



**Before:** Judge Ebrahim-Carstens  
**Registry:** New York  
**Registrar:** Morten Albert Michelsen, Officer-in-Charge

GARCIA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
George Irving

**Counsel for Respondent:**  
Peri Johnson, UNDP

## **Introduction**

1. The Applicant received and accepted an offer of appointment for a one-year fixed-term contract at the L-5 level from the United Nations Development Programme (“UNDP”) subject to “a number of clearances” and “formalities”. He subsequently received a communication from UNDP informing him of the “cancellation of [his] appointment”. The main legal issue in this case is whether there was a duly constituted contract between the parties. The Applicant requested administrative review of the decision to “cancel” his appointment and subsequently filed an appeal with the Joint Appeals Board (“JAB”). Based on the findings and recommendations of the JAB, the Secretary-General decided to reject the Applicant’s appeal. The Applicant filed an application with the United Nations Dispute Tribunal, contesting the decision of the Secretary-General and seeking reinstatement and financial compensation.

2. The application, the Respondent’s reply and subsequent submissions constitute the pleadings and the record in this case. With the consent of the parties, the Tribunal determined the matter on the papers.

## **The facts**

3. The Applicant has over 15 years of experience in international economic and social development. On 8 January 2005 he was employed by UNDP under a 200 series contract as Principal Coordinator of the Global Fund to fight AIDS, Tuberculosis and Malaria (the “Global Fund”) in the Democratic Republic of the Congo (the “DRC”). He served in this capacity until 7 March 2007 and was commended by his manager for having done “a terrific job despite the odds and the complexity of the situation [in the DRC]”.

4. On 15 May 2007, after the expiration of the Applicant’s two-year contract with UNDP, he accepted a 45-day assignment under a consultancy contract (Special

Service Agreement—“SSA”) to act as a Regional Programme Advisor for the Middle East with UNDP’s Bureau for Development Policy. The SSA was subsequently extended until 30 November 2007.

5. While engaged under the SSA, the Applicant successfully participated in a competitive selection process for an L-5 level position with UNDP. On 15 August 2007 the Applicant was offered a one-year contract, commencing on 1 October 2007. The offer of appointment was signed by a Human Resources Associate, Benefits and Entitlements Services, UNDP, and stated:

On behalf of the Administrator of UNDP, I am pleased to offer you a One year Fixed Term Appointment (200 Series Staff Rules) as Programme Advisor – HIV/AIDS with [the Bureau for Development Policy] in Cairo, Egypt, at the L-5 level, step 9.

...

Your appointment is subject to a number of clearances and you will be contacted when all these formalities are completed. Consequently, you should not resign from your present employment or take any other action that may result in financial loss or personal inconvenience until I have notified you. You should also ensure that prior to departure, your security clearance, if required, has been received from the duty station.

Attached to this letter, you will find “Conditions Related to your Appointment” and “Annex 1 – Salary Detail (Estimate only)”, which will give you further details concerning salary, conditions of employment, official documents and forms for your completion. ...

...

In order for me to proceed with your new appointment, please indicate your acceptance of this Offer by signing and returning a copy to our office, along with the documents and forms requested.

6. The bottom part of the offer of appointment stated:

I accept this Offer of Appointment and the conditions specified therein, subject to any modifications to the Staff Rules and Regulations, copies of which I have received.

7. The offer was signed by the Applicant on 24 August 2007 (as stated above, at the time the Applicant's SSA had not yet expired).

