



THE UNITED NATIONS A

Please be assured that your right to request a management evaluation is preserved during the course of the assessment of your allegations and subsequent investigation as applicable. We will revert to you following the determination by the respective offices and proceed with a review of your request. (Emphasis added.)

9. On 20 March 2014, the UNDP BOM provided Dr. Babiker with a response to her request for management evaluation stating that her request was time-barred as it was not made within 60 days of 4 March 2013, when she was initially advised of the decision not to renew her appointment. Nevertheless, the UNDP BOM also addressed the merits of Dr. Babiker's request, opining that the decision not to renew her fixed-term appointment was supported by valid reasons and fully complied

Submissions

Dr. Babiker's Appeal

Receivablility ratione materiae

14. The UNDT erred in fact and law when it found that the e-mail communication of 15 March 2013 was the communication of a decision; it was the communication of a recommendation, with the promise of a formal communication once a decision was taken. The UNDT's errors resulted, in part, from its failure to understand that: (1) the 15 March 2013 e-mail did not refer to the non-renewal of Dr. Babiker's appointment, but only to the non-extension of her position or post; and (2) Dr. Babiker's supervisor had no authority to make any decision with respect to the renewal of her contract—only the Senior Country Director could make that decision.

15. Further, the 15 March 2013 e-mail referred only to a preliminary proposal or preparatory step before a decision with direct legal consequences on Dr. Babiker's contract terms could be taken or finalized. The 15 March 2013 e-mail must be viewed in the context of the earlier discussion between Dr. Babiker and her supervisor. Thus, her supervisor's suggestion of a possible new position that might interest Dr. Babiker showed the preliminary nature of the e-mail communication. The final decision was communicated when the 18 April 2013 letter was received by Dr. Babiker.

16. The UNDT erred in attaching significance to Dr. Babiker's response to a question on the application asking when the staff member first became aware of the decision. She became aware of the decision not to renew her position before the 18 April 2013 letter, but that is not dispositive of the issue, as the Appeals Tribunal concluded in *Bernadel*.¹ The staff member should be given the benefit of the doubt when to hold otherwise would result in a denial of access to justice.

17. Dr. Babiker deserves a hearing on the merits of her claims.

¹ *Bernadel*

Receivability ratione temporis

18. The UNDT erred in failing to conclude that the Administration should not benefit from its own advice—even if that advice was misplaced. The Administration specifically advised Dr. Babiker that her request for management evaluation was being deferred, and she relied on this advice. Moreover, it was not in the interest of either party or the UNDT to proceed before the investigations were completed.

19. The UNDT has the authority to suspend or waive the filing deadline for a limited

merely relayed a recommendation or proposal, rather than an administrative decision, is without support.

23. Further, Dr. Babiker failed to establish that her supervisor had no authority to abolish her post or to make the decision not to renew her appointment. Whether Dr. Babiker's supervisor had such authority is irrelevant, as the 15 March 2013 e-mail from her supervisor relayed the decision of senior management not to renew her fixed-term appointment.

24.

29. The Administration did not defer its response to her request for management evaluation and did not waive any time limit.

30. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment.

Considerations

Receivability ratione materiae

31.

Staff Rule 11.2(c); thus, her application was not receivable *ratione materiae*. The Appeals Tribunal does not agree, as discussed below.

34. Initially, the UNDT correctly recognized that determining “the date on which [Dr. Babiker] received notification of the administrative decision to be contested” was its first task. In this regard, the Dispute Tribunal was faced with two possible dates: 15 March 2013, the date on which Dr. Babiker received an e-mail from her supervisor “confirming” that her position would not be renewed; and 18 April 2013, the date on which Dr. Babiker received the letter from the Senior Country Director of UNDP Haiti advising her that her position and fixed-term appointment would not be renewed.

Dr. Babiker is an example. It is the Dispute Tribunal's role to determine when and if Staff Rule 11.2(c) has been met; not the staff member's role. Lastly, the first written communication is not necessarily controlling, as in this case.⁷

42. For all these reasons, we determine that the UNDT made both factual and legal errors when it concluded that 15 March 2013 was the date on which Dr. Babiker received notification of the administrative decision she contested within the meaning of Staff Rule 11.2(c). To the contrary, 18 April 2013 was the date on which Dr. Babiker received notification of the administrative decision not to renew her fixed-term appointment, and that is the date from which the 60-day period began to run under Staff rule 11.2(c).

43. In light of the fact that the request for management evaluation was made within 60 days of 18 April 2013, the UNDT further erred in law when it concluded that the application was not receivable *ratione materiae*.

Receivability ratione temporis

44. Article 8(1)(d)(i) of the Dispute Tribunal Statute requires that an application may be received by the UNDT if it is filed within 90 calendar days from the date on which the staff member received the outcome of the management evaluation, or, from the date of expiration of the 45-day deadline for the communication of the outcome of the management evaluation for a staff member stationed outside New York. Staff Rule 11.4(a) sets the same deadline for a staff member to file an application with the Dispute Tribunal.

45. The jurisprudence of the Appeals Tribunal authorizes the Dispute Tribunal to consider *sua sponte* whether it has jurisdiction or competence to review a staff member's application.⁸ The Dispute Tribunal, thus, properly raised *sua sponte* the question of the timeliness of the application before it.

46. The Appeals Tribunal's jurisprudence also "mandates that both Tribunals must strictly adhere to statutory filing deadlines as one of the ways to assure the timely hearing of staff members' cases and the prompt rendering of judgments".⁹ In light of this, we have

⁷ *Ibid.*, para. 25.

⁸ *Christensen*

deadlines, and the UNDT's conclusion correctly applied our jurisprudence.¹³ We find that the circumstances of Dr. Babiker's case are not like those we considered in *Faraj*, where we held that the representations by the United Nations Relief and Works Agency for Palestine Refugees in the Near East supported the staff member being permitted to file what would otherwise be considered a tardy application.¹⁴

50. Lastly, the UNDT found that the deadline for Dr. Babiker "to file her application

53. Thus, the UNDT correctly determined that the application was not timely and not receivable *ratione temporis*.

Judgment

54. UNDT Judgment No. UNDT/2015/108 is affirmed and the appeal is dismissed.

Refugees in the Near East, Judgment No. 2010-UNAT-029, para. 14. See also, *Diagne et al. v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-067, para. 23.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar