

*Translated from French*



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/GVA/2009/29  
Judgment No.: UNDT/2010/008  
Date: 20 January 2010  
Original: French

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**Before:** Judge Jean-François Cousin  
**Registry:** Geneva  
**Registrar:** Víctor Rodríguez

GLAVIND

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
None

**Counsel for Respondent:**  
Chris Mensah, Office of the Director-General/UNON

## **Application**

1. The applicant submitted an appeal on 26 January 2009 to the New York Joint Appeals Board contesting the 4 August 2008 decision of the Director-General of the United Nations Office at Nairobi to reorganize the Support Services Service which the applicant headed, removing the Procurement, Travel and Shipping Section from under her responsibility and putting it under the direct authority of the Director of the Division of Administrative Services.
2. The applicant requests that the said decision should be rescinded, that PTSS should be restored under her authority as part of the Support Services Service, and that the damage to her reputation should be repaired.
3. Further to a request from the applicant dated 27 January 2009, the appeal was transferred to the Joint Appeals Board in Geneva.
4. In line with the transitional measures set forth in resolution 63/253 of the United Nations General Assembly, the case was referred to the United Nations Dispute Tribunal on 1 July 2009.

## **Facts**

5. The applicant has since May 2004 held the position of Chief, Support Services Service, at the P-5 level, under the authority of the Director of the Division of Administrative Services, United Nations Office at Nairobi.
6. On 26 February 2008, the Office of Internal Oversight Services, in its audit report No. AA2006/211/04 concerning the support and procurement services of the United Nations Office at Nairobi, pointed out serious deficiencies in the procurement control system.
7. By a memorandum dated 4 August 2008, the Director-General of the United Nations Office at Nairobi announced her decision to remove the Procurement, Travel and Shipping Section from under the purview of Support Services Service and to put it directly under the Director of the

Division of Administrative Services, noting that the decision was based on the conclusions of the Office of Internal Oversight Services audit report.

8. On 15 September 2008, the Director of the Division of Administrative Services sent a memorandum to the Director-General of the United Nations Office at Nairobi raising serious reservations about the reorganization of the Procurement, Travel and Shipping Section, while confirming that the Director-General's decision was in the process of being implemented.

9. On 26 September 2008, the applicant requested the Secretary-General to review the decision of 4 August 2008 to remove the Procurement, Travel and Shipping Section from under her authority.

10. By a letter dated 13 October 2008, the Administrative Law Unit of the Office of Human Resources Management at the United Nations Secretariat acknowledged receipt of the applicant's request.

11. By a memorandum dated 10 December 2008, the Human Resources Policy Service of the Office of Human Resources Management at the United Nations Secretariat informed the applicant that her request for review had been rejected. It pointed out that the contested decision was not an appealable administrative decision as defined by the United Nations Administrative Tribunal (UNAT), and that the applicant's allegation that the decision in question violated her rights as a staff member was not borne out by the facts of the case.

12. On 26 January 2009, the applicant submitted her appeal to the Joint Appeals Board in New York, explaining that she did not wish to have her case heard by the Joint Appeals Board in Nairobi owing to conflict of interest. Following a decision to refer the matter to the Joint Appeals Board in Geneva, the secretariat of that Joint Appeals Board received the appeal in question on 27 February 2009.

13. The respondent replied on 6 May 2009. The applicant responded on 17 July 2009, and the respondent further replied on 7 September 2009. The final observations of the applicant were received at the Tribunal registry on 22 September 2009.

**Parties' submissions**

14. The applicant's principal contentions are as follows:

- a. As regards the receivability *ratione materiae* of the present appeal, the applicant contends that a UNAT judgment cannot serve as the basis for the non-receivability of her application. She maintains that the said judgment sets three conditions that were not set out in Chapter XI of the Staff Rules in effect at the time;
- b. The applicant avers that, in any event, her application is receivable since the three conditions outlined in the above-mentioned jurisprudence are met in this case. She argues that the decision (i) had been taken unilaterally by the Director-General of the United Nations Office at Nairobi; (ii) can be applied individually because the applicant is the only person to have been excluded from procurement decisions following the restructuring; and (iii) it has a legal impact on her terms of appointment, in that it reduces the scope of her functions and also denies her the chance of being promoted to D-1 in case of reclassification of the post which she was holding during the comparative post review exercise planned for September 2008;
- c. The applicant recalls that the impugned decision was taken by the Director-General of the United Nations Office at Nairobi as retaliation for the applicant's desire to apply the existing rules, and as such constitutes abuse of authority;
- d. The applicant is not disputing the authority of the Director-General of the United Nations Office at Nairobi to take such a decision. However, she is questioning the basis of this particular decision, in that contrary to the respondent's claim, the Director-General of the United Nations Office at Nairobi did not intend to strengthen internal controls with regard to procurement, or to follow the recommendations of the Office of Internal Oversight Services. On

the contrary, the applicant feels that the contested decision will disrupt the operation of the Service and maintains that the audit report of 26 February 2008 does not in any way recommend the removal of the Procurement, Travel and Shipping Section from the Support Services Service;

- e. To support her claim, the applicant points to a number of incidents and disputes between herself and the Director-General of the United Nations Office at Nairobi in the performance of her duties, and to the fact that in April 2007 she wrote to the Director-General to propose that they discuss their relationship, but received no feedback from the Director-General. The applicant further alleges that she played a key role during the audit by the Office of Internal Oversight Services which led to the discovery of irregular practices by certain staff members with regard to procurement. She asserts that the contested decision was taken without regard for the opinion of the staff members affected by the measure and without consulting with headquarters. She also feels that the Director-General, in her letter dated 19 September 2008 to the Director of the Division of Administrative Services, clearly identifies the applicant as the person she wanted to remove from the decision-making process concerning procurement. The applicant further notes that the manner in which the decision was announced — through a circular sent to all United Nations agencies in Kenya at a time when neither the applicant nor the Director of the Division of Administrative Services was at headquarters — was meant to inflict the maximum damage to her reputation and career;
- f. In response to the respondent's argument that she should not have initiated appeal proceedings, but should have used the mechanisms established for combating harassment and abuse of authority and/or retaliation against staff members, the applicant contends that she could have used these legal avenues, but that she was also entitled to formally contest the legality of the impugned decision. She further notes that her goal is to have the said decision rescinded, a

goal which could in no way be achieved using the above-mentioned mechanisms.

15. The respondent's principal contentions are as follows:

- a. On the issue of the receivability of this appeal, the respondent contends that the application was submitted late. Pursuant to article 111.2 (a) (ii) of the Staff Rules in effect at the time of the alleged facts, it should have been filed within one month from the date the staff member received the response to the request for review, in this case, by 10 December 2008. However, the applicant did not submit her appeal until 26 January 2009;
- b. The respondent also maintains that the decision in question is not appealable because it was not of individual application, considering that the applicant is not the only staff member concerned by the said decision, and that it has no direct legal impact on her terms of appointment. The respondent relies on UNAT case law concerning the definition of an administrative decision (judgment No. 1157, *Andronov* (2007)), which she considers relevant to the extent that it was for UNAT to interpret the applicable provisions of the Staff Rules and Regulations. In addition, the respondent feels that the decision was not taken unilaterally, since it was preceded by a series of consultations, notably during a meeting held on 10 June 2008;
- c. The respondent notes that, since pursuant to Secretary's General's bulletin ST/SGB/2008/7, the Director-General for all activities of the United Nations Office at Nairobi, she was fulfilling those responsibilities when she set out to reform the procurement service;
- d. The respondent asserts that the decision in question is based on the recommendations of Office of Internal Oversight Services report No. AA/2006/211/04 of 26 February 2008;

- e. The respondent maintains that the contested decision is not arbitrary and that it cannot be seen as constituting harassment. In the respondent's view, the applicant does not provide any evidence to establish the nexus between the contested measure and the comparative post reclassification review which was to start one month later;
- f. The respondent asserts that given the nature of the applicant's allegations, she should have followed the procedures established specifically for cases of abuse of authority and harassment (ST/SGB/2008/5) and retaliation against staff members for cooperating with audits (ST/SGB/2005/21). This Tribunal is therefore not the appropriate body to entertain such allegations. In this connection, the respondent maintains that the applicant's choice of procedure constitutes a clear violation of existing law and an abuse of process;
- g. In view of the foregoing, the respondent prays the Tribunal to find this application non-receivable and groundless, and to reject it in its entirety.

### **Judgment**

16. Rule 11.1 of the Staff Rules in effect until 30 June 2009 provides that: "The Secretary-General shall establish administrative machinery with staff participation to advise him or her in case of any appeal by staff members against an administrative decision alleging the non-observance of their terms of appointment ...".

17. According to article 2, paragraph 1, of the statute of the United Nations Dispute Tribunal: "The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations: (a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract"

and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance ...”.

18. The applicant, Chief of the Support Services Service at the United Nations Office at Nairobi, requests this Tribunal to rescind the decision of the Director-General of the United Nations Office at Nairobi to remove the Procurement, Travel and Shipping Section from under the authority of the Chief of Support Services Service and put it directly under the responsibility of the Director of the Division of Administrative Services. While the result of the contested decision is to reduce the applicant’s responsibilities by taking away her authority over one of the services which she headed, the decision in question is, in and of itself, a measure that merely pertained to the organization of the Service and cannot be contested by the applicant before this Tribunal. Indeed, according to the provisions cited above, a staff member can only contest before the Tribunal an administrative decision which violates his or her rights as prescribed in his or her contract or by the relevant staff rules.

19. In this case, the decision of the Director-General of the United Nations Office at Nairobi to reorganize the Service headed by the applicant does not violate the applicant’s rights as prescribed in her contract or by the relevant rules and regulations.

20. Even assuming that the allegation that the decision in question was taken for a reason other than to improve the Service, it is in any event irrelevant in determining the receivability of the present application. The Tribunal therefore has no choice but to reject this application, as its jurisdiction is strictly limited by its statute.

### **Decision**

21. For these reasons, the Tribunal DECIDES:

The application is rejected.



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(signed)

Judge Jean-François Cousin

Dated this 20<sup>th</sup> day of January 2010

Entered in the Register on this 20<sup>th</sup> day of January 2010

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(signed)

Víctor Rodríguez, Registrar, UNDT, Geneva