



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

CHARLES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Bart Willemsen, OSLA

Counsel for Respondent:

Marcus Joyce, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision taken by the Officer-in-Charge, Sabbatical Leave Programme (“Programme Officer-in-Charge”), Office of Human Resources Management (“OHRM”), not to submit or forward his application for sabbatical leave to the Sabbatical Leave Selection Committee (“the Committee”). The Applicant contends that the Programme Officer-in-Charge ventured outside her discretionary authority by not forwarding his application to the Committee, thus violating his terms of appointment. The Applicant submits this caused significant delay in the completion of his studies and mental distress, for which he seeks compensation.

2. On 8 March 2011, the Tribunal held a case management hearing in New York, at which the Applicant, his Counsel and Counsel for the Respondent were present. Counsel confirmed that in their shared opinion, there were no outstanding matters which would prevent the Tribunal from coming to a decision on the merits of the case on the papers already before it, and the Tribunal deemed it appropriate to do so.

Facts

3. On 15 November 2009, the Applicant, a staff member of the Procurement Division, Office of Central Support Services, Department of Management of the United Nations, submitted an application for sabbatical leave, for a five-month period.

4. By email dated 16 November 2009, the Programme Officer-in-Charge’s Assistant acknowledged receipt of the application. The email requested the Applicant to provide the formal endorsement of his application from the Director of the Procurement Division (“the Director”), by 17 November 2009, the deadline for the submission of applications for the 2010 cycle of the Sabbatical Leave Programme.

5. On 16 November 2009, the Applicant’s immediate supervisor, the Chief, Logistics and Transportation, Procurement Division (“the Supervisor”), sent an email to the Director, advising that:

Section 3 of ST/AI/2000/4 [in force at the time] states that sabbatical leave may be approved for a period normally not in excess of four months, subject to release of the staff member [The Applicant's] application covers a 5 month period. Based on [this], I cannot support the application unless funding for immediate recruitment of a replacement can be made available by [the Department of Management] or OHRM.

6. On the same date, 16 November 2009, the Director forwarded the Supervisor's advice to the Applicant, noting that due to staffing and resource requirements in the Procurement Division, his request for sabbatical leave could not be supported. The Applicant emailed the Supervisor, with a copy to the Director, on the same date stating that he "underst[ood] the position", and requested instead "support [for] one (1) month up to the end of January 2010".

7. The following day, 17 November 2009, the Supervisor granted approval for the leave "to a maximum of 1 month, i.e. up to 31 January 2010", stating further that he had obtained consent from the Procurement Division's management. He asked the Applicant to "amend [his] submission accordingly". The Applicant responded by email of the same date, asking whether, rather than amend his submission, the Director could provide his official approval of one month's leave directly to the Committee. The Supervisor emailed back later that day, copying the Director and others, including the Programme Officer-in-Charge, asking the Applicant to refer directly to the Director regarding the formalities of communicating with the Committee, and recommending that the Applicant "contact the [C]ommittee as to whether or not [the Applicant's] original request needs to be amended to reflect the change from 5 months to 1 month".

8. Later the same day, the Programme Officer-in-Charge emailed the Director and the Applicant, copying the Supervisor and others, requesting confirmation from the Director whether the Applicant's application for sabbatical leave for one month was endorsed. She noted in this email that the deadline for the submission of applications was that day, but gave the Applicant an extension, stating that, "in case your application [is] endorsed, kindly submit your amended proposal along with the

letter of endorsement to us latest by Sunday, 22 November [2009]”. Shortly after, the Director confirmed by email copied to the same parties his “support [for a] 1 month sabbatical leave for [the Applicant] (1–31 January 2010)”.

9. On 18 November 2009, the Applicant wrote to the Director, with copies to the Supervisor, the Programme Officer-in-Charge and others, requesting an amendment to the agreed proposal for sabbatical leave reached on the previous day. He requested as follows:

1. As you may be aware, I am currently on annual vacation leave, which expires on or about 4 December 2009 I will return to New York on 20 December 2009.

