



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/109

Judgment No.: UNDT/2011/105

Date: 22 June 2011

Original: English

Before: Judge Coral Shaw

Registry: Geneva

Registrar: Víctor Rodríguez

AL-MULLA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Winston Sims

Counsel for Respondent:

Ingeborg Daamen, UNOV/UNODC

Introduction

1. The Applicant, a staff member of the United Nations Office on Drugs and Crime (“UNODC”), has filed an application with the United Nations Dispute Tribunal challenging the decision made on 4 December 2009 to no longer reassign him laterally to the UNODC Sub-Regional Office in Abu Dhabi, United Arab Emirates (“UAE”), as UNODC Representative to the UAE and Special Representative to all Gulf countries.

2. In his application, the Applicant sought a number of remedies. At the hearing these were revised and stated as follows:

- a. Rescission of the decision to return him to a post at the P-3 level;
- b. Payment of one year’s net salary as compensation for the emotional and actual damages suffered;
- c. Award of a nominal sum of one USD for the various injustices suffered.

Hearing

3. The Tribunal held an oral hearing of this matter. The Applicant and two witnesses for the Respondent gave evidence and the parties presented oral and written submissions.

4. Following the oral hearing, a further short written submission was filed by the Applicant without notice or direction. As it had no influence on the eventual outcome of this case it was not referred to the Respondent for comments.

The issues

5. The issues properly before the Tribunal were narrowed down at a directions hearing. This was particularly necessary in this case in view of the Applicant’s reprehensibly long and confusing pleadings and submissions in the original application. This application contained details of a number of different

factual and legal subjects which were not strictly relevant to the single receivable issue in this case. One of these concerned the selection process for an L-5 post to which the Applicant had unsuccessfully applied. The Applicant accepted that as he had not requested management evaluation of this decision it was not a receivable claim before the Tribunal.

6. The Applicant was also critical of the fact that after the withdrawal of his lateral reassignment he was required to return to a post at his original P-3 level. Again that decision has not been the subject of a management evaluation and is not receivable by the Tribunal.

7. The Applicant is unable to seek any rulings or relief for either of these matters. The events surrounding them are part of the factual matrix of the application but they are peripheral at best.

8. The central issue before the Tribunal is the legality of the decision not to laterally reassign him to the post in Abu Dhabi. It was agreed with the parties at the directions hearing that this issue could be expressed as follows:

Was the decision to no longer laterally assign the Applicant to the P-4 position of UNODC Representative to the UAE and Special Representative to all Gulf countries in the UNODC Sub-Regional Office in Abu Dhabi unlawful by reason of:

- a. The lack of a project document for the post;
- b. That it was in breach of the Host Country Agreement; and
- c. That the process adopted was in breach of ST/AI/2006/3?

9. To this agreed issue the Tribunal adds the following:

Was the assignment of the Applicant to the post in Abu Dhabi subject to any conditions to be fulfilled by the Organization and/or the Applicant? If so were these conditions fulfilled?

Facts

10. The facts outlined below are limited to those which are relevant to the issues before the Tribunal.

11. The Applicant entered the service of the United Nations in 1985 in Vienna, Austria. He was promoted to the P-3 level in September 1992 and his initial fixed-term appointment was converted to a permanent one in September 2006. From 1 July 2007, the Applicant was appointed to the L-4¹ project post of Regional Programme Coordinator for the Gulf Cooperation Council (“GCC”) countries, Division of Operations, UNODC. He was based in Vienna. In the letter of offer dated 21 May 2007, he was informed that:

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 selected for positions for promotion to the P-4 level.

12. On 15 October 2008, UNODC and the UAE signed a Host Country Agreement to establish a UNDOC Sub-Regional Office in Abu Dhabi. Included in Annex I to the Agreement was the commitment by the UAE to fund, among other positions, one L-5 Representative and one L-4 Programme Manager.

13. There was hope that the Office would be established by the end of 2008 but this was not possible. The Applicant prepared a draft project document on 16 December 2008 in accordance with instructions issued on 15 December 2008 by the Chief of the Financial Resources Management Service (“FRMS”), Division of Management, UNODC. Those instructions were that to properly account for the use of the contribution of the UAE a project document would need to be created and submitted for clearance. The project document was to be simplified to a one-page document with the Host Country Agreement annexed. The Chief of FRMS also advised that in the event that funds were necessary to meet urgent requirements, FRMS could create an account against which immediate expenditure could be incurred pending the completion of the necessary project

¹ 200 series of the Staff Rules applicable at the time.

document. The former Chief of the Africa and Middle East Section, Division of Operations, UNODC who was at the time the direct supervisor of the Applicant explained to the Tribunal that this was normal procedure and was only a preliminary measure. In early 2009, steps were taken to move the project forward.

