her request for administrative review that "the new skillset does not suit my background or career interest". Therefore, without pronouncing on the form the "invitation" should have taken, the Tribunal finds that, in the circumstances, the Applicant was not prejudiced by the lack of a formal, express invitation to apply for the reclassified post. On the

contrary, she was aware of the post being advertised and made a personal choice not to apply for it.

31. The Tribunal will address briefly the Applicant's contention that she was not, in any event, qualified for the reclassified post. The Applicant stated that "a requirement for an architectural degree was included knowing that the Applicant did not possess it". This is a mischaracterisation. Firstly, the vacancy announcement stated under the heading Qualifications: Education, "Advanced University Degree in Architecture, Engineering and Facilities Management *or closely related field*" (emphasis added). The Applicant did not state that she does not have any of these degrees, only that she did not have a degree in architecture. The P-3 post she performed the functions of before its reclassification had required an advanced university degree, and it is reasonable to conclude that the Applicant has at least one. Further, it was not stated that such a degree was necessarily a mandatory prerequisite (as opposed to merely a desirable qualification). If she had applied and been rejected or not selected, the Applicant could, in any event, have challenged this decision. However, she did not, and, most importantly, evinced that her decision not to apply for the reclassified post was, at least in part, motivated by her personal choice that it did not "suit [her] career interest".

32. The Tribunal also notes that, although in her request for administrative review the Applicant noted that her post was the only one to be abolished within ASD, she did not provide any further suggestion or support that there was any impropriety or improper motive relating to the reclassification of the post. Accordingly, in the absence of the Applicant's contentions otherwise, the Tribunal is satisfied on the papers before it that the exercise was properly conducted. The Applicant did not complain of any impropriety when she wrote to the Chief, ASD, on 11 March 2009, stating that she intended "to return to [her] current job until the replacement comes on board". Rather, the Applicant's complaints relate to what she perceives to be a general unfairness in relation to the transfer of her functions and subsequent reclassification. However, the transfer of functions predicated the reclassification and, although it is not strictly necessary to examine this history, appeared to have the support of the Applicant. In an

email of 7 June 2007 to the Operations Specialist, the Applicant thanked the Operations Specialist for "taking on the distribution of work … of UNDP-country office responsibilities … [n]ow I can concentrate heavily on [headquarters] facilities". More importantly though, there was no request for administrative review made within the two-month period required by former staff rule 111.2(a) of the transfer of any of the Applicant's functions, and the challenge of these aspects of the claim are likewise not receivable.

33. The Applicant makes additional claims that the abolition of her post was not properly notified to her. The Applicant says the emails by which the decision was alleged to have been communicated were "preliminary communication" and a "courtesy" but that they "did not conform to the standard notification of abolition of post". However, the Applicant does not say what this standard notification is, or point to any rule or regulation that requires the Respondent to make the notification in a prescribed manner. The question can be seen to be simple—did the Applicant understand from these related communications (the call of 28 January 2009 and the emails of 30 January and 12 February 2009) that her post would be reclassified, readvertised and abolished? The answer must be that she did. The Applicant did not seek to advance a case that the meaning of these communications or the consequences explained were unknown to her—rather, her arguments are objections to their form.

34. Therefore, having been informed on 12 February 2009 that the condition stated in the 30 January 2009 email had been fulfilled, it should have been clear to the Applicant, or a reasonable person in her position that, as of 12 February 2009, the reclassification and resultant selection process would proceed, and, accordingly, the Applicant's post would be abolished. Indeed, from the record as reviewed, it appears the Applicant was also clear on the consequences that would result. By the email of 30 January 2009 the Applicant had been advised to call the Chief, ASD, with any queries, but it appears she did not make use of this offer.

35. The Tribunal wishes to iterate that the present circumstances are unlike those in the case of *Schook* 2010-UNAT-013, where the applicant had received notification of

the administrative decision only by telephone. In the present circumstances, the notification by telephone on 28 January 2009 was followed by the email of 30 January 2009 to the Applicant, indicating the condition that needed to be satisfied for the decision to take effect, and the fulfillment of that condition, was notified to the Applicant on 12 February 2009 in writing, thus satisfying former staff rule 111.2(a).