2. In light of the positive outcome of the consultative process on the subject, I would like to suggest that the date for the sabbatical leave be amended to cover the period, 5 December 2009 to 4 January 2010 (2 months).

10. In his submissions, the Applicant later clarified that “4 January 2010” was meant to read “4 February 2010”, which understanding, according to him, seems to have been shared by the other parties involved. It is unclear why the Applicant referred to a “positive outcome of the consultative process”, when what he was proposing in this email did not reflect the proposal supported by the Director.

11. On 18 November 2009, the Director wrote back to the Applicant, with copies to the Supervisor, the Programme Officer-in-Charge and other parties, asking the Applicant to “please adjust [his] request to be back at work on Monday 1 February 2010”.

12. On 18 November 2009 the Programme Officer-in-Charge emailed the Applicant, advising that the Committee would meet in mid-December and “the earliest start date of the sabbatical leave would therefore be 1st January 2010 In this regard, it is noted that section 5.1 of ST/AI/2000/4 (Sabbatical leave programme) provides that: “The sabbatical leave shall normally be taken during the calendar year following the year in which the application was submitted”.

13. By email of 20 November 2009, the Programme Officer-in-Charge reminded the Applicant that he had to complete and submit his application, including an amended schedule of work, by Sunday, 22 November 2009. According to the Applicant, on 20 November 2009 he did send an “amended proposal”, but which he admits did not include an amended schedule of work pursuant to the terms of para. 5(h) of ST/IC/2009/33 (United Nations sabbatical leave programme for 2010).

14. On 17 December 2009, upon his request for an update, the Applicant was advised by the Programme Officer-in-Charge that his application was not presented to the Committee because it was “incomplete”, not containing an “amended proposal”. In response, the Director wrote to the Programme Officer-in-Charge, stating that although his email of 17 November 2009 may not have been in the proper format, it was timeously submitted and clearly stated that the Procurement Division supported the Applicant’s sabbatical leave until 1 February 2010, i.e., for one month. In her response, the Programme Officer-in-Charge noted that Applicant’s proposal covered a period of five months and that, as one of the criteria for the Committee would be the feasibility of the proposal and whether it could be undertaken and completed within the proposed period of the sabbatical leave, an amended proposal was required. She further advised that, had she received the amended proposal that included an amended schedule of work, she would have accepted the Director’s email as an endorsement.

15. On 15 January 2010, the Applicant requested management evaluation of the decision by the Programme Officer-in-Charge not to forward his application for sabbatical leave, and, dissatisfied with the outcome, on 11 May 2010, the Applicant filed an application with the Tribunal.

Applicant’s submissions

16. The Applicant’s principal contentions may be summarised as follows:

- a. The Programme Officer-in-Charge acted *ultra vires* in deciding not to forward or present the application for sabbatical leave to the Committee. The

Applicant does not dispute that the Programme Officer-in-Charge may be authorised not to present or forward applications to the Committee if incomplete. However, such determination could arguably only go so far as relating to an objective failure to respect the administrative criteria set out in paras. 4 and 5 of ST/IC/2009/33;

b. The terms of sec. 4.2(b) of ST/AI/2000/4 leave no room for interpretation: an application shall be “evaluated” on the basis of the feasibility of the proposed study and whether it can be undertaken and completed within the proposed period of sabbatical leave;

c. Section 4.3 of ST/AI/2000/4 stipulates that the proposals submitted “shall” be reviewed by the Assistant Secretary-General for Human Resources Management (“ASG, OHRM”), “assisted by a selection committee”. Section 4.3 therefore does not at all refer to any delegation of the evaluation of the proposals to the Programme Officer-in-Charge. It is evident that the Programme Officer-in-Charge reviewed the Applicant’s work schedule and subsequently made a subjective determination as to whether this would be feasible in the period of time endorsed by the Director. As such, the Programme Officer-in-Charge made a determination on feasibility, which is a matter strictly reserved for the ASG, OHRM, assisted by the Committee;

d. There is nothing in the terms of either paras. 4 or 5 of ST/IC/2009/33 that stipulates that the work schedule referred to in para. 5(h) for the purposes of determining whether the application is complete must conform to the period of endorsement referred to in para. 4(c). Likewise, neither para. 4 nor para. 5 require that the research project need necessarily be completed or could be completed within the period of time endorsed by the responsible head of department or office. Failure to include a work schedule that comports with the period of time specified would at best result in a determination under sec. 4.2(b) of ST/AI/2000/4 that the application could not be granted but it does not follow that as a result thereof the application was incomplete.