14. In January 2009 the Programme and Project Committee (“PPC”) of UNODC was officially requested to include the project in the next agenda for the PPC meeting on 15 January.

15. Also in January 2009 a vacancy announcement was issued for the L-5 position of Representative of UNODC in the Sub-Regional Office in Abu Dhabi. The Applicant applied for that post in February 2009. He was one of three short-listed candidates but after an in-depth analysis of the candidates, it was decided that none of them met all the necessary requirements of an L-5 post.

16. In the absence of a successful candidate the L-5 vacancy was cancelled on 17 March 2009. The Executive Director decided that rather than re-advertising the vacancy the post would be reclassified at the L-4 level and offered as a lateral reassignment to the Applicant. It was intended that consideration would be given to reclassify the post to L-5 once the office was in operation. The reclassification would depend on the size of the office and the number and type of projects it was administering. The former Chief of the Africa and Middle East Section told the Tribunal that at all times it was made clear to the Applicant that after a period of time in the office and depending on performance and growth of the sub-regional portfolio the matter of the grade and level of the Representative’s position could be reconsidered.

17. On 8 April 2009 the Applicant was told by the Director of Operations that he was to be laterally reassigned to Abu Dhabi. On 9 April 2009, a meeting was held with the Applicant in which it was explained why he could not get the L-5 position. The minutes of the meeting record that it was explained to him that while he had been instrumental both financially and politically in getting the Gulf States’ support of UNODC work in the region, it was clear that there were a number of weaknesses in the program management. The Applicant was formally advised at that meeting that the Executive Director had decided to laterally

reassign him as from 4 May 2009 to the Sub-Regional Office in Abu Dhabi as Programme Coordinator at the L-4 level. He was encouraged by the Director to accept this lateral reassignment. He was told that he should look at it as an opportunity and under his guidance the Sub-Regional Office should evolve into a strong hub for strengthening UNODC programme in the region. The Applicant told the Director that a unilateral change (to the level of the post from L-5 to L-4) would aggravate the relationship with the UAE. Going into the field at the L-4 level was not good for him and he would rather not go as L-4 because it was a matter of image even if he risked losing his current post. The Applicant signed a copy of those minutes.

18. In an email dated 21 April 2009, the Applicant informed the Human Resources Management Service (“HRMS”) of UNODC that he had decided to decline the offer of a lateral reassignment to Abu Dhabi. One of the reasons he gave was that he had applied for the L-5 position and expected to take it up. He told the Tribunal that he had not received written advice of his non-selection and this was another reason for writing the email.

19. The Applicant was informed at a meeting held on 4 May 2009 that because he had declined to be laterally reassigned a vacancy announcement would be issued for the Programme Coordinator post in Abu Dhabi. In the meantime he was asked to temporarily relocate to Abu Dhabi to set up the Sub-Regional Office pending recruitment of a candidate to this new post. He was also informed that once the new post had been filled in the Sub-Regional Office, his own position as Regional Programme Coordinator in Vienna would become redundant.

20. On 11 June, he wrote to the Executive Director asking him to “intervene to stop the bureaucratic nightmare that has enveloped the implementation of this important step [i.e., the opening of the office]”.

21. At a further meeting on 12 June 2009 between the Applicant and the Executive Director, the Applicant finally agreed to a reassignment to the Sub-Regional Office in Abu Dhabi at the L-4 level but requested a different title and a higher step-in-grade. The post title was subsequently changed from Programme Coordinator to UNODC Representative to the UAE and Special Representative to

all Gulf countries but HRMS refused to grant the Applicant a higher step-in-grade. The post was established at the P-4 instead of L-4 level because of the introduction of the new, provisional Staff Rules.

22. The UNODC Executive Director then informed the UAE on 19 June 2009 that the Applicant had been appointed as the UNODC Representative to the UAE and Special Representative to all Gulf countries. In his letter, he told the UAE that the Applicant would “be taking up his appointment in the Sub-Regional Office within a week”. This never happened.

23. From June until mid-November 2009, the Applicant met and regularly corresponded with the Executive Director and other senior managers about his deployment.