36. Accordingly, the Tribunal finds that the date that the Applicant was notified of the decision to reclassify and advertise her post (and, by extension, to abolish it) was 12 February 2009. As a result, the Applicant's challenge, being outside of the two-month time limit in which to seek administrative review of a contested decision, is irreceivable.

Sick leave

37. The Applicant has advanced a further argument that, in any event, she could not have received official notification of the contested decision until her return from sick leave on 4 May 2009. Specifically, her Counsel argued that:

> Certified sick leave suspends the operation of any applicable statute of limitations until the return of the staff member to active service, as it does any applicable notice periods. It cannot be considered reasonable to expect a staff member who is ill and not physically present at work to follow the intricacies of a reclassification exercise or be required to initiate legal proceedings.

38. The Tribunal recognises that certain traditions accept that a period of extinctive prescription may be suspended if the performance of an obligation is prohibited by *force majeure* or *vis major*. However, Counsel did not cite any authority—from the Organisation's rules, regulations or jurisprudence, or from general principles of law—to support the proposition that there exists a general rule suspending the operation of time limits during certified sick leave. Rather, one would imagine this may, in an appropriate case, constitute an exceptional circumstance or make for an exceptional case that could justify the suspension or waiver of deadlines.

39. Due to the pronouncements of the Appeals Tribunal in *Costa*, however, this Tribunal is unable to suspend or waive deadlines with respect to administrative review or management evaluation, irrespective of the circumstances of each case. Unless an appropriate case is put before the Appeals Tribunal and it decides to limit the seemingly absolute application of the pronouncements of *Costa* as it currently stands, this Tribunal is bound to follow them, even where sick leave or other intervening events would render filing impossible for an applicant. The Applicant's argument that the deadlines were suspended until her return from sick leave on 4 May 2009 must fail.

40. The Tribunal notes that, in any event, the Applicant has not argued that her sick leave prohibited her from receiving, or responding to, the notifications she received. The record shows that, while on sick leave, the Applicant was clearly capable of and did communicate with the Chief, ASD, and others. Amongst other things, on 11 March 2009, the Applicant sought to arrange "a one-on-one meeting with [the Chief, ASD]—possibly over lunch—to discuss expectations".

Receivability of challenge of termination of appointment

41. The Applicant argues that the 4 May 2009 letter informed her of a separate decision to terminate her permanent appointment. However, termination or separation was not an inevitable consequence of the abolition of the Applicant's post, and the Applicant was not separated within the meaning of the Staff Rules. Due to the operation of former staff rule 109.1(c) and the UNDP Rank-in-post policy, the Applicant has been entitled to priority in the consideration of her candidature for alternate posts, as well as the assistance of the Career Transition Unit. It is clear that, both at the time of her request for administrative review and her application before the Tribunal, the Applicant's permanent appointment had not been terminated. The parties requested a suspension of the proceedings on more than one occasion as alternate postings for the Applicant were explored in the context of the attempted informal resolution of the dispute. With the assistance of the Career Transition Unit of OHR, UNDP, the Applicant was offered and accepted at least one appointment during the

course of these proceedings. The Tribunal notes that it has at the present date received no notification whether this appointment is continuing or not (although, whether it is or not is immaterial to the outcome of this case).

42. Counsel for the Applicant described the Applicant as being "headed for termination", insofar as he contends the notification of 4 May 2009 is a notification of termination. However, this communication conveys a number of potential outcomes which may follow the abolition of the Applicant's post, and is itself only a preparatory communication which does not affect the scope or extent of the Applicant's rights—see discussion in *Ishak* UNDT/2010/085. The challenge of the Applicant's "termination" is therefore not receivable. The Applicant retains the right to challenge her termination before the Tribunal if it occurs, subject of course to the procedural and substantive validity of such challenge, as determined by the Tribunal.

Conclusion

43. The application is time-barred and not receivable. It is therefore dismissed without consideration of its merits.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 31st day of May 2011

Entered in the Register on this 31st day of May 2011

(*Signed*)

Santiago Villalpando, Registrar, New York