



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2016/032

Judgment No.: UNDT/2016/061

Date: 19 May 2016

English

Original: French

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Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

PALACO CABALLERO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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SUMMARY JUDGMENT

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**Counsel for Applicant:**

Self-represented

**Counsel for the Respondent:**

ALS/OHRM, United Nations Secretariat

## **Introduction**

1. By application submitted on 11 May 2016 and registered under Case No. UNDT/GVA/2016/032, the Applicant contests the decision to place her on special leave without pay for the period from 27 January to 14 February 2016, a decision that “was notified to her by e-mail dated 2 February 2016”.

## **Facts**

2. The Applicant is employed as Associate Legal Officer (P-2) at the Registry of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”), on the basis of a temporary contract.

3. By e-mail dated 2 February 2016, a human resources clerk at the Registry informed an employee of the Chambers Legal Support Section that in light of the exhaustion of all other benefits to which the Applicant was entitled, she was placed on special leave without pay during the period from 27 January 2016 to 14 February 2016. The Applicant was copied on the e-mail.

4. By memorandum dated 2 March 2016, the Applicant contested before the Registrar of the ICTY, the decision to place her on special leave without pay, which “was notified to her by a staff member from Human Resources by e-mail dated 2 February [2016]”. In her memorandum, the Applicant also referred to a memorandum dated 4 February 2016 by which the Registrar, responding to a request from the Applicant, would have informed the latter that, until she resumed work, the Human Resources Section would continue to consider her to be on special leave without pay.

5. By memorandum of 16 March 2016, the Registrar of the ICTY informed the Applicant that, if she wished to formally contest the decision to place her on special leave without pay, she would have to submit, in the first place, a request for management evaluation to the Management Evaluation Unit.

6. The Applicant filed the present application on 11 May 2016, stressing that she had not requested a management evaluation.

### **Applicant's main contentions**

7. The absence of formal administrative action on the part of the Registrar of the ICTY has deprived her of her right to contest the decision by way of management evaluation; her placement on special leave without pay is unlawful because of the lack of administrative action. She is seeking €10,000 in compensation.

### **Consideration**

8. First, the Tribunal must consider whether the complaint is admissible; hence, in the first place it must establish whether the contested decision was the subject of a request for management evaluation as provided for in the texts below.

9. Indeed, art. 8 of the Statute of the United Nations Dispute Tribunal stipulates:

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;

10. Furthermore, rules 11.2(a) and (c) of the Staff Rules, relating to management evaluation, state that:

(a) A staff member wishing to formally contest an administrative decision ... shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 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.

11. The Tribunal notes that the Applicant acknowledged in her application and, prior to that, in her memorandum of 2 March 2016 addressed to the Registrar of the ICTY, that she was informed of the decision to place her on special leave without pay by notification of 2 February 2016. Therefore, there can be no doubt that, in accordance with the above provisions, to allow the Tribunal to declare the application receivable, the Applicant should have submitted the contested decision for management evaluation within the prescribed deadline.

12. Given that the Applicant has until today not yet submitted a request for management evaluation of the contested decision, the Tribunal cannot but declare the application irreceivable, *ratione materiae* (*Eggesfield* 2014-UNAT-402). The Tribunal also notes that, since the statutory time limits specified above have expired, at this stage any request by the Applicant for management evaluation would be late, hence time-barred.

13. Since this is a question of law, the Tribunal considers that it is appropriate to make use of art. 9 of its Rules of Procedure, and to decide on the application by summary judgment, without transmitting the application to the Respondent (cf. *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335).

### **Conclusion**

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 19<sup>th</sup> day of May 2016

Entered in the Register on this 19<sup>th</sup> day of May 2016

(Signed)

René M. Vargas M., Registrar, Geneva