Respondent's submissions

17. The Respondent's principal contentions may be summarised as follows:
- a. The application is not receivable as no administrative decision exists within the meaning of art. 2.1(a) of the Statute of the Tribunal and of staff rule 11.4(a). The alleged decision was, in fact, a simple verification by the Programme Officer-in-Charge as to whether the Applicant's application for sabbatical leave met all the requirements set out in paras. 4 and 5 of ST/IC/2009/33. The Respondent submits that undertaking such pre-screening procedure involves no discretionary power by the Administration and should not be considered an administrative decision affecting the Applicant's terms of appointment or contract of employment. An administrative decision is a decision taken by the Administration in a precise individual case that has a direct legal effect on an individual's rights and obligations and there is no such administrative decision in the present case. Sabbatical leave is a benefit and not an entitlement of staff members of the Organisation. Accordingly, no legal effect flows from the actions taken during the pre-screening procedure of applications for the Sabbatical Leave Programme, to determine if an application is complete or not, and the alleged decision has no direct effect on the Applicant's rights and obligations;
 - b. The evaluation to be undertaken by the Committee and the ASG, OHRM, under sec. 4.2(b) of ST/AI/2000/4, could only be undertaken based on a proposed work schedule. In the present case, the Applicant submitted a work schedule based on five months of sabbatical leave, which was then reduced to a period of a single month, without giving any further details on how the proposed study could be undertaken and completed within the new proposed time frame. The Programme Officer-in-Charge did not make any subjective determination on the feasibility but asked the Applicant to amend his application in light of the new time frame, given the 80 percent reduction in the time proposed to complete the study project. This reduction was so significant

that it was entirely reasonable for the Programme Officer-in-Charge to request an amended schedule of work, in the absence of any explanation or details as to how the proposed study would be completed in a month;

c. It cannot be reasonably argued that the Committee should be responsible for deciding on the completeness of all applications. The Committee is composed of six members and meets once a year for one day. It is not reasonable to expect it to conduct all administrative functions in relation to the proposals, including vetting the applications for completeness, without the assistance of the Programme Officer-in-Charge;

d. The schedule of work of the research was not submitted as the new proposal radically changed the substance of the application. Consequently, the application was rightly considered incomplete by the Programme Officer-in-Charge. In performing her functions, the Programme Officer-in-Charge was under a duty to review the documentation and information submitted and only to forward applications that contained all the documents listed under para. 4 and all information listed under para. 5 of ST/IC/2009/33. In the present case, the Programme Officer-in-Charge merely assessed that a work schedule for the proposed period of sabbatical leave of one month was missing;

e. Neither the Programme Officer-in-Charge, nor her assistant, confirmed the receipt of the Applicant's complete application at any point;

f. The Applicant did not submit his application through his Head of Department, but submitted it to the Programme Officer-in-Charge. The Programme Officer-in-Charge, in turn, sought to accommodate consideration of the amended proposal by granting an extension to provide the requested documentation and information, and acted with consideration for the interest of the Applicant by not insisting on strict compliance with the specifications of ST/IC/2009/33 regarding the means of submission of the application.

Consideration

Preliminary matter

18. At the case management hearing of 8 March 2011, Counsel for the Applicant confirmed to the Tribunal that the Applicant did not contest the failure to grant special leave to him in the same time period, which was a separate administrative decision raised in his request for management evaluation. Accordingly, this matter is not considered in the present Judgment.

Receivability

19. The Respondent's first contention is that the impugned decision does not satisfy the definition of an administrative decision as "a decision taken by the administration in a precise individual case that has a direct legal effect on an individual's rights and obligations", citing the cases of *Hocking*, *Jarvis*, *McIntyre* UNDT/2009/077 and *Planas* UNDT/2009/086. The Respondent states that the matter is therefore not receivable.

20. The Tribunal finds to the contrary on the present facts. The decision in question taken by the Administration clearly concerns the Applicant's individual case, and, if it is one capable of affecting his contractual rights, is receivable. A staff member has a contractual right to a decision on his application for sabbatical leave. The Applicant's application for sabbatical leave was considered by the Programme Officer-in-Charge, and deemed to be incomplete. The Programme Officer-in-Charge thus took a decision which was final and which was clearly one capable of affecting the Applicant's contractual rights.

21. The Respondent argues further that the Programme Officer-in-Charge's action was not an administrative decision because: (a) no discretion was exercised; and (b) the Applicant had no right to sabbatical leave, which is a benefit and not a right. In relation to the contention that no discretion was exercised, the Programme Officer-in-

Charge made a decision that the application was incomplete. An exercise of discretion may require making a decision or a judgment on the basis of choosing between options. The very fact that she decided not to forward the application shows that the Programme Officer-in-Charge exercised some nature of discretion—otherwise she would have simply forwarded the application to the Committee. The question in this case, therefore, is whether that discretion was correctly exercised—that is, by someone actually entitled to exercise the discretion, and, if so, whether it was exercised in accordance with any legal limitations concerning its exercise.

22. The Respondent's second argument is that sabbatical leave is not a right, but an entitlement or benefit. This argument misconstrues the Applicant's case, which is not that he had a right to sabbatical leave, but that he had a right to have his application for sabbatical leave considered. Accordingly, all of the Respondent's arguments on receivability fail, and the Tribunal finds the present application receivable.

23. To my mind, in light of the Respondent's own arguments in this case, it should have been clear that the decision taken in this case clearly falls within the type of decisions contemplated by art. 2.1 of the Tribunal's Statute. As stated by this Tribunal in *Hassanin* Order No. 83 (NY/2011), this Tribunal has moved toward a less rigid and more purposive interpretation of what constitutes an administrative decision: see *Luvai* UNDT/2009/074, *Jaen* UNDT/2010/165, *LeBoeuf* UNDT/2010/206, *Appleton* Order No. 289 (NY/2010); see also the United Nations Appeals Tribunal's judgments in *Tabari* 2010-UNAT-030, *Andati-Amwayi* 2010-UNAT-058. Despite the growing jurisprudence, submissions on receivability which hold little or no merit, specifically with regard to what constitutes an administrative decision, are constantly peddled in cases before the Tribunal. The Tribunal appreciates that the Respondent's submission was made some time before the date of this Judgment, and may have been made before at least some of the above-cited jurisprudence, but parties should not fail to take into account the developing case law of the Dispute Tribunal and the Appeals Tribunal. Parties should amend their pleadings and submissions accordingly, making

the necessary concessions and avoiding arguments that border on being frivolous, requiring an uneconomic use of the Tribunals time to adjudicate settled issues.

Summary of facts

24. It is useful to summarise what transpired in this case. The Applicant initially submitted his application on 15 November 2009, two days before the deadline. He received a response the following day, and was asked to resubmit it in a format that complied with the requirements (specifically, endorsement from the Director). It was clearly assessed as being incomplete in the submitted format. The Applicant did not challenge this assessment or the procedural requirement for compliance.

25. The Applicant was advised the following day that his Division could not release him for five months, and he requested the Division's assent to "one month up to end of January 2010".

26. On 17 November 2009, the original deadline, a number of events occurred. The Applicant was given leave by his supervisor for an absence of one month (which was approved by the Director) and directed to contact the Committee to determine whether his original request needed to be amended. The Director and the Programme Officer-in-Charge were sent copies of this correspondence, with the latter writing to the Applicant, granting him an extension of deadline until 22 November 2009 to submit an amended proposal with the Director's letter of endorsement.

27. The following day, the Applicant requested a further amendment, to include the period of December 2009, for a total period of two months. It appears that this leave was approved by the Director, but the Programme Officer-in-Charge responded that the program was not to commence before January 2010.

28. On 20 November 2009, the Applicant was reminded by the Programme Officer-in-Charge to send his application, including an amended schedule of work, by 22 November 2009. He sent it by this date, but without an amended schedule of work.

Review of exercise of discretion

Requirement to evaluate applications

29. ST/AI/2000/4 (Sabbatical leave programme) states:

4.1 Eligible staff members interested in the programme shall submit an application in accordance with the detailed provisions contained in the annual information circular on the sabbatical leave programme.

4.2 Applications shall be evaluated on the basis of the following criteria:

(a) Importance of the study. This element shall be assessed on the basis of the importance of the issue in the proposed field of study and its relevance to the current and future work of the United Nations and to the current or future responsibilities of the applicant;

(b) Feasibility of the proposed study and whether it can be undertaken and completed within the proposed period of the sabbatical leave;

(c) Appropriateness of the planned methodology;

(d) Quality of the proposal, demonstrating awareness of the latest developments in the area of study;

(e) Suitability of the candidate, including demonstrated ability to perform independent work. This element shall be assessed on the basis of the staff member's qualifications and/or experience and the references provided by the applicant;

(f) Expected usefulness of the completed study to the United Nations.

4.3 The Assistant Secretary-General for Human Resources Management, assisted by a selection committee, shall review the proposals submitted and make a final selection.

...

4.4 The Office of Human Resources Management shall consult the heads of offices and/or departments to confirm the release of selected staff members.

30. The order of these sections, each with its own mandatory requirement, shows that there is a clear sequence to the process—firstly, the staff member must submit the compliant application; next, the evaluation must occur, although it is not expressly

stated in ST/AI/2000/4 by whom it must be done; finally, the ASG, OHRM, assisted by a selection committee, must review and make final selections.

31. Sections 1.2 and 4.1 of ST/AI/2000/4 refer to the annual information circular on the Sabbatical Leave Programme. Paragraph 6 of ST/IC/2009/33, the relevant circular at the time in question, states:

All proposals will be evaluated by a selection committee on the basis of the criteria set out in administrative instruction ST/AI/2000/4. The terms of the proposal shall be binding for the staff member. Late or incomplete applications will not be considered.

32. Thus, although ST/AI/2000/4 does not specify who is to “evaluate” the application, ST/IC/2009/33 defines the evaluation of the proposal as a responsibility of the Committee. This specification, read in light of the sequence suggested by ST/AI/2000/4 and sheer common sense, suggests that applications are evaluated by the Committee, and then reviewed and decided on by the ASG, OHRM.

33. Despite the seemingly absolute wording of the phrases “applications shall be evaluated” in sec. 4.2 of ST/AI/2000/4, and “all proposals” in para. 6 of ST/IC/2009/33, there is a specific category—namely “late or incomplete applications”—which will “not be considered”. Paragraph 6 of ST/IC/2009/33, however, does not specify who should determine whether an application is late or incomplete, and no express provision of either ST/AI/2000/4 or ST/IC/2009/4 attributes any power to this effect to the Programme Officer-in-Charge.

Was the Applicant’s application incomplete?

34. In order to assess whether the Applicant’s application for sabbatical leave was incomplete, it is necessary to refer to the requirements for such applications as contained in the relevant instruments. Section 4.1 of ST/AI/2000/4 uses mandatory language, stating that staff members “shall submit an application in accordance with the detailed provisions contained in the annual information circular”. ST/IC/2009/33 sets out the requirements of these detailed provisions in paras. 4 and 5:

4. Each application must include the following documents:
 - (a) Application form contained in annex I to the ... circular;
 - (b) Proposal describing the research project;
 - (c) Written endorsement by the head of department or office or chief mission support responsible for the work of the applicant during the proposed research or study project, which must be attached;
 - (d) Two signed letters of recommendation;
 - (e) Written correspondence on potential acceptance from the proposed sabbatical institution.

Applicants are requested to submit all of the above documents through their respective head of department or office or chief mission support to the Officer-in-Charge, Sabbatical leave programme, Room M-14033E, Learning, Development and Human Resources Services Division, Office of Human Resources Management, New York, NY 10017, by 17 November 2009.

