

UNITED NATIONS D

## **Background**

1. The Applicant is a staff member of the United Nations Population Fund (“UNFPA”) serving as Representative at the UNFPA Oman Country Office (“CO Oman”) within the Arab States Regional Office (“ASRO”) at the P-5 level.
2. On 4 June 2019, he filed an application with the United Nations Dispute Tribunal in Nairobi challenging the Respondent’s decision to renew his fixed term appointment (“FTA”) by nine months instead of two years (“the contested decision”) that is, from the expiration date of 20 June 2019 to 19 March 2020.
3. The Respondent filed his reply to the application on 8 July 2019 in which it is argued that the application is not receivable *ratione materiae*.

## **Summary of the relevant facts**

4. By a Personnel Action (“PA”) form dated 20 February 2019, the Applicant’s appointment was renewed for nine months, from 20 June 2019 until 19 March 2020.<sup>1</sup>
5. On 16 April 2019, the Applicant sought management evaluation of the contested decision.
6. In its response to the management evaluation request dated 28 May 2019, UNFPA upheld the contested decision.
7. On 2 July 2019, the Applicant received a new PA granting him a further extension of appointment until 31 March 2021.<sup>2</sup>
8. On 12 July 2020, the Applicant filed a rejoinder to the reply.

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<sup>1</sup> Application, annex 2.

<sup>2</sup> Reply, annex 1.

## **Parties' submissions**

### **Receivability**

#### *The Respondent*

9. The application is not receivable *ratione materiae*. The contested decision has been superseded and rescinded by effect of the PA dated 2 July 2019. The Applicant has now been granted the full two year renewal of appointment. The contested decision of the PA dated 20 February 2019 has no legal effect on Applicant's terms of appointment or contract of employment.

#### *The Applicant*

10. The PA dated 2 July 2019 did not supersede or rescind the contested PA dated 20 February 2019 as nothing in its content explicitly or implicitly states so. The two PAs provide renewals for two different renewal periods. The contested PA grants renewal from 20 June 2019 to 19 March 2020 while the PA dated 2 July 2019 granted an extension of appointment from 20 March 2020 to 31 March 2021.

11. If the Tribunal were to follow the Respondent's argument and consider the contested PA rescinded while the new PA dated 2 July 2019 did not cover the period 20 June 2019 to 19 March 2020, it necessarily means that the Applicant was not covered by any PA for that period which is not the case.

12. The Respondent inadvertently admits the validity of the contested PA in terms of the period it covered. At the same time, the Respondent argues it was rescinded by a new PA dated 20 February 2019. Logically, this contradicts the uncontested fact that the Applicant continues to serve as an employee covered by the contested PA.

13. The Administration issued three PAs consecutively and gave different and inconsistent justifications for each. ¶The t13.41 144.77 Tm0 g0 G(T)-8 612 792 re nBT/F1 12 Tf1 0 0 1 2

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order.<sup>3</sup> Conversely, a decision that is final but produces no direct legal consequence on

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Entered in the Register on this 22<sup>nd</sup> day of October 2020

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi