



The issues

1. By application filed on 25 August 2010, the Applicant sought review by the United Nations Dispute Tribunal (“UNDT”) of the decision to reassign him from the position of Officer-in-Charge (“O-i-C”), Human Resources Management



9. Also on 13 April 2010, the Applicant summarized his understanding of the conversation held earlier that day in an email addressed to the Deputy Secretary-General, UNCTAD. He reported having been told, inter alia, that “[he was] being designated O-I-C HRMS, however, [he would] continue to work in ... GSU ...”.

10.

17. On 20 October 2010, the Respondent submitted clarifications on the Personnel Actions (“PAs”) issued regarding the decisions in question, as the parties expressed different views thereon during the oral hearing. Counsel for the Respondent thereby confirmed that a PA dated 13 April 2010 was issued following the memorandum of the Deputy Secretary-General, UNCTAD, of the

placing the Applicant against the post of Chief, HRMS, UNCTAD, was never issued, instead a notation was made on a PA drawn against the Applicant's own post; (iii) no email was sent to UNCTAD staff notifying them of the Applicant's designation as O-i-C, HRMS, UNCTAD, as customary in similar circumstances; (iv) on 14 April there were in fact two

never transferred to a vacant post, but was again reassigned using his





- b. Proper implementation of the UNDT order in paragraph 52(1) of Judgment UNDT/2010/009;
- c. Compensation for breach of rights and process and for moral damage and damage to professional reputation;
- d. Compensation from 2008 for denial of his right to appropriate relief as was awarded by the Judgment;
- e. That costs be awarded against the Respondent for abuse of

tenor—reassignment—has been taken, but under different circumstances. The above-referred provisions prescribe respectively that consultations be conducted when taking decisions involving major organizational changes or relocations of groups of staff and where an issue or policy should affect the entire department or office or at least a significant number of staff in a particular unit or service of the department or office. In the case at hand, only one staff member, i.e., the Applicant, was reassigned;

e. Contrary to the Applicant's contention, the 14 April 2010 reassignment is a new administrative decision. Otherwise, the application would be inadmissible as already passed judgment upon (principle of *res judicata*);

f. Concerning the Applicant's allegation that no meaningful consultation took place prior to his reassignment, no provision exists in the Staff Regulations and Rules requiring such a consultation. Consultation with the staff member before the decision is officially communicated is good managerial practice and should be guided by the principles of good faith and fair dealing;

g. The consultation which took place in the present case fulfilled the requirements of good faith and transparency. A meeting was held between the Applicant, his supervisor and the Deputy Secretary-General, UNCTAD, in order to inform the Applicant of the implementation of paragraph 52(1) of the Judgment. The Applicant was furthermore given the possibility to share his views on his subsequent transfer back to GSU. The Deputy Secretary-General informed him promptly and personally of the decision to reassign him back to the post of Chief, GSU;

h. Regarding the fact that the Applicant was O-i-C, HRMS, UNCTAD, only for one day, from a legal point of view, the Administration was only requested to rescind the illegal decision. After

i. The immediate reassignment of the Applicant to his former post was in the interest of UNCTAD, because his services as O-i-C, HRMS, were not operationally required in April 2010, as another staff member had been appointed to perform those functions and it was planned that she would continue to do so. Moreover, the Applicant's services were required for the post of Chief, GSU, in order to ensure proper discharge of the responsibilities of this position by a qualified staff member. These functions are commensurate with the Applicant's qualifications and skills;





Consequently, the conditions which trigger the application of the above-cited provisions were not met in the present case.

34. In any case, although not legally bound to carry out consultations, the Deputy Secretary-General, UNCTAD, held a meeting with the Applicant aimed at addressing the implementation of Judgment UNDT/2010/009 on 13 April 2010, followed-up by email exchange. The Applicant was thereby given the opportunity

(UN Administrative Tribunal Judgment No. 1069, Madarshahi (2002)).

39. Judgment UNDT/2010/009 already pointed out, referring to the transfer dated 19 September 2008, that, on the substance, the reassignment of the Applicant to the position of Chief, GSU, constituted a proper exercise of the

43. Finally, in the above-described circumstances, there is cause to determine that, contrary to the Applicant's claim, the Respondent did not abuse the proceedings before the Tribunal. Accordingly, the request for costs to be awarded against the Organization pursuant to article 16.2 of the Statute is hereby rejected.

#### Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 8<sup>th</sup> day of December 2010