



## Introduction

1. The Applicant is a former staff member of the United Nations Development Programme (UNDP). She filed the current application with the Registry of the United Nations Dispute Tribunal (the Tribunal) in Nairobi to contest: (i) the sudden verbal decision to relocate her post from Amman to Baghdad without any notice and the subsequent abolition of her post in Amman and (ii) the rejection of her request by the Country Office to postpone her entry on d(EOD) date for a post in Baghdad to the end of March 2011.

5. The Applicant was then offered the same post in Jordan that she had encumbered as a local staff member of the Iraq duty station. She accepted the offer and effective 1 February 2006 she held the position of Operations Associate at the G-7 level with UNPD Iraq in Amman.

6. By an email dated 5 March 2009<sup>1</sup> the then Resident Representative provided a synthesis of the key issues discussed at a UNDP 2009 Retreat<sup>2</sup> to all UNDP Iraq staff members. He informed the staff that the United Nations system was on a “gradual but sure path back to Iraq” and that efforts were being made to increase United Nations agencies presence both in Baghdad and in the field offices. In this respect, he: (i) urged that new personnel be recruited with the understanding that they would be based in Iraq; and (ii) indicated that while a sizeable Country Office would remain in Amman for some time, he, along with UNDP senior management and senior project personnel, would be spending more time in Iraq.

7. The Country Director wrote to the Deputy Resident Representative (Operations), UNDP Iraq, on 8 March 2010 requesting that the Applicant’s post be advertised with the duty station as Baghdad, Iraq. He explained that this move was necessary because: (i) UNDP Iraq did not have many core operations staff in Baghdad; (ii) the increase of project activities and coordination functions in Baghdad; and (iii) the need to provide administrative assistance to the large number of staff going on missions from Amman to Baghdad.

8. A Human Resources Specialist from the Human Resources Unit (HRU) verbally informed the Applicant of the Country Director’s decision to relocate her post to Baghdad on 11 March 2010. Upon her request, a copy of the Country Director’s email was shown to her.

9. The Country Director informed all UNDP Iraq staff members, by an email dated 18 March 2010, of the United Nations Country Team’s (UNCT) decision to

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<sup>1</sup> The Resident Representative provided all UNDP Iraq staff members with a copy of the Retreat Report on 29 April 2009.

<sup>2</sup> This was a UNDP Iraq retreat, which was held from 24 – 26 February 2009.

freeze all Amman-based future recruitments to shift toward Iraqi nationals being posted in Iraq. He advised staff to expect that in the near future certain positions, including that of Operations Associate would be Baghdad-based.

10. The Deputy Resident Representative (Operations) informed all UNDP Iraq staff members on 21 March 2010 that the positions of Programme Specialist, Procurement Analyst, Operations Associate and Administrative Associate would be based in Iraq with immediate effect. This was followed up by an email from the Country Director dated 29 March 2010 to UNDP Iraq staff members reiterating the relocation of the four positions to Baghdad.

11. Subsequently, the Resident Representative informed the Applicant by a letter dated 26 April 2010 that her post in Amman would be abolished and that a new post at the same level would be established in Baghdad with new terms of reference. The Applicant was further informed that the new post in Baghdad would be advertised for competitive selection and that if she was selected for the new post by 31 August 2010 she would be separated effective 1 September 2010.

12. According to the Applicant's submission, she did not apply for the new post in Baghdad but rather applied for two positions based in Amman. She was informed on 9 June 2010 and 15 July 2010 that her applications for these positions were not successful.

13. By a letter dated 8 August 2010 addressed to the Director of the UNDP Office of Human Resources, Bureau of Management (OHR/BOM), the Applicant requested management evaluation of the decision to abolish and transfer her post from Amman to Baghdad. She received communication from the Chief of the Bureau of Management Directorate that a reply to her request would be sent to her by 22 September 2010.

14. In a response dated 25 August 2010, the Officer-in-Charge (OIC), OHR/BOM, confirmed the abolition of the post.

process, the post in Baghdad as it was the same post she was encumbering in Amman. The OIC informed the Applicant that she had up until 30 September 2010 to either accept or decline the offer and that if she chose to decline she would be separated from UNDP effective 31 December 2010.

15. On 22 September 2010, the Applicant sent an email to the Bureau of Management requesting suspension ~~her~~ request for management evaluation pending efforts to informally resolve the matter with the assistance of the Ombudsman.

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up the functions of the post as soon as possible. The Deputy Director then requested that the Applicant provide further clarification to enable her to assess when the Applicant would be able to take up the post.

20. The Applicant provided the Deputy Director with additional information on 11 November 2010 and on 12 November 2010, Deputy Director advised her to consult with UNDP Iraq on the way forward.

21. The Applicant declined the offer on 16 November 2010 and on 23 December 2010; she applied for Special Leave Without Pay for a period of one year from 1 January 2011 to 31 December 2011, which was approved by OHR/BOM.

22. On 29 March 2011, the Applicant requested that OHR/BOM resume

## Issues

26. In the Applicant's 29 March 2011 email to OHR/BOM, she sought resumption of her 8 August 2010 request for management evaluation and also sought management evaluation of UNDP Iraq's decision to take away her United Nations Laissez-Passer (UNLP) on 10 January 2011. However, since she did not raise the issue of the confiscation of her UNLP in her Application, the Tribunal will not consider this issue but will only canvass the receivability of the two claims she detailed in her Application in this judgment.

## Parties' submissions

### *Respondent's submissions*

27. With respect to the decision to abolish the Applicant's post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq, the Respondent submits that the Applicant's request for management evaluation is time-barred and therefore not receivable. The Respondent contends that since the Applicant was informed verbally of the decision on 11 March 2010 and in writing on 26 April 2010 she should have filed her request for management evaluation no later than 10 May 2010 (60 days from the verbal notification) or no later than 25 June 2010 (60 days from the written notification). However, she did not request management evaluation until 8 August 2010. Thus, her request failed to comply with staff rule 11.2(c).

28. With respect to the decision not to delay the Applicant's EOD for the Procurement Analyst post until the end of March 2011, the Respondent submits that the Applicant failed to request management evaluation of this decision as required by staff rule 11.2(a). In this respect, the Respondent asserts that the Applicant's request for management evaluation dated 8 August 2010, related solely to the decision to abolish her post in Amman and to create a similar post in Baghdad. On 29 March 2011, she requested that her initial management evaluation request be resumed based





to the Dispute Tribunal to request a management evaluation of the contested administrative decision.

33. Staff rule 11.2(a) provides in relevant part that a staff member wishing to formally contest an administrative decision shall, as a first step, submit a request for management evaluation to the Secretary-General.

34. Further, staff rule 11.2(c) provides that:

A request for a management evaluation shall not be receivable by the Secretary-General unless it is submitted within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by th

38. BOM informed the Applicant on 16 August 2010 that a reply to her request would be sent by 22 September 2010. It is worth noting that the OHR/BOM letter was received by the Applicant on 25 August 2010, approximately two and a half weeks after her request for management action. Thus it was sent to her within the deadline for a response from the Administration.

39. Paragraph 2 of the 25 August 2010 letter indicated that OHR/BOM had “carefully reviewed” the Applicant’s arguments and the content of the 26 April 2010 notification (the administrative decision) and that OHR/BOM wanted to “share the result of [their] analysis with [the Applicant]. The letter then went on to provide the Applicant with a brief history of the c

and Director of BOM suspended the Applicant's request for management evaluation "until further notice" pending efforts at formally resolving the matter with the assistance of the Ombudsman and informed her as follows:

Should the issues not be resolved to your satisfaction, you will, of course and at any stage in the future be at liberty to ask that the formal process be resumed. Should this occur, you will receive a new acknowledgement of receipt from my Office, together with an indication of the date by which you may expect a reply.

I hope that the efforts that are currently being made will bear fruit, and thank you for your engagement in this process.