24. The Applicant consistently said that he was ready to take up the appointment. In his correspondence, however, he continued to raise issues. He was concerned about the UNODC fulfilling its obligations under the Host Country Agreement; he was concerned that HRMS had not sent a formal offer of appointment; he wanted information about the classification of his post and his salary and allowances; he had questions about the way the Abu Dhabi office would operate. All of these questions were answered in a timely manner.

25. During this time the Chief of the Africa and Middle East Section made repeated requests of the Applicant to produce and finalise a fully fledged project document. The first one he had prepared in December 2008 had been only preliminary. The Applicant provided a draft in May 2009 but it was not considered to be up to standard and therefore unable to be submitted to the PPC.

26. At a meeting with the Applicant on 15 July 2009, he was requested to come up with a mechanism whereby all future envisaged activities and outputs could be delivered.

27. On 29 July 2009, the Chief of HRMS sent an email to the Applicant informing him of the administrative procedures and entitlements relating to his reassignment.

28. On 3 August 2009, the Cairo Regional Office for the Middle East and North Africa (“ROMENA”), to which the sub-Regional Office in Abu Dhabi was to have a direct reporting line, was asked to provide assistance to finalise the project document. That office provided suggestions to improve the document on 12 August.

29. The Executive Director wrote to the UAE on 20 August 2009 reiterating that the Applicant had been appointed as Representative to the UAE Sub-Regional Office and stating that the opening of the office was anticipated in the very near future.

30. On 4 September 2009, the Applicant requested assistance to finalise the project document.

31. On 9 September 2009 the Executive Director met with the Applicant following which HRMS was asked to urgently finalise the Applicant’s travel documents. On 14 September, the Chief of the Recruitment and Placement Unit, HRMS asked the Applicant for his preferences for a travel date. The Applicant told him that the “most suitable date” would be 19 October but also requested more administrative details including a post number and the classification level of the post, full calculation of the salary and other entitlements, most of which he had been informed of.

32. By email dated 28 October 2009, the Director of Operations asked the Applicant—who apparently was away from the Office for family reasons—when he would travel to Abu Dhabi, “based on [his] last indication of moving there by the end of this month”, stressing that his departure should not be delayed any further.

33. In an email dated 29 October 2009, the Applicant raised again the question of the appropriate level of the post asking for a “clear understanding of the staffing table and the level and title of the head of [the Abu Dhabi] office”.

34. To resolve these issues a meeting was held on 29 October with the Applicant, his supervisor, the Director of Operations and the Chief of the

Recruitment and Placement Unit, HRMS. It was agreed, *inter alia*, that the Applicant would take up his assignment in Abu Dhabi on 9 November 2009. The Applicant told the Tribunal that it was agreed at that meeting that once the project document is approved he would take up his new assignment. In fact the minutes of the meeting record that the Director of Operations had made the decision that:

The project ... must be finalised over the next few days in order to cover the salaries and operational costs of the new office. It was emphasised that the project document be very concise as per [the Chief of FRMS' instructions] of 15 December 2008. Once the document is approved it was agreed that [the Applicant] ... will take up his new appointment as of 9 November 2009.

The minutes of the meeting further record the following:

The Director of [Operations] confirmed to [the Applicant] that in line with the [Executive Director]'s decision he will be reassigned at the P-4 level ... and charged against the P-5 of the staffing table of the new Office in UAE ... The Director also agreed that once the Office is operational and the GCC programme is expanding, UNODC intends to review the level of the position of Representative with a view to reflect the increased responsibilities entrusted to that function and bring it in line with the provisions of the Host Country agreement which foresees a P-5 position.

35. The Chief of the Africa and Middle East Section then sent the Applicant the project document with instructions to complete the budget and to include a remark that the project work plan and log frame would be developed at a later stage. He asked the Applicant to give the matter his most urgent attention.

36. On 6 November the draft project document was sent to ROMENA for direct approval.

37. On 11 November in view of the fact that the Applicant had not taken up his assignment on 9 November as mutually agreed and because of the disappointment of the Executive Director in the Applicant's inertia, the Director of Operations sent the Applicant a final deadline. He was officially released of his duties at UNODC in Vienna from 23 November by which date he was required to take up office in Abu Dhabi. He was reminded that refusal to take up the assigned functions may be construed as a disciplinary issue.

38. Two days later the Applicant responded by email dated 13 November 2009 that he would be “more than happy” to travel on 23 November 2009, but that he still had not received responses from HRMS to additional information about the nature of the post and there were matters of a political nature that needed to be taken up at a higher level which was beyond his capacity. He concluded:

I am ready to go to Abu Dhabi as requested but as you are aware in order to take up my duty officially the government clearance is required among other very important issues I have raised above in order to successfully undertake my duties.

He also mentioned other matters which, in his view, were “de facto preventing [his] move to UAE” and should be addressed by senior management.

39. By email dated 18 November 2009, the Director of Operations informed the Applicant, *inter alia*, that “in view of the very long delays involved in [his] implementing the lateral reassignment to Abu Dhabi ... and given that the same issues concerning the Abu Dhabi Sub-Regional Office are continuously being raised by the UAE authorities in their various letters to the [Executive Director], it [had] been decided to review the entire scenario related to the Abu Dhabi Sub-Regional Office with the [Executive Director] upon his return to Vienna ...”.

40. The Applicant responded on the same day, stating among other things that he was “pleased to hear that the UNODC [Executive Director] [had] decided to ‘review the entire scenario’”.

41. On 25 November 2009 a meeting was called by the Executive Director to review the situation. The Director of Operations told the Tribunal that he attended the meeting together with the Chief of HRMS, the Chief of the Recruitment and Placement Unit, HRMS and the Chief of the Office of the Executive Director. The Executive Director expressed his deep concerns and displeasure about the unacceptable delays in the opening of the Sub-Regional Office in Abu Dhabi. After discussion he took the decision to no longer reassign the Applicant to Abu Dhabi.

42. In a meeting held on 1 December 2009 with the Applicant, the Applicant’s supervisor and the Chief of the Recruitment and Placement Unit, HRMS, the

Applicant was informed of the Executive Director's decision taken on 25 November 2009 to no longer laterally reassign him to the UNODC Sub-Regional Office in Abu Dhabi as Representative to the UAE and Special Representative to all Gulf countries. The Applicant was also informed that he would remain the Regional Programme Coordinator for the GCC countries in Vienna until such time as a new "Head" of the Sub-Regional Office were appointed and that "he would thereafter be reassigned to yet-to-be identified other P-3 level functions at UNODC HQs" and revert to his permanent appointment status. The discussions held during the meeting were reflected in a note for the file, which was reviewed and cleared by the Applicant.

43. By letter dated 2 December 2009, the Executive Director informed the UAE that "upon further careful consideration, and in order to provide a new impetus to the delivery of UNODC's programme in the Gulf States", the Applicant would "remain here at UNODC Headquarters and [would] be tasked with new functions" while "a senior UNODC officer with the requisite qualifications and experience" had been appointed as Head of the Abu Dhabi Sub-Regional Office.

44. On 4 December 2009, the Chief of HRMS informed the Applicant by email that in light of the decision to no longer reassign him: (i) HRMS was "formally retracting [the] email of ... 29 July 2009"; (ii) the Applicant would continue performing his "current functions as Regional Programme Coordinator for the GCC countries until such time as the new Head of the UNODC Sub-Regional Office in Abu Dhabi is appointed"; and (iii) "[t]hereafter, UNODC will try to identify a suitable position for you, in accordance with the provision of your latest letters of assignment dated 21 May 2007 and 6 April 2009 ...".

45. On 21 December 2009, the Applicant requested a management evaluation of the decision to no longer reassign him to Abu Dhabi.

46. The Applicant filed an application requesting the Tribunal to suspend, during the pendency of the management evaluation, the implementation of the contested decision. This application was rejected.

47. From 15 March 2010 the Applicant was reassigned to a Programme Officer post at the P-3 level, in the Division of Operations, UNODC.

48. The Applicant then filed an application on 4 May 2010 to appeal the decision to no longer reassign him laterally to UNODC Sub-Regional Office in Abu Dhabi.

