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# APPEALS TRIBUNAL DES NATIONS UNIES

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17. In an e-mail dated 21 December 2010, the EMO Regional Director informed the Applicant, inter alia, that she had recommended that the latter's contract be renewed for six months to see how the issues raised would be resolved before she would consider a further extension.

18. The Applicant responded to the EMO Regional Director on 28 December 2010, maintaining inter alia that a six-month contract extension would not be in the JMOC's interest due to the negative impact it would ha

24. On 26 April 2011, the Applicant received an e-mail attaching a letter from UNOPS' Executive Director dated 19 April 2011. The letter informed the Applicant that her fixed-term contract would not be renewed beyond its expiry date of 31 July 2011 and that she was being placed on special leave with full pay with effect from 1 May 2011 due to lack of improvement in her management style in spite of an improvement plan put in place for her.

25. Meanwhile, in April 2011, the informal efforts spearheaded by the consultant ombudsman made progress when he contacted first UNOPS' Executive Director and then UNOPS' Human Resources Director. In May 2011, the consultant ombudsman and UNOPS' management explored the option of reassigning the Applicant to the post of Senior Partnership and Liaison Advisor with the UNOPS office in Brussels.

26. The Applicant submitted a request for rebuttal of her 2010 PRA on 1 May 2011.

respect of the decision to extend the Applicant's appointment for only six months, finding that the Applicant had sought the services of the Ombudsman by 10 January 2011 within the deadlines for filing a UNDT application and the Administration had agreed to mediation. The UNDT rejected the Secretary-General's argument that the mediation broke down on 26 April 2011 when the Applicant was notified of the decision not to renew her contract beyond 31 July 2011, because, nearly a month later on 24 May 2011, the consultant ombudsman wrote to the Applicant reporting progress of his informal efforts with the

34. The Dispute Tribunal exceeded its jurisdiction by finding receivable the Applicant's application against the six-month renewal decision. Her application was filed on 26 September 2011, some six months after she had received the outcome of management evaluation on 28 March 2011, and she did not request a waiver of the time limit to file her application. Further, no exception set forth in Article 8(1)(d) of the UNDT Statute applied in the present case, and the discussions between the Applicant and the consultant ombudsman did not constitute mediation proceedings within the meaning of Article 8 of the UNDT Statute.

35. Alternatively, the Secretary-General maintains that the Dispute Tribunal erred in law by awarding the Applicant six months' net base salary for renewing her contract for six instead of 12 months, as such award was inconsistent with the purpose of compensation articulated in *Warren*.<sup>1</sup> In the present case, UNDT awarded the Applicant six months' net base salary in compensation for the loss of her salary, although she commenced employment with UNICEF on 5 October 2011 without a reduction in level or step from her previous service with UNOPS. Consequently, her actual loss of earnings corresponded to the salary that she did not receive from 1 August 2011, when she separated from UNOPS, to 4 October 2011, the day before she started with UNICEF.

36. The Secretary-General requests that the Appeals Tribunal vacate the UNDT's conclusion in respect of the six-month renewal decision and its award of six months' net base salary on that basis. Alternatively, the Secretary-General requests that the Appeals Tribunal reduce that award of compensation from six months' net base salary to an amount corresponding to her actual loss of earnings from 1 August 2011 to 4 October 2011.

### **The Applicant's Answer**

37. The UNDT correctly found the Applicant's application against the six-month renewal decision receivable, because she was engaged in informal dispute resolution with the assistance of the Office of the Ombudsman from January through "the summer" of 2011. Both the Applicant and UNOPS engaged with the Office of the Ombudsman to informally resolve their dispute. At all times, the Applicant engaged with the consultant ombudsman in good faith and with the understanding that she was seeking informal resolution without prejudice to her right to pursue the matter formally if the informal efforts were unsuccessful.

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*Appeal on Receivability*

42. The Appeals Tribunal recalls resolution 66/237 where the General Assembly “[r]eaffirms that the informal resolution of conflict is a crucial element of the system of administration of justice, emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation, ... to encourage recourse to informal resolution of disputes and to avoid unnecessary litigation; ... and stresses the importance of developing a culture of dialogue and amicable resolution of dispute through the informal system”.<sup>2</sup>

43. In accordance with this, the Staff Rules expressly encourage a staff member who considers that his or her contract of employment or terms of appointment have been violated to approach the Office of the Ombudsman to have the matter resolved informally. This may

This rule is repeated in Article 8(1)(d)(iv) of the Statute of UNDT, which states:

... An application shall be receivable if:

...

(d) The application is filed within the following deadlines:

...

(iv) Where the parties have sought mediation of their dispute within the deadlines for the filing of an application under subparagraph (d) of the present paragraph, but did not reach an agreement, the application is filed within 90 calendar days after the mediation has broken down in accordance with the procedures laid down in the terms of reference of the Mediation Division.

46. The Secretary-General submits that the UNDT exceeded its jurisdiction and erred in law by holding that the exception to the time limit for filing an application as set out in Article 8(1)(d)(iv) of the UNDT Statute w36 c plicatoirT.8(f)-2.4( the UNDT 24(d)-5( )5.oadGf(ner)-60 10t

49. Article 8(1)(d)(iv) does not identify any specific mediation process that the parties must follow, such as nomination of a mediator, though it is reasonable to expect that the mediator be acceptable to both parties.

50. Furthermore, the said article does not require the institution of a formal procedure as that would defeat the very purpose of encouraging dialogue and amicable resolution of dispute through mediation reached through a mutually agreeable solution. We do not think that a valid mediation process, being an informal method of resolution of disputes, needs to follow a certain or fixed format.

51. In our considered opinion, what is envisaged or required by the UNDT Statute and the Staff Rules is that: mediation has to be pursued by either party within the deadline for filing an application with the UNDT; such informal dispute resolution is carried out through the Office of the Ombudsman;<sup>3</sup> the time limits may be tolled when the Mediation Division of the Ombudsman's Office is involved in settlement or mediation discussions;<sup>4</sup> and the staff member may file an application within 90 calendar days of the breakdown of the mediation.

52. Annex 12 attached to the Applicant's answer brief unequivocally shows that the Office of the Ombudsman was engaged in the informal dispute resolution on the Applicant's behalf.

53. The UNDT held that the parties sought mediation of their dispute and within the deadlines for filing an application. The UNDT stated:<sup>5</sup>

... Based on the documentary evidence submitted by both parties, the Tribunal finds that by 10 January 2011, the Applicant sought the services of the Ombudsman

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Appeals Tribunal has held that in awarding compensation for loss of salary several factors must be taken into consideration, including gainful employment after separation.

60. The Secretary-General submits that the UNDT erred on a question of law by awarding compensation in the amount of six months' net base salary for renewing the Applicant's contract for six instead of 12 months, when the Applicant commenced employment with another entity within approximately two months of being separated from service with UNOPS with no reduction in level or step from her previous service with UNOPS.

61. In *Warren*,<sup>8</sup> the Appeals Tribunal held that "the very purpose of compensation is to