42. After meeting with the Deputy Director of OHR/BOM on 23 September 2010, the Applicant requested that the 30 September 2010 deadline provided in the 25 August letter be extended for an additional 2 weeks i.e. up until approximately 14 October 2010.

43. Before the Applicant could provide the Administration with a response to the 25 August 2010 offer, UNDP Iraq offered her, on 12 October 2010, the post of Procurement Analyst, which had been newly created in Baghdad and was at a higher level than the post the Applicant had initially offered in Baghdad. She was asked to provide a response to this offer by 25 October 2010. After the parties reached a stalemate on the issue of Applicant's EOD date, she wrote to UNDP Iraq on 16 November 2010 and declined the offer for the Procurement Analyst post in Baghdad.

44. While there were two offers outstanding, it is worth noting that the Applicant did not provide a response to the Administration in relation to the offer contained in the 25 August 2010 letter. The Administration also did not follow up on the earlier offer or on the Applicant's request for management evaluation until she requested reinstatement of her request on 29 March 2011.

45. The Tribunal finds that the Respondent effectively waived the deadline for management evaluation and handed the Applicant the discretionary authority to decide when to litigate her matter by engaging her on the merits of her tardy claims

via the letter of 25 August 2010 and by suspending her request for management evaluation via the letter of 22 September 2010 “until further notice” with an undertaking that she could request for resumption of the formal process “at any stage in the future”, should the issue not be resolved to her satisfaction.

46. In view of the foregoing, the Tribunal holds that the Respondent is estopped from asserting that the Applicant’s challenge against the decision to abolish her post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq, is now time-barred.

47. Accordingly, this claim is receivable.

*Is the Applicant’s challenge against the decision not to delay her EOD for the*

subsequently advised the Applicant to consult with UNDP Iraq on the way forward. Without any further consultations with UNDP Iraq, the Applicant declined the offer on 16 November 2010.

51. In her email dated 29 March 2011, dated "Re Suspension of Request for Management Evaluation", the Applicant specifically requested management evaluation of the decision to seize her UNLP, which was an issue that had not initially been raised in her 8 August 2010 request. No such request was made in relation to the decision not to extend her EOD until March 2011. She stated the following in relation to the EOD decision:

Dear Ms. JDW,

I am writing today to seek your kind assistance to:

1. Resume the formal process for my request for Management Evaluation in light of the following facts that took place since the suspension of the request:
  - a. The offer of the Procurement Analyst post in Baghdad (dated 12<sup>th</sup> Oct 2010) did not meet my satisfaction because the Office failed to provide a response to my deep concerns on the security situation and if any security arrangements were in place if I return to Baghdad.
  - b. The disapproval of my request to extend the EOD in Baghdad Office (dated 27<sup>th</sup> Oct 2010), if I accept the above post, until end of March 2011 because I have compelling family circumstances [...]. The above facts resulted in declining the offer for the mentioned post.

52. Thus, in actuality, she only raised the issue of the EOD to provide context and a reason for her request to the Administration to resume the management evaluation of her 8 August 2010 request. Based on the evidence, the Tribunal finds that the mere mention of the EOD decision in the Applicant's 29 March 2011 email cannot be construed as a request for management evaluation.

53. Thus, the Applicant failed to comply with art. 8.1(c) of the Tribunal's Statute and as such, this claim is not receivable.

54. In view of the fact that the Applicant did not request management evaluation of the decision, there is no need for the Tribunal to examine whether she complied with the delay stipulated by staff rule 11.2(c).

#### Decision

55. The Tribunal concludes that the Applicant's challenge against the decision to abolish her post in Amman, Jordan, and to create a new post at the same level in Baghdad, Iraq, is receivable and will therefore proceed to a determination on the merits.

56. The Tribunal further concludes that the Applicant's challenge against the decision not to delay her EOD for the Performance Analyst post until the end of March 2011 is not receivable. Accordingly, this claim is dismissed in its entirety.

*(Signed)*

Judge Vinod Boolell