5. The proposal, which should not exceed four pages, should contain the following information:
 - (a) Title of the research or study project;
 - (b) Field of the research or study project;
 - (c) Rationale for the research or study project;
 - (d) Relationship of the research or study project to the work of the individual and to the work of the Organization;
 - (e) Outline of the topic or topics to be covered;
 - (f) Study or research activities;
 - (g) Detailed methodology;
 - (h) Schedule of work of the research or study project, with an indication of any preparatory work already accomplished;
 - (i) Usefulness of the expected outcome of the research or study project and its practical implications for the individual and the Organisation.

35. An incomplete application may therefore be one which is missing one of the documents specified in para. 4 (e.g., an application form, proposal, letters of recommendations). An application may also be considered incomplete if it is missing key information as described in para. 5, such as the outline, activities, or methodology

of the proposed research or study project. However, the fact that an application contains minimal information in response to the requirements of paras. 4 and 5 does not necessarily mean that it shall be considered complete. There may be cases where an application, while formally containing the documents and information described above, is substantively incomplete, that is, where it does not contain information of a sufficient or reasonable quality for a decision to be made on the basis of what is submitted. An example of this might be where the information described in para. 5 is provided in too brief a manner to be useful, or is irrelevant or incompatible with the application.

36. In the present case, the Applicant submitted an application on 15 November 2009 for sabbatical leave for a five-month period. There is no dispute that the proposal initially complied with the requirements of ST/IC/2009/33. However, when the Applicant was refused authorisation to take five months' sabbatical leave, he sought to amend the duration to one month. He was directed by the Supervisor to amend his application to reflect the shortening of the authorised duration. The Programme Officer-in-Charge put the Applicant on notice that his application required an "amended proposal, along with the letter of endorsement [from the Director]", and he was given an extension of the deadline to provide these. Shortly thereafter on the same day, the Director provided the letter of endorsement. The Applicant sought once again to amend the duration of his leave (from one month to two), but, despite being reminded again on 20 November 2009 that he was required to submit an amended schedule of work as part of his resubmitted proposal, he did not do so.

37. The schedule of work that was submitted with the final application related to a five-month sabbatical leave, but the Applicant was, by that stage, applying for leave of one or two months' duration. The proposal, and therefore the application, did not merely lack a correct schedule of work; it contained a schedule of work that was inconsistent with what he was asking for. Accordingly, the party tasked with evaluating the application or proposal would not have been able to come to a decision that the Applicant's specific application for sabbatical leave was justified, as certain

mandatory information needed to evaluate his proposal was absent. At the date of the extended deadline, the Applicant had submitted an application for sabbatical leave which included an application form together with other documents, including a materially deficient proposal. However, as the proposal did not contain sufficient information to allow the Committee to make a reasoned decision on it, the application was therefore incomplete.

Did the Programme Officer-in-Charge act properly in not forwarding the Applicant's application for sabbatical leave?

38. The Applicant's contention is that the Programme Officer-in-Charge does not have the power to determine if an application is incomplete for substantive reasons—specifically, that an application is not feasible, in light of the proposed schedule of work. His argument is that the Programme Officer-in-Charge may only find an application incomplete if there is an objective failure to fulfill the documentary and procedural requirements set out in paras. 4 and 5 of ST/IC/2009/33 and that it is only the Committee that makes a decision on the completeness of an application.

39. The Programme Officer-in-Charge had been sent the Applicant's original application and the facts show she was aware of its contents. Thereafter, she received copies of the correspondence between the Applicant, the Supervisor and the Director, which correspondence covered the shortening of the period of leave from five to one or two months. The Programme Officer-in-Charge informed the Applicant of the need for his schedule of work to be amended.

40. When the Programme Officer-in-Charge received the final application, she decided that it did not contain the information necessary, that is, a schedule of work applicable to the Applicant's proposal, for the Committee to undertake its evaluation, and therefore did not forward it to the Committee. As explained above, this assessment of the completeness of the application was, in the circumstances, a reasonable one. The question, however, is whether she was authorised, under the relevant instruments, to decide not to forward the application to the Committee, based on her assessment.

41. ST/AI/2000/4 does not outline the powers or obligations of the Programme Officer-in-Charge. ST/IC/2009/3 mentions only that documents are to be submitted to the Programme Officer-in-Charge. Neither was any evidence led of the delegation of authority to the Programme Officer-in-Charge to determine whether applications are either late or incomplete. Although the wording of para. 6 of ST/IC/2009/33 states that such applications “will not be considered”, it must be for the Committee to undertake at least a preliminary consideration and make the assessment of which applications comply and which will be considered on their merits.

42. According to the Respondent’s unchallenged submission, the Committee is composed of six members and meets only once a year for one day, during which it must consider all applications for that year. It may therefore be impractical that the administrative framework of the Sabbatical Leave Programme does not allow the Programme Officer-in-Charge to make a determination whether an application is incomplete, even if it clearly does not contain the information necessary for the Committee to undertake an evaluation. However, in the absence of a proper delegation of authority to the Programme Officer-in-Charge to make determinations of substantive incompleteness, or a clear direction in the legislative instruments, no conclusion is available other than that the Programme Officer-in-Charge should have forwarded the application for evaluation by the Committee. Accordingly, the Tribunal finds that, on the facts, the determination that the application was incomplete and should not be forwarded for consideration was not within the Programme Officer-in-Charge’s power, and was in breach of the Applicant’s terms of appointment—specifically, his right to have his application forwarded to the Committee and the ASG, OHRM.

Loss resulting from the breach

43. The Tribunal must now determine the prejudice suffered by the Applicant as a result of the Programme Officer-in-Charge’s failure to forward his application for sabbatical leave to the Committee.

44. As explained by the Tribunal above, the application submitted by the Applicant lacked a compatible schedule of work relating to his proposed leave, required for a proper assessment of the application. Without a relevant schedule of work, a proposal cannot be properly assessed as either meritorious or not. The Applicant's application for sabbatical leave was therefore so manifestly incomplete that it would have been outside the boundaries of reasonableness for the decision-maker to determine it to be complete. A decision-maker cannot determine an application for sabbatical leave as complete if the proposal does not contain essential information such as a schedule of work which is necessary for a decision on the application to be made.

45. In *Antaki* 2010-UNAT-095, the United Nations Appeals Tribunal determined that, "Not every violation will necessarily lead to an award of compensation. Compensation may only be awarded if it has been established that the staff member actually suffered damages" (see para. 20). In light of the finding that no consideration or informed evaluation of the Applicant's application for sabbatical leave would have been possible, the Applicant cannot be said to have suffered loss from the decision of the Programme Officer-in-Charge not to forward his application to the Committee. Moreover, the Applicant has not made any suggestion or argument that her decision was tainted by bad faith, unfairness, unreasonableness, illegality, irrationality, bias, capriciousness or arbitrariness (see *Sanwidi* 2010-UNAT-084), such that any resultant loss would have been attributable to the Respondent.

45. As the Tribunal has found that no consideration or informed evaluation of the Applicant's application for sabbatical leave would have been possible even if it had been forwarded, it finds no basis for an award of damages for alleged delay in the completion of his studies and for mental distress.

46. Although the above is sufficient for the determination of this case, for the sake of completeness the Tribunal will consider whether the outcome would have been different if the application had been evaluated. ST/AI/2000/4 requires that applications be evaluated on the basis of, *inter alia*, the "[f]easibility of the proposed study and

whether it can be undertaken and completed within the proposed period of the sabbatical leave”. The Applicant’s proposal to complete a five-month programme (as specified in his schedule of work) within a one or two-month period appears to be unreasonable. Whilst it is not for the Tribunal to substitute its assessment for that of the Committee, the Tribunal considers that it is unlikely that a reasonable decision-maker could arrive at the determination the Applicant sought on this basis. On the facts, the Tribunal assesses therefore as negligible the chance that the ASG, OHRM, assisted by the Committee, would have ultimately found otherwise.

Conclusion

47. The present application is therefore dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 4th day of August 2011

Entered in the Register on this 4th day of August 2011

(Signed)

Santiago Villalpando, Registrar, New York