Parties' submissions

49. The Applicant's principal contentions are that there was a pattern of behaviour by the Respondent whereby it took measures without any legal underpinning. Included amongst these were:

a. He did not receive any formal notice that he had not been selected for the L-5 vacancy;

b. Project documents establish the legal framework within which the UNODC has agreed to operate. Without a project document, the Executive Director could not laterally reassign the Applicant to the Sub-Regional Office in Abu Dhabi. The project document was only finalised on 21 December 2009. "Since the Applicant could not have legally taken the post prior to that date, removing him prior to that date for delays in 'taking up the post' could only have been disingenuous". The delays in finalising the project document were not due to the Applicant, who had submitted a second fully fledged draft in May 2009;

c. The attempts of UNODC to laterally transfer him at the P-4 level were in violation of the Host Country Agreement establishing the new Sub-Regional Office in Abu Dhabi whereby the chief of office should be at the L-5 level;

d. The contested decision was in breach of ST/AI/2006/3, in particular sections "2.2, 2.3, 4.1, 4.2, 4.3, 4.4, 5.3, 5.3(a), 7.1, 7.5, 7.6, 7.7, 7.8, 8, 9.1, 9.2, 9.3, 9.5, 10.1, and 12.1". In her letter of 11 September 2009, the Assistant Secretary-General for Human Resources Management reminded all Heads of Departments/Offices of the importance of strictly

adhering to the provisions of ST/AI/2006/3, especially in light of recent jurisprudence by the Dispute Tribunal;

e. The decision to no longer reassign him to Abu Dhabi “involved bad faith, mismanagement, abuse of authority and retaliation”. “The action enjoyed no basis in policy and none was cited.” This was also in breach of staff rule 4.15 (Senior Review Group and central review bodies) and staff regulation 1.1(d) which provides that “the paramount consideration in the determination of the conditions of service shall be the necessity of securing staff of the highest standards of efficiency, competence and integrity”.

50. The Respondent’s principal contentions are:

a. The decision to laterally reassign the Applicant from Vienna to Abu Dhabi at the L-4 level had been taken pursuant to staff regulation 1.2(c) and section 2.4 of ST/AI/2006/3 (Staff Selection System). Everything was administratively in place, on the basis of an exceptional set-up, when that decision was taken. The Applicant initially declined the reassignment, and then agreed. The Organization made good faith efforts to accommodate the Applicant’s numerous requests in connection with his reassignment. However, the Applicant’s failure to take up his functions in Abu Dhabi within a reasonable timeframe despite repeated instructions constituted a valid basis for withdrawing the decision to reassign him. The contested decision was in line with staff rule 1.2(a) and section 10.4 of ST/AI/2006/3;

b. Authority to reassign can be exercised without the need for applying the procedures of the staff selection system. There was no requirement to issue a vacancy beforehand; all that was required was a vacant post, which existed;

c. The contested decision was entirely dictated by operational requirements in the interest of the Organization and was necessitated by the Applicant’s delay in taking up his functions in Abu Dhabi. The

Applicant did not adduce any evidence that the contested decision was tainted by improper motivation;

d. The delays in finalizing the project document were largely attributable to the Applicant but in any event they were not an obstacle to the Applicant's lateral reassignment from a legal point of view. Indeed, in order to address this situation, an exceptional set-up was created in the system, including a financial account against which expenditures related to the Abu Dhabi Sub-Regional Office were incurred pending the finalization of the project document. The decision to implement this exceptional arrangement fell within the purview of the Chief of FRMS and was taken in the interest of the Organization and in an effort not to cause further delays in the opening of the Sub-Regional Office in Abu Dhabi.

Applicable rules

51. Staff regulation 1.2(c) provides that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations” and provisional staff rule 1.2(a) applicable at the time that “staff members shall follow the directions and instructions properly issued by the Secretary-General and by their supervisors”.

52. Paragraph 2.4 of ST/AI/2006/3 (Staff Selection System) provides that: “Heads of departments/offices retain the authority to transfer staff members within their departments or offices to vacant posts at the same level”. A similar provision is contained in paragraph 1 of annex I, *Responsibilities of the head of department/office*, to ST/AI/2006/3, which stipulates that: “The head of department/office has the authority ... [t]o transfer staff laterally within his or her department/office”.

Considerations

53. The issues may be summarized in the following way:

Was the reassignment of the Applicant to the post in Abu Dhabi subject to any conditions to be fulfilled by the Organization and/or the Applicant? If so were these conditions fulfilled?

54. The Applicant identified three alleged conditions that were not fulfilled. These were the failure to finalise the project document, the conditions in the Host Country Agreement and the requirements of ST/AI/2006/3.

The project document

55. The Applicant had the responsibility for preparing and finalising the project document. The document he drafted during 2009 was not up to standard and required input from the Cairo Regional Office. This led to delays. The contention of the Applicant that he was prevented from taking up the post because the project document was not finalised is not accepted for a number of reasons.

