



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** René M. Vargas M.

MAFESSANTI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alan Gutman, ALS/OHRM, UN Secretariat

## **Introduction**

1. By application filed on 18 August 2015 with the New York Registry, the Applicant contests the decision to find her ineligible for reinstatement from her fixed-term appointment (“FTA”) with the United Nations Assistance to the Khmer Rouge Trials as of the taking up of her current post on a FTA with the United Nations Appeals Tribunal (“UNAT”).

## **Facts**

2. The Applicant held a fixed-term appointment with the United Nations Assistance to the Khmer Rouge Trials (“UNAKRT”) in Cambodia, from 6 January to 30 April 2014.

3. From 1 May 2014 to 31 December 2014, the Applicant held a temporary appointment with the Department of Peacekeeping Operations Standing Police Capacity in Brindisi, Italy.

4. Since 1 January 2015, the Applicant holds a fixed-term appointment with the UNAT. She signed the respective letter of appointment on 5 January 2015. It did not contain a provision with respect to the Applicant’s reinstatement.

5. By email of 17 February 2015, the Applicant asked the Office of Human Resources Management (“OHRM”) whether she was reinstated, under staff rule 4.18, when taking up her position with the UNAT as of 1 January 2015 as she had been reappointed within twelve months of separating from service from her previous fixed-term appointment. She noted that this “was not clear to [her] from the most recent Personnel Appointment form [she] had”. By emails of the same day and of 19 February 2015, a Human Resources Assistant, OHRM, stressed that OHRM would revert after review.

6. By email of 24 February 2015, a Human Resources Officer, OHRM, responded to the Applicant, explaining the reasons why OHRM did not consider her to be eligible for reinstatement under staff rule 4.18. The Applicant sought further clarification from OHRM by email of the same day, noting that she was seeking reinstatement from her previous fixed-term contract with UNAKRT, and not from her temporary appointment with UNGSC/UNLB.

7. The Human Resources Officer, OHRM, responded to the Applicant on 25 February 2015, noting that “she [had] fully understood [her] request” and that “since [the Applicant] held a temporary appointment between the two fixed-term appointments, it [was] not possible for [her] to be reinstated.”

8. By email of 27 February 2015, the Applicant drew OHRM attention to a Dispute Tribunal and Appeals Tribunal judgment, issued respectively in 2012 and 2014, noting that “she was trying to understand [her] rights and the Organization’s position on this point”. By email of the same day, the Human Resources Officer, OHRM, thanked the Applicant for bringing the judgments to her attention, and advised her that she would review the case again and revert back to the Applicant.

9. On 8 April 2015, the Applicant wrote again to OHRM, asking whether there had been any update in the matter. By email response of the same day, the Human Resources Officer, OHRM, advised the Applicant that she would submit the Applicant’s case “to an appropriate authority to review”, and that although “this may take some time” “it would be properly reviewed” and “[she would] inform [the Applicant] in due course”.

10. On 21 April 2015, the Applicant filed a request for management evaluation of OHRM decision to find her ineligible for reinstatement.

11. By letter dated 26 May 2015, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to accept the recommendation of the Management Evaluation Unit to uphold the contested decision.

12. The Applicant filed the present application on 18 August 2015. The case was registered by the Tribunal's New York Registry under Case No. UNDT/NY/2015/050, and served on the Respondent, who was granted until 21 September 2015 to submit his reply, which he did.

13. By Order No. 190 (NY/2015) of 19 August 2015 on Change of Venue, the case was transferred to the Tribunal's Geneva Registry, where it was registered under Case No. UNDT/GVA/2015/155.

14. By Order No. 184 (GVA/2015) of 1 October 2015, the Tribunal asked the parties to file objections, if any, to a judgment being rendered on the papers. Both parties informed the Tribunal that they did not have objections thereto.

#### **Parties' submissions**

15. The Applicant's principal contentions are:

a. Section 1.2 of ST/AI/2010/4/Rev.1 and Staff Rule 4.17 read together do not of themselves necessarily allow the conclusion that reinstatement is precluded only by having held a temporary appointment. Moreover, the rules do not support an interpretation that for the purpose of reinstatement, the reference in staff rule 4.18 to a fixed-term or continuing appointment has to be the last appointment held by a staff member;

b. The Appeals Tribunal, in *Egglesfield* 2014-UNAT-399, clarified that staff rule 4.18 only provides for two expressed criteria for reinstatement in staff rule 4.18(a), namely that (a) a staff member held a fixed-term appointment, and (b) he or she was re-employed under a fixed-term appointment within twelve months of separation of service. No other conditions for reinstatement have been established by the Secretary-General. To require a staff member to be re-employed by the same office or to be vetted in a particular manner adds conditions to reinstatement that are not set forth in staff rule 4.18(a); and

c. She does not seek reinstatement from the end of her temporary appointment with DPKO, but from the end of her fixed-term appointment with UNAKRT to her current fixed-term appointment, pursuant to staff rule 4.18, and implementation of ensuing rights pursuant to the Staff Regulations and Rules.

16. The Respondent's principal contentions are:

a. The application is not receivable since the Applicant failed to file a timely request for management evaluation; the Appeals Tribunal has consistently emphasized the need to strictly adhere to statutory deadlines; it is mandatory to file a request for management evaluation within 60 days of notification of the contested decision;

b. The Applicant was notified of the contested decision on 5 January 2015, when she signed her letter of appointment for her current fixed-term appointment, which did not stipulate that she was reinstated; furthermore, the Applicant was not asked to return any monies she had received on account of her separation, as required in cases of reinstatement (cf. staff rule 4.18 (b)); ignorance of the law is no excuse for missing deadlines;

c. From 5 January 2015, the Applicant had 60 days to submit her request for management evaluation in accordance with staff rule 11.2(c), that is, until 6 March 2015; by submitting it only on 21 April 2015, the Applicant's request for management evaluation is time-barred;

d. The reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines; and

e. Therefore, OHRM emails of 24 and 25 February 2015 did not constitute new and separate administrative decisions, but rather a confirmation of the initial decision of 5 January 2015; hence they did not restart anew the time limit to request management evaluation; the Dispute

Tribunal has no power to suspend or waive the deadlines for management evaluation under art. 8.3 of the Statute; it follows that it has no competence to hear the application.

### **Consideration**

17. Pursuant to art. 2.1 of its Statute, the Tribunal has jurisdiction to consider applications only against an administrative decision for which an Applicant has, first, timely requested management evaluation, and, second, filed an application within the statutory time limit (see *Eggesfield* 2014-UNAT-402; *Ajdini et al.* 2011-UNAT-108).

18. With respect to the timelines for the request for management evaluation, staff rule 11.2(c) provides:

A request for management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

19. The Tribunal recalls the established jurisprudence of the Appeals Tribunal, according to which statutory time limits have to be strictly enforced (*Mezoui* 2010-UNAT-043; *Laeijendecker* 2011-UNAT-158; *Romman* 2013-UNAT-308).

20. Furthermore, pursuant to art. 8.3 of its Statute, and equally to the established jurisprudence of the Appeals Tribunal, the Dispute Tribunal has no discretion to waive the deadline for management evaluation or administrative review (*Costa* 2010-UNAT-036; *Rahman* 2012-UNAT-260; *Roig* 2013-UNAT-368; *Eggesfield* 2014-UNAT-402).

21. Additionally, the Appeals Tribunal has consistently held that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to the statutory time limits; rather, the time starts to run from the date of the original decision (*Sethia* 2010-UNAT-079; *Odio-Benito* 2012-UNAT-196).

22. Finally, according to the longstanding jurisprudence of the Appeals Tribunal, “staff members have to ensure that they are aware of Staff Regulations and Rules and the applicable procedures in the context of the administration of justice in the United Nations’ internal justice system and that ignorance of the law is no excuse for missing deadlines” (*Kazazi* 2015-UNAT-557; *Amany* 2015-UNAT-521, citing *Kissila* 2014-UNAT-470, *Christensen* 2012-UNAT-218 and *Jennings* 2011-UNAT-184).

23. The Appeals Tribunal also held in *Rosana* 2012-UNAT-273 that “the date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine”.

24. To determine the relevant date from which the 60-day deadline under staff rule 11.2(c) started to run in the case at hand, the Tribunal first has to assess when the original decision not to reinstate the Applicant was notified to her. In her application, the Applicant refers to the email of 24 February 2015 from the Human Resources Officer, OHRM, as the contested decision.

25. In determining the date of the contested decision, the Tribunal notes that staff rule 4.18 on Reinstatement provides:

(a) A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within 12 months of separation from service may be reinstated if the Secretary-General considers that such reinstatement would be in the interest of the Organization.

...

(c) If the former staff member is reinstated, it shall be so stipulated in his or her letter of appointment.

26. The Tribunal finds that the unambiguous wording of staff rule 4.18(c) is crucial for the determination of the date of the administrative decision in the case at hand. There is no doubt that the Applicant signed her letter of appointment on 5 January 2015, and that said letter did not contain any provision stipulating that she had been reinstated. The only possible conclusion to be drawn from this letter of appointment is that the Applicant had not been reinstated. Otherwise, pursuant

to the legal obligation to do so (“ ... shall be so stipulated ...”), it would and should have been explicitly mentioned in the letter of appointment.

27. In comparison, the Tribunal notes that if a letter of appointment e.g. places a staff member on a certain category and level, said staff member is on notice, as of the date of signature of the letter of appointment, of the Administration’s decision to put him/her on that category and level. The same applies if a letter of appointment, despite the explicit wording of a relevant rule, does not provide for a certain legal position (e.g. reinstatement). Indeed, the content of the letter of appointment, detailing the legal position and rights of a staff member, complies with the criteria of an administrative decision in that it is unilateral, taken by the Administration in a precise individual case, and produces direct legal consequences to the legal order.

28. As such, in the present case, and since the letter of appointment did not refer to a reinstatement, the Applicant was—as of 5 January 2015, that is the day she signed her letter of appointment—on notice that she would not be reinstated. The Tribunal notes that ignorance on the part of the Applicant, if any, with respect to staff rule 4.18(c), does not change this.

29. The Tribunal finds that the subsequent exchange between the Applicant and the Administration did not result in a new administrative decision that could have reset the clock to contest the refusal to reinstate her. The Applicant’s request to have the matter reviewed by OHRM was not based on any new facts, or information, the Respondent was unaware of (cf. in this respect *Fiala* 2015-UNAT-516).

30. More specifically, the Applicant, in her email of 17 February 2015, simply referred to her previous fixed-term appointment with UNAKRT, which ended on 30 April 2014, and her current appointment at the UNAT as of 1 January 2015. The Human Resources Officer, OHRM, in her response of 24 February 2015—i.e. the email to which the Applicant referred to as the contested decision—noted that it was not possible to reinstate the Applicant in light of her having held a temporary appointment between 1 May 2014 and 31 December 2014 with the



Department of Peacekeeping Operations Standing Police Capacity in Brindisi, Italy.

31. By email of 25 February 2015, upon a further request of the Applicant, the Human Resources Officer, OHRM, explained, yet again, that reinstatement was not possible, “since [the Applicant] held a temporary appointment in between the two fixed-term appointments”.

32. Thereafter, on 27 February 2015, the Applicant sought a further review of the decision in light of two judgments of the Dispute and the Appeals Tribunal, issued respectively in 2012 and 2014. In response thereto, by email of 8 April 2015, the Human Resources Officer, OHRM, noted that since her authority might be questioned, she would submit the Applicant’s case to an appropriate authority for review. It is unclear whether any response was subsequently sent to the Applicant.

33. The description above leaves no doubt that the email from OHRM of 24 February 2015, in reply to the Applicant’s email of 17 February 2015, was not based on any new fact that was unknown at the time the letter of appointment was issued. Even the subsequent exchanges between the Applicant and OHRM show that in light of the Applicant’s repeated requests, OHRM, while suggesting to review her case, did not receive or base such review on any new facts or information. Indeed, the Applicant’s own views and interpretation of the relevant rules, and their application to her case, do not constitute new facts or information susceptible to trigger a new decision. Furthermore, her reference to judgments of the Dispute and Appeals Tribunal, issued in 2012 and 2014, could not trigger a new administrative decision, either.

34. Therefore, since it was only on 21 April 2015 that the Applicant filed her request for management evaluation regarding an administrative decision known to her as from 5 January 2015, her request for management evaluation was submitted beyond the statutory 60-day deadline, and, as a result, her application is irreceivable, *ratione materiae*.

**Conclusion**

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

The application is rejected.

*(Signed)*

Judge Thomas Laker

Dated this 3<sup>rd</sup> day of November 2015

Entered in the Register on this 3<sup>rd</sup> day of November 2015

*(Signed)*

René M. Vargas M., Registrar, Geneva