8. At this juncture, I deem it important to set out the circumstances that the Respondent alleges led to the cancellation of the Applicant's appointment. In April 2007 the United Kingdom ("UK") police authorities contacted UNDP and the Global Fund regarding an investigation they had initiated into possible collusion in the awarding of contracts in the DRC during the Applicant's tenure as Principal Coordinator. On 4 May 2007 the UK Mission to the United Nations forwarded a request to the Respondent from the UK police for information and documentation relating to the selection of a pharmaceutical company as a supplier of HIV and malaria drugs. The UK investigation centred on accusations that the pharmaceutical company paid bribes to a consultancy firm to secure a contract with UNDP for its project in the DRC, funded by the Global Fund. Following the receipt of the report on possible fraud, on 12 May 2007, a UNDP procurement official gave his opinion on the report, indicating that the Applicant may have improperly influenced the procurement process. After being advised informally of the accusations that were being made, the Applicant asked on 3 July 2007 to be provided with the allegations against him, but received no response at the time. In August 2007, UNDP's Office of Audit and Performance Review ("OAPR") examined the Applicant's laptop computer and the correspondence between the Applicant and a senior employee of the consultancy firm, examining whether the integrity of the procurement process that led to the selection of the pharmaceutical company was compromised. The Applicant was not charged with any misconduct or criminal offence.

9. On 5 September 2007 the Applicant received an advance from UNDP for his travel and removal allowances (which I understand did not have any conditions attached to it), and subsequently to that made preparations to leave for Cairo to take up his post as of 1 October 2007. During a mission to Cairo conducted from 28 August to 7 September 2007, while under the SSA as facilitator of two workshops,

the Applicant was introduced to the UNDP team and to major national and international counterparts at the duty station.

10. On 9 September 2007 UNDP was informed by the authorities of the UK that the Applicant was suspected of conspiring with the consultancy firm to ensure the award of a contract to the pharmaceutical company.

11. On 19 September 2007 the Applicant sent an email to UNDP's Office of Human Resources, inquiring when he would receive his contract:

In order t[o] prepare my departure to [C]airo as planned for the 1st of [O]ctober 2007, could you please let me know when I can expect receiving the contract. I already have sent my luggages [sic] and paid the deposit for my apartment.

12. On 20 September 2007, the Applicant received an email from UNDP, stating, "We have not been instructed yet to issue your contract, but rest assured, we will keep you posted".

13. Several developments took place on 21 September 2007. Firstly, the Applicant was issued a UN Laissez-Passer, valid from 21 September 2007 to 31 October 2008. Secondly, OAPR advised the Applicant that it had started an investigation into the award of contracts in the DRC funded by the Global Fund. Thirdly, a Human Resources Business Advisor in UNDP's Bureau for Development Policy emailed the Applicant, advising him of the "cancellation of [his] appointment". The email stated:

**Subject: Cancellation of appointment**

Following the telephone conversation you had with ... [the Officer-in-Charge], Director HIV/AIDS Group, [Bureau for Development Policy] on Wednesday 19 [September 2007], and the communication from the OIC of the Office of Audit and Performance Review Investigation you received earlier today, it is with regret that I have to confirm the information already communicated to you by [the Officer-in-Charge] that the UNDP Senior Management has decided to cancel your appointment [to] the position of Programme Advisor-HIV/AIDS (L5)

located in Cairo, Egypt ..., which was expected to start on 1 October 2007.

I will be contacting you soon on the administrative arrangements following the cancellation of your appointment.

14. Upon enquiry as to the reason for the cancellation, the Applicant was advised, by email from the Human Resources Business Advisor, dated 26 September 2007, that his actions as special adviser of the Global Fund projects in the DRC were under investigation by OAPR:

I am sorry I missed your call, but I did receive your voicemail in which you asked to be informed on the reasons for the cancellation of your appointment.

In this regard, I would like to refer you to the UN Staff Regulations, Article I, Duties, Obligations and Privileges, Regulation 4.2 which states that “the paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity of securing the highest standards of efficiency, competence and integrity.” This principle is also repeated in Chapter XV of the Charter of the United Nations, Chapter XV, article 101.

In accordance with the above mentioned principles, and as we are now aware that your actions as the Special Advisor ... in DR Congo are under investigation by [the OAPR], the organization cannot proceed issuing your letter of appointment.

I understand this decision puts you in a very difficult situation, but I hope you also understand the position of the organization. We can further discuss the implications of this decision, but as you already have made some arrangements for the move to Cairo, at this point I would like to confirm that you will be able to keep the payments that have been made to you. I will liaise with the Copenhagen colleagues on that matter.

15. The Applicant was subsequently allowed to keep USD19,822 that had already been transferred to him as a relocation grant.

16. By letter dated 23 November 2007 the Applicant was formally informed by UNDP that he was the subject of an investigation being carried out by OAPR. The letter from the Officer-in-Charge of OAPR stated that “[a]ll staff members are

obligated to cooperate with any investigation and assist designated investigators as required in accordance with Staff Regulation 1.2(r)".

17. The Applicant voluntarily met with OAPR on 26 November 2007. The Applicant travelled at his own expense to Geneva to meet OAPR, providing his personal financial information, including bank account records for the period of his employment in the DRC. No report had been issued by OAPR on the results of the investigation by the time this matter came before the Tribunal. In July 2008 the authorities of the Anti-Corruption Unit in the UK confirmed to UNDP that whilst it was initially suspected that the Applicant might have been involved in the alleged improprieties in some way, he was no longer a suspect in the corruption case, although he may be a witness.

18. The Applicant sought administrative review of the contested decision on 12 November 2007, asserting that the decision to unilaterally rescind his contract was legally invalid and improperly motivated. The Respondent replied on 14 January 2008, stating that the Applicant was not a staff member at the time of the contested decision as the contract had not been effected and therefore his request was not receivable.

19. On 30 January 2008 the Applicant filed an appeal with the JAB. The JAB issued its report on 21 April 2009, finding that at the time of the contested decision the Applicant was employed by UNDP as a contractor on an SSA, not as a staff member. The JAB found that the offer of appointment explicitly stated that it was made subject to a number of clearances and the Applicant would be contacted when all these formalities were completed. The JAB found the Applicant's appeal not receivable for lack of standing and decided to make no recommendations.

20. On 13 May 2009 the Applicant was notified that the Secretary-General had examined his case and concluded that his appeal was not receivable. On 4 August 2009 the Applicant filed his application with the Tribunal.

### **Applicant's submissions**

21. The Applicant's submissions may be summarised as follows:

a. The Applicant was a staff member effective 24 August 2007, when he accepted the offer. The phrase "subject to a number of clearances" in the offer of appointment referred to medical and security clearances, which did not apply to him because he was not new to the Organisation and had already received all the necessary clearances. For these reasons, the clearance procedures and formalities were not an issue, as evidenced by the letter cancelling his appointment. The Applicant had provided the information requested by the UNDP and had not been requested to undergo any further security clearance before departing. In any case, if security clearance was required, it would have been received in Egypt after his arrival. The Respondent would not have issued a significant relocation grant if these procedures had not been in order.

b. A valid contract subsisted upon acceptance of the offer by the Applicant, notwithstanding the conditions in the offer of appointment. It is common practice that letters of appointment are often executed to formalise the terms of employment long after the staff member is already on board and the terms of the contract already implemented. Further, the conduct of both parties indicates that the contract was in place. The Respondent advanced the Applicant a significant amount of money in the form of a relocation grant. The Applicant was introduced to the UNDP team and others at the duty station and was issued a UN Laissez-Passer, which is given to staff members. Following his acceptance of the offer, the Applicant made preparations to leave for the intended duty station, aiming to take up his post on 1 October 2007. The Applicant rented accommodation in Cairo and sent his belongings there. He spent several months working as a consultant in preparation for his new assignment. Further, he was informed by email of the "cancellation" of



his appointment, not the “withdrawal of his appointment” or “withdrawal of the offer”, which is a clear indication that the appointment had been made.

c. The unilateral decision to cancel his contract with UNDP was both procedurally defective, motivated by improper considerations, and precipitated by the adverse publicity generated over the case in the press. At the time it was decided to cancel the Applicant’s assignment there had been no investigation of the allegations, let alone a finding that he had done anything wrong. The mere initiation of an investigation is not a basis for taking action against a staff member such as to void a contract or to terminate his employment. The Applicant was subjected to a *de facto* summary dismissal without any respect for his due process rights. After the cancellation, while refusing to accord him the protections to which staff members are entitled, the Respondent nevertheless required the Applicant to participate in internal investigations as if he were a staff member.

d. The sudden termination of employment inflicted emotional stress and severe anxiety over the Applicant’s financial security, the uncertainty of his future, and the damage to his reputation. Accordingly, the Applicant seeks, *inter alia*, reinstatement in service from 1 October 2007, a public apology for the damage to his reputation, compensation in the amount of five years’ net base pay for the actual, consequential and moral damages suffered by him, and an award of legal costs.

### **Respondent’s submissions**

22. The Respondent’s submissions may be summarised as follows:

a. The application is not receivable pursuant to arts. 3.1 and 8.1(b) of the Dispute Tribunal’s Statute because the Applicant was not a staff member at the relevant time, since at the time of the withdrawal of the offer of appointment he was still engaged under an SSA as a consultant (i.e.,

contractor). While the Applicant had received his relocation grant and had been medically cleared, neither the Respondent nor the Applicant had terminated his SSA. Moreover, just ten days prior to being notified of the withdrawal of the offer of appointment, the Applicant was enquiring about the possibility of further missions under his SSA. An individual cannot be both a contractor under an SSA and a staff member.

b. An incorrect reference to “cancellation of appointment” instead of “withdrawal” or “cancellation of offer of appointment” in UNDP’s communications to the Applicant does not change the fact that no binding contract existed at the time. The appointment had not yet commenced. Final clearances had not been issued and the Applicant was informed of the cancellation prior to the date his contract was to commence. The Applicant had not received a letter of appointment, nor had he relocated to the duty station. The Applicant accepted the offer with full knowledge that all conditions and clearances would have to be obtained, as reflected by his signature accepting the offer.

c. The decision to withdraw the offer of appointment was properly motivated in view of the serious evidence obtained in relation to the Applicant. Recognising the inconvenience of the decision to cancel the offer of appointment, the Respondent informed the Applicant that he could keep the payments already transferred to him in the sum of USD19,822. This decision was made “on humanitarian grounds”, under the circumstances of this case, and this amount is more than sufficient to compensate the Applicant for any inconvenience caused to him.

### **Further submissions**

23. On 26 January 2010, the Dispute Tribunal issued Order No. 7 (NY/2010), seeking clarification from the Respondent regarding the applicable clearance

procedures and other formalities that were in place between August and September 2007. The Respondent submitted that the applicable Recruitment Guidelines of UNDP enshrine the principle, which is carried out in the recruitment process up to finalisation of the contract, that candidates must be screened based on performance and through reference checking to ensure that they meet both the technical and competency requirements of the position. According to the Respondent, the Applicant's job description reflected "Commitment to UNDP's core values" as a competency, and information that the investigation had been initiated, including allegations of corruption and fraud on the part of the Applicant, was received by the Respondent before the contract was issued. It was further submitted by the Respondent that the offer of appointment attached conditions related to the appointment, which detailed a number of steps that must be completed, including medical and security clearances. The Respondent submitted that there was no evidence on file that the Applicant had his security clearance or visa for the duty station. Further, the letter of appointment had not been issued and the Applicant had not yet departed for the duty station at the time of the withdrawal.

### **Considerations and findings**

24. I will first address whether the Respondent's offer of appointment and the Applicant's acceptance of the offer, particularly in light of the subsequent actions of the parties and the particular circumstances of this case, resulted in a binding contract. Then, I will discuss the effect of the conditions—if any—included in the offer of appointment.

#### *Offer of appointment*

25. Under staff regulation 4.1, upon appointment each staff member shall receive a letter of appointment in accordance with the provisions of Annex II to the Staff Regulations. This, of course, does not mean that the only document capable of creating legally binding obligations between the Organisation and its staff has to be

called a “letter of appointment”. As the Administrative Tribunal of the International Labour Organisation (“ILOAT”) stated in Judgment No. 307, *In re Labarthe* (1977),

It is quite often the case that, when a contract of this sort has been concluded, it will be followed by a formal document; in the case of a large organisation which is accustomed to use its own forms, there will almost certainly be a letter of appointment. This does not mean that there can be no binding contract until the letter of appointment has been issued. There is a binding contract if there is manifest on both sides an intention to contract and if all the essential terms have been settled and if all that remains to be done is a formality which requires no further agreement.

26. In the present case, the offer of appointment accepted by the Applicant and the communications between the parties contained the necessary material terms for the formation of a binding contract, including those stipulated in the provisions of Annex II to the Staff Regulations, such as the nature and the period of employment, the category and the level of the appointment, and details concerning salary and other conditions of employment. It is also apparent that the parties agreed that the appointment was to commence on 1 October 2007. Section (b) of Annex II to the Staff Regulations requires that a “copy of the Staff Regulations and the Staff Rules shall be transmitted to the staff member *with the letter of appointment*” (emphasis added), and that in accepting the appointment the staff member shall state that he has been acquainted with and accepts the conditions laid down in the Staff Regulations and Rules. This is precisely what transpired in the Applicant’s case, where upon signing the offer of appointment, he acknowledged acceptance of the conditions laid down in the Staff Rules and Regulations, copies of which he acknowledged having received. All the essential terms of the appointment were agreed by the parties and, to my mind, the parties intended to enter into binding obligations as shown in the offer, which settled all the terms of their agreement. There is no basis for supposing that the parties intended any subsequent letter of appointment to vary or add to the terms of the offer of appointment in any significant respect.

27. On the facts before me, therefore, the offer and the acceptance, particularly in light of the subsequent actions of the parties, produced a legally binding contract that the Applicant would commence the performance of his official functions on 1 October 2007. It does not mean, of course, that the Applicant was entitled to receive his salary as a staff member *prior* to 1 October 2007, but it does mean, among other things, that the Applicant was legally required to commence his duties on 1 October 2007 and the Organisation was legally required to start paying his salary starting 1 October 2007. Any further documentation confirming the contractual relationship would have been a formality and reiteration of the terms already agreed.

28. Furthermore, the language in which the emails of 21 and 26 September 2007 were couched is indicative of the understanding of UNDP that its communications had the effect of a “cancellation of [the Applicant’s] appointment”. There is no evidence to support the bare assertion made by the Respondent that the email dated 21 September 2007 mistakenly referred to “the cancellation of [the Applicant’s] appointment” and that it was in fact a withdrawal or cancellation of the *offer* of appointment. In any event, by the time of this communication the parties were in a binding agreement.

29. I have considered the recent case law of the Dispute Tribunal (*Adrian* UNDT/2010/072, *Gabaldon* UNDT/2010/098) and the UN Appeals Tribunal (*El-Khatib* 2010-UNAT-029), as well as the jurisprudence of the former UN Administrative Tribunal (see, e.g., Judgment No. 1195, *Newton* (2004)), and I find that the unique language of the offer of appointment made to the Applicant, the surrounding circumstances, and the legal relationship created between the parties make the present case significantly distinguishable from some of the pronouncements in these cases.

30. In *Adrian*, the Dispute Tribunal found that the memorandum and conditions of service reassigning the Applicant to a different duty station were not sufficiently specific to create a binding contract, and that the parties expected the final terms to be

expressed in the form of a letter of appointment. In the present case, unlike in *Adrian*, the offer given to the Applicant contained all the necessary terms and conditions, was unambiguous, and sufficiently clear to create a contractual relationship.

31. In *Gabaldon*, the letter of offer stated that “a copy of the Staff Regulations and Rules [would] be made available to [the Applicant] when [he would sign] a Letter of Appointment, which [was] the official document by which [he would become] a staff member of the United Nations”. In the present case the letter given to the Applicant contained no such language, but articulated all the relevant material attributes sufficient to create a contract, including the terms contained in Annex II to the Staff Regulations, with the Staff Regulations and Rules already provided to and acknowledged by the Applicant.

32. I also do not consider *Newton* relevant to the present case, because it dealt with material deviations from the regulations and rules which were made in error and the Organisation had neither the intention nor the ability to offer the Applicant entitlements that were not applicable to his duty station. The factual circumstances in *Newton* were distinct from those in the present case.

33. For similar reasons, this case is also distinguishable from the recent judgment of the UN Appeals Tribunal in *El-Khatib*, in which the Appeals Tribunal found the application time-barred and, accordingly, not receivable. In *El-Khatib*, the Appeal Tribunal also discussed, *inter alia*, the significance of the letter of appointment and stated that no binding contract existed where the intended appointment resulted from non-compliance with the UN rules prohibiting employment of close relatives in the same line of supervision. The case before me is distinguishable from *El-Khatib* in that the present case concerns the legal effect of the very specific language contained in the offer of appointment and the true legal nature of the offer, acceptance and agreement reached. As illustrated in this Judgment, the Respondent has failed to show that there

was any non-compliance with the Staff Regulations or the UN Charter such as to void the contract.

*Conditions*

34. The Respondent submits that the offer was subject to some conditions being met. The offer of appointment did not specify the meaning of the terms “a number of clearances” and “formalities”, although there is a reference to “security clearance, if required”. The Applicant submits that the terms encompassed routine medical and security clearances, which he already had due to the previous relationship between the parties. The Respondent has not demonstrated that the Applicant’s understanding of the terms of the offer was incorrect. In fact, the record shows that the Applicant’s understanding of the requirements was accepted by UNDP at the time, as explained below.

35. On 19 September 2007 the Applicant informed UNDP that he had already sent some of his belongings to Cairo and paid the deposit for his apartment, from which the Respondent should have reasonably understood that the Applicant believed that all clearances and formalities had been finalised. UNDP did not dispute this understanding in its reply dated 20 September 2007, instead stating simply that “[w]e have not been instructed yet to issue your contract, but rest assured, we will keep you posted”. Further, by email dated 26 September 2007, UNDP acknowledged that the Applicant “[had] made some arrangements for the move to Cairo”, and advised him to keep the payments already made to him. This was clearly an admission of liability for some loss and damages, the amount of which the Respondent unilaterally set at USD19,822. There is no evidence to support the Respondent’s averment in the pleadings before the Tribunal that this sum was provided to the Applicant on “humanitarian grounds”. An averment in pleadings does not constitute evidence. As contemporaneous records demonstrate, this money was provided to the Applicant to compensate him for the costs of his “arrangements for the move to Cairo”. If no contract giving rise to an obligation to compensate the Applicant existed, what was

the basis for the Respondent's concession? The Respondent's decision to compensate the Applicant for the relocation expenses renders unsustainable the Respondent's position that there was no contractual relationship between the parties.

36. It is clear to me that the parties intended to be bound by the agreement created by the offer and subsequent acceptance. The promises exchanged by the parties and the steps they took were sufficient to create a binding contract. Actions were taken by both parties in reliance on and in compliance with their contractual obligations under the agreement. The Respondent paid a relocation grant and proceeded with finalisation of the induction documents, including a Laissez Passer. The Applicant took steps to rent accommodation in Cairo and to send his belongings there, expecting to depart for Egypt in a matter of days.

37. With respect to clearances, the Respondent submitted that the Applicant's job description referred to "commitment to UNDP's core values" as a competency and that under the Recruitment Guidelines, all candidates must be screened based on performance and through reference checking to ensure that the candidates meet the technical and competency requirements of the position. Therefore, according to the Respondent, having been made aware of the allegations against the Applicant, UNDP had to take this new information into account. I find the reference to competencies and UNDP's core values in this context misguided; as it is clear from UNDP's Recruitment Guidelines, the verification of technical and competency requirements takes place during the selection exercise. There is no evidence to suggest—and it would not be reasonable to conclude—that the technical and competency requirements had (or, in fact, were permitted) to be checked again after the completion of the selection process and, more importantly, that the Applicant failed or would have failed them. The Respondent's submission in this regard is plainly not supported by UNDP's own recruitment rules. It is instructive that in its contemporaneous emails with the Applicant, UNDP did not claim discharge from its obligations due to the Applicant's failure to satisfy any clearances. The email dated 26 September 2007 singularly articulates the reason for cancellation of the



appointment as being the contravention of staff regulation 4.2 and art. 101 of the Charter of the United Nations, no doubt questioning the Applicant's integrity based on suspicion and conjecture as there was no investigation report nor were there any findings that the Applicant had done anything wrong. The contemporaneous records in this case do not support the position now taken by the Respondent that the Applicant had failed to satisfy any clearances and formalities to which the offer of appointment referred. Had UNDP considered at the time that the Applicant had failed some clearances, it would and should have stated so, with references to the specific clearances and formalities.

38. I also do not accept the Respondent's argument that no contract could have been concluded prior to September 2007 because the Applicant was still employed as a consultant on an SSA. It was agreed by the parties that the Applicant would assume his duties on 1 October 2007. Nothing precluded the Applicant from performing duties under his SSA prior to that, while at the same time being in a binding agreement with the Organisation that he would assume his duties as a staff member in Cairo on 1 October 2007. There is no reason why parties cannot enter into a binding contract on a particular date with a future date for commencement of duties.

39. As the former UN Administrative Tribunal stated in Judgment No. 106, *Vasseur* (1967), dealing with a similar case,

[A]lthough the Applicant's appointment did not take effect within the meaning of Staff Rule 204.2, he did not receive the letter of appointment, and the expiration date of the appointment therefore was not specified, a real contract by which the Respondent undertook to employ the Applicant was concluded between the parties, and they have recognized the existence of legal obligations arising out of this contract.

III. The Tribunal is called upon to determine the legal consequences of the Respondent's refusal to execute this contract. As this contract is related to the appointment procedure laid down by the Staff Regulations and Staff Rules, it is not open to dispute that the issue is one which must be resolved on the basis of rules of law which it is the responsibility of the Tribunal to apply.

40. I find that there was a binding contract between the Applicant and the Respondent, with the latter recognising the existence of legal obligations arising therefrom. As this contract and the contested decision concerned the appointment procedure, it follows that the present application is receivable (see *Vasseur*). The Tribunal also finds that the Organisation's refusal to execute the employment relationship on 1 October 2007 was in breach of its contract with the Applicant.

### **Conclusion**

41. The offer of appointment accepted by the Applicant and the communications between the parties contained the terms necessary for the formation of a binding contract. All the essential terms of the appointment were agreed by the parties and there is no basis to find that the parties intended any subsequent document to vary or add to the terms contained in the offer of appointment in any significant respect. There is no evidence to support the Respondent's averment that the Applicant had failed to satisfy any clearances and formalities. On the particular facts of this case, including the agreement reached and the actions of the parties, there was a binding contract between the Applicant and the Respondent and UNDP's refusal to execute the employment relationship on 1 October 2007 was in breach of this contract.

42. Where there is a breached right, there should be a remedy. Liability having been established, it is now a matter for determination of appropriate relief. Further submissions will be required on relief to be ordered on the basis of this judgment. The parties may also consider resolving the issue of relief between themselves in the light of this judgment.

### **Orders**

43. On or before **Monday, 15 November 2010**, the Applicant is to file and serve a submission on relief to be ordered, attaching supporting documentation.

44. On or before **Monday, 6 December 2010**, the Respondent is to file and serve a submission in response.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 25<sup>th</sup> day of October 2010

Entered in the Register on this 25<sup>th</sup> day of October 2010

*(Signed)*

Morten Albert Michelsen, Officer-in-Charge, UNDT, New York Registry