56. First, there is no mandatory requirement in the rules or any Administrative Instructions for a project document to be finalised prior to the responsible staff member taking up the project post. UNODC has Management Instructions, the most relevant of which is UNODC/MI/2007/2. This deals with Projects Approval by UNODC Representatives. It requires Project Concepts to undergo a formal approval process. That Management Instruction also allows for funding advances of up to 10% of the project until the final fully fledged document is developed. That is what happened in this case. The Executive Director authorised preliminary release of funds to facilitate the setting up of the office and the preparation of the project document.

57. Second, in none of the voluminous correspondence and documents or in any of the many meetings between them did either the Applicant or the Respondent insist that the finalisation of the fully fledged document was a pre-condition of his taking up the post. The agreement reached at the 29 October 2009 meeting was that once the document was approved he would take up his post on 9

November. That agreement was implicitly conditional on his completion of the project document by that date. He did not do so.

58. Third, contrary to his evidence and submission at the oral hearing, the reasons given by the Applicant throughout 2009 for not taking up the post as and when agreed did not include the lack of the finalised project document. They concerned his requirement for a change of functional title for the post, repeated requests for clarification of the level of the post and requests for information of an administrative nature which he either already had or was capable of finding online.

59. The Tribunal finds that the obligation to finalise the project document to the required standard and within the time frames set for him lay with the Applicant, but the completion of such a document was not a binding precondition for his taking up of the post.

Breach of Host Country Agreement

60. If the creation of an L-5 post were a binding condition of the Host Country Agreement between UNODC and the UAE, then the reclassification to L-4 of that post would have been in breach of that agreement. However it was not a binding condition. The Host Country Agreement was a commitment by the UAE to provide funding for posts that were to be created. The discretion to classify posts lies with the Administration which is responsible for the administration of the projects established under the Host Country Agreement.

61. The classification of the post intended to be encumbered by the Applicant was not in breach of the Host Country Agreement nor was the reclassification from L-5 to L-4 a sign of bad faith on the part of UNODC. The evidence of the Director of Operations and the former Chief of the Africa and Middle East Section confirmed that the intention to reclassify the post to P-5 at a later stage was made explicit both verbally and in writing to the Applicant and in fact steps are now underway to do just that.

62. The Tribunal finds that there was no breach of the Host Country Agreement as alleged by the Applicant.

Breach of ST/AI/2006/3

63. This Administrative Instruction concerns the staff selection system and sets out the procedures applicable from the beginning to the end of the selection process. However paragraph 2.4, which is derived from staff regulation 1.2(c), expressly reserves the authority to laterally transfer staff members to the head of department.

64. There was no evidence at all in support of the Applicant's contention that the exercise of the Executive Director's discretion to laterally reassign the Applicant was done with improper motives, bias or bad faith. To the contrary, in spite of his initial refusal to take the posting offered to him, the Applicant was persuaded to reconsider. At that stage it was intended and hoped by the Respondent that he would take up his post as soon as possible.

65. A decision to withdraw a reassignment is also within the broad discretion of the head of department. In this case the Executive Director had clearly reached the limits of reasonable tolerance. Considerable effort had gone into accommodating the Applicant's numerous requests. On at least three occasions the Applicant committed to taking up the post on a specific date. In reliance on the Applicant's assurance that he would take up the post by the end of June 2009 the Executive Director had formally advised the UAE of his impending arrival. The Applicant failed to honour either of these commitments without any valid justification.

66. The Tribunal finds that the Respondent did not breach ST/AI2006/3 in relation to the withdrawal of the Applicant's lateral reassignment.

Other matters

67. The Applicant raised a number of other matters that were not directly relevant to his challenge to the administrative decision to withdraw the lateral

reassignment. One of these was the selection process for the L-5 post. Recognizing that he had no receivable claim for this, the Applicant nevertheless raised his concerns about the selection process as a demonstration of an alleged pattern of conduct by the Respondent that supported his claim that the decision in dispute was not lawful.

68. For the avoidance of doubt the Tribunal observes that the Applicant produced no evidence that demonstrated such a pattern. On the contrary the Respondent's conduct towards the Applicant during 2009 as demonstrated by the evidence of the Director of Operations and the former Chief of the Africa and Middle East Section was remarkably restrained and considerate towards the Applicant in spite of his increasingly obdurate behaviour.

Conclusion

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

The application is dismissed in its entirety.

(Signed)

Judge Coral Shaw

Dated this 22nd day of June 2011

Entered in the Register on this 22nd day of June 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva