



## Introduction

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for the post and would be separated from service in three months time during which she could undertake a job search.

7. On 23 January 2008, the Applicant filed a formal complaint with the UNDP Office of Human Resources, Bureau of Management, accusing the Resident Representative and Resident Coordinator of harassment, abuse of authority and retaliation. An investigation was conducted into the Applicant's complaint.

8. On 4 March 2008, after she was advised of the administrative decision to separate her from service, she wrote to the Assistant Administrator and Director, RBAS, the then Deputy Assistant Administrator and Deputy Regional Director, RBAS, and the then Director, Office of Human Resources, Bureau of Management. She expressed her concerns about the job fair and made a number of allegations about the way in which the interview panel had conducted her interview. She wrote the following:

I am writing to you all following the letter received by the Director of OHR requesting me to do so to provide concerns regarding the change management process carried out at UNDP Kuwait in December 2007 which led to my dismissal.

9. She then wrote of the emotional toll the procedure had taken on her and went on to say:

Mr. [H.], [the then Director, Office of Human Resources, Bureau of Management], I am including you because first and foremost yourself and the RC/RR are the two sole individuals who [have] the right to review the panel's recommendation.

10. Next, addressing the Assistant Administrator and Director, RBAS, and the Deputy Assistant Administrator and Deputy Regional Director, RBAS, she referred to her "successful and efficient career ... ending with [her] and other colleague[s'] dismissal ([six] people in less than one year)". She then set out a list of criticisms of the job fair process and the conduct of the panel interview and ended by writing:

Justice delayed is justice denied. My professional career of 14 years serving the UN and livelihood is at stake. Moreover, to





19. The Respondent's principal contentions on receivability are:

a. The application is irreceivable

- c. What is the effect of the terms of reference of the Office of the Joint Ombudsperson on the time limits of former staff rule 111.2?
- d. Was the request for administrative review filed within the time limits of former staff rule 111.2?

#### Considerations

21. Former staff rule 111.2(a) states:

(a) A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing. The staff member shall submit a copy of the letter to the executive head of his or her department, office, fund or programme.

22. The requirements of this rule are mandatory in expression and, on their face, are mandatory in intent.

23. The first requirement of the rule is that the Applicant wishes to appeal against an administrative decision. Next, it shall be in a letter addressed to the Secretary-General and third it must be sent within two months of the notification of the decision in writing.

24. Neither of the administrative decisions of which the Applicant complains, that is the decision not to select her for a position and the decision to separate her, had been made when she sent the first letter on 25 November 2007. She therefore cannot have been appealing against the administrative decisions of 16 January 2008 and 21 October 2008. The first requirement of former staff rule 111.2 is not met. The Tribunal finds that the letter dated 25 November 2007 is not a request for administrative review in terms of the rule.

25. The letter dated 4 March 2008 was sent by the Applicant within the required two-month time period but it was not addressed to the Secretary-General.



Joint Appeals Board in accordance with former staff rule 111.2(a)(ii). She did not do this.

32. Finally, the Applicant did make a properly addressed and specific request for administrative review on 23 June 2009. This is another indication that she did not intend to request an administrative review by her letter of 4 March 2008.

33. In view of the foregoing, the Tribunal finds that the 4 March 2008 letter was not a request for administrative review.

34. The third letter which was addressed to the Secretary-General was in proper form except that it was sent on 23 June 2009, more than a year after the administrative decision had been made. It was sent over 15 months out of time.

35. In *Costa and other judgments*<sup>4</sup>, the Appeals Tribunal has affirmed that pursuant to article 8.3 of the Dispute Tribunal's Statute, the Tribunal may suspend or waive the deadlines for the filing of applications imposed by the Statute and Rules of Procedure, but may not suspend or waive the deadlines in the Staff Rules concerning requests for administrative review or management evaluation.

36. The terms of reference for the Joint Ombudsperson relied on by the Applicant are an internal document produced by the Office of the Joint Ombudsperson for UNDP, UNFPA, UNICEF, UNOPS and related funds and programmes and they are inconsistent with the Staff Rules.

37. These terms of reference purport to suspend the two-month time limit specified in the former Staff Rules for filing a request for administrative review. However, there is no binding legislative provision which gives the Ombudsperson the power to suspend the operation of former staff rule 111.2(a). Accordingly, this provision has no effect.

38. In response to the Applicant's submission that the Secretary-General implicitly decided not to waive the time limits at the time she was engaged with the Ombudsperson, the Tribunal notes, as a matter of fact, that she did not request the suspension of the time limit within which she could request an administrative

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review. In the absence of a request, the Administration could not have made any decision, actual or implied, to waive the time limits.

39. In summary the Tribunal is obliged to find that it has no jurisdiction to waive or extend the time in which an applicant may request an administrative review, whatever the circumstances of the case. There is no basis in the former Staff Rules for finding that time should only be calculated from the end of the involvement of the Ombudsperson. Nor does the Tribunal have jurisdiction to decide whether there were exceptional circumstances which led to the Applicant's delay in making the request.

40. On each of the issues the Tribunal finds that:

a. The Applicant's letter of 25 November 2007 to the UNDP Administrator and the Assistant Administrator and Director, RBAS, was not a receivable request for administrative review;

b. The 4 March 2008 letter to the Assistant Administrator and Director, RBAS, the Deputy Assistant Administrator and Deputy Regional Director, RBAS, and the Director, Office of Human Resources, Bureau of Management, was not a receivable request for administrative review;

c. The terms of reference of the Office of the Joint Ombudsperson have no effect on the time limits in former staff rule 111.2(a);

d. The Applicant's request for administrative review dated 23 June 2009 was filed outside the time limit established in former staff rule 111.2(a).

41. The Tribunal concludes that the application is not receivable.

#### Conclusion

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

The application is rejected.

## Observations of the Tribunal

43. There are two matters arising from this case about which the Tribunal makes the following observations:

1. The wording of the terms of reference for the Office of the Joint Ombudsperson has no legislative effect but, as in this case, has the potential to mislead staff members about the operation of the time restrictions in former staff rule 111.2(a). They should be modified to avoid confusion.

2.1 Article 8, paragraph 3, of the Statute of the Tribunal prevents it from giving relief to staff members even in rare cases where exceptional circumstances exist that would otherwise justify the waiver of the time limit in the former Staff Rules for requesting administrative review. This applies also to the current Staff Rules relating to time limits for requests for management evaluation.

2.2 The power of the Secretary-General to extend the deadline for

Entered in the Register on this 24<sup>th</sup> day of June 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva