



Case No.: UNDT/GVA/2011/092

Judgment No.: UNDT/2012/045

Date: 5 April 2012

English

## Introduction

1. By an application filed with the Registry of the Tribunal in Geneva on 19 December 2011 and completed on 17 January 2012, the Applicant, a staff member at the United Nations Office on Drugs and Crime (“UNODC”), contests the decision to reassign him to a P-3 post after he had held a P-4 post.

2. He requests the Tribunal to rescind that decision, refer the case to the Secretary-General for possible action to enforce accountability, and order the payment of several years’ net base salary as compensation for damages suffered.

## Facts

3. The applicant joined the United Nations in Vienna in 1985. He was promoted to the P-3 level in 1992, and in 2006 his fixed-term appointment was converted into a permanent appointment.

4. On 1 July 2007, the Applicant was appointed to an L-4 post (under the 200 series of the former Staff Rules applicable to technical assistance project personnel) as Regional Programme Coordinator for the Gulf Cooperation Council Countries, Division for Operations, UNODC, Vienna. The letter of offer, dated 21 May 2007, stated:

Your permanent appointment status will be frozen for the duration of this assignment. Upon completion of this assignment, you would revert to your current P-3 contractual status and level, and would be required to apply for and be considered for positions for promotion to the P-4 level.

5. On 9 April 2009, the Applicant was informed of the decision of the Executive Director of UNODC to laterally reassign him to the UNODC Subregional Office in Abu Dhabi.

6. After initially declining the transfer, then accepting it, then postponing his entry-on-duty date several times, the Applicant was informed during a meeting on 1 December 2009 of the decision taken by the Executive Director to no longer

laterally reassign him to the UNODC Subregional Office in Abu Dhabi as Special Representative to the Gulf Countries at the P-4 level. He was also advised that he would continue to perform his functions as Regional Programme Coordinator for the Gulf Cooperation Council Countries in Vienna until such time as the new Head of the UNODC Subregional Office in Abu Dhabi was appointed, and that thereafter, in accordance with his permanent appointment, he would be transferred to a yet-to-be-identified P-3 post in Vienna.

7. By email dated 4 December 2009, the Chief of the Human Resources Management Service confirmed to the Applicant the decisions that had been communicated to him during the meeting on 1 December.

8. On 21 December 2009, the Applicant requested a management evaluation of the decision to no longer laterally reassign him to Abu Dhabi, and on 23 December, he filed an Application requesting the Tribunal to suspend implementation of that decision. The application was registered under the number UNDT/GVA/2009/109

11. On 9 March 2010, the Executive Director approved the recommendations contained in the aforementioned inter-office memorandum.

12. By email dated 12 March 2010, the Applicant was advised of his reassignment to the aforementioned P-3 post. He took up his new functions on 15

Translated from French

b. The contention that the Applicant was not advised of the contested decision until June 2011 is unfounded and in bad faith.

#### Consideration

23. The Applicant contests the decision to reassign him to a P-3 post after he had held a P-4 post. The evidence provided shows that he was notified of that decision on 12 March 2010.

24. Staff rule 11.2(c) states that “[a]pproval for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested”.

25. In the present instance, however, the Applicant did not request a management evaluation of the decision to reassign him to the P-3 post until 1 August 2011, over one year late.

26. Article 8, paragraph 3, of the Statute of the United Nations Dispute Tribunal points out, moreover, that the Tribunal “shall not suspend or waive the deadlines for management evaluation”, and according to established case law of the United Nations Appeals Tribunal, the article precludes the Dispute Tribunal from extending the deadline for submitting a management evaluation request to the Secretary-General (see for example *Costa* 2010-UNAT-036, *Samardzic* 2010-UNAT-072, *Trajanovska* 2010-UNAT-074, *Ajdini et al.* 2011-UNAT-108).

27. In his application, the Applicant states that he became aware of the contested decision through the email of 4 December 2009 from the Chief of the Human Resources Management Service and the inter-office memorandum of 1 March 2010, approved by the Executive Director of UNODC on 9 March 2010, a copy of which he did not receive until 30 June 2011.

28. As regards the email of 4 December 2009, inasmuch as it informs the Applicant that he would be transferred to a yet-to-be-identified P-3 post, and assuming that this is an administrative decision which could be appealed, no



Entered in the Register on this <sup>th</sup> 5 day of April 2012

(Signed)

René M. Vargas M., Registrar, Geneva