



**Before:** Judge Agnieszka Klonowiecka-Milart

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

AVRAMOSKI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Nicole Wynn, AAS/ALD/OHR  
Rosangela Adamo, AAS/ALD/OHR

## **Introduction**

1. On 27 September 2018, the Applicant, a Budget and Finance Assistant with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), filed an application before the Dispute Tribunal contesting the refusal by the Field Personnel Division (FPD) of the Department of Field Support (DFS) to “correct the error in [her] official records of service in Umoja to reflect her [entry on duty] (EOD) UN date as 28th February 2000 and not 2 September 2008”.

2. The Respondent filed a reply on 1 November 2018 in which it was argued that the application is not receivable *ratione materiae* on two grounds:

a. The change to the EOD date is not an administrative decision within the meaning of art. 2.1(a) of the Dispute Tribunal’s Statute. It has produced no legal consequences directly affecting the Applicant’s terms of appointment or employment contract.

b. The Applicant did not make a timely request for management evaluation as required by staff rule 11.2(c). The Applicant has known, or should have known, since September 2008, that her EOD date was reset upon her re-employment with the United Nations Logistics Base in Brindisi (UNLB). Even based on the Applicant’s claim that she identified the change in her EOD date only on 12 March 2018, the request for management evaluation was still 15 days late.

3. Having reviewed the reply, the Tribunal considers it appropriate to examine the preliminary issue of its jurisdiction or competence to entertain this application.

## **Facts**

4. On 28 February 2000, the Applicant was appointed to the Organization with the United Nations Transitional Administration in East Timor (UNTAET) as

an international staff member on a 300-series appointment.<sup>1</sup> On 20 May 2002 UNTAET was succeeded by the United Nations Mission of Support in East Timor (UNMISSET) established by Security Council resolution 1410 of 17 May 2002 to provide assistance to core administrative structures critical to the viability and political stability of East Timor.

5. On 13 January 2004, the UNMISSET Chief, International Staffing Support Unit, informed the Applicant that she had been reappointed from the 300-series to the 100 series of staff rules effective 1 January 2004.<sup>2</sup>

6. On 17 July 2005, the Applicant signed a Letter of Appointment (LOA) to serve on a fixed-term appointment in the United Nations Secretariat as a Budget Assistant at the United Nations Mission in Sudan (UNMIS).<sup>3</sup>

7. On 10 July 2008, DFS/FPD informed UNMIS that the Applicant had been selected to be reappointed/reassigned to UNLB effective 1 September 2008.<sup>4</sup>

8. On 18 August 2008, the Applicant signed a Memorandum of Understanding (MOU) regarding her annual leave balance. In the MOU, the Applicant acknowledged, *inter alia*, that she would be separated on 1 September 2008 and be reappointed on 2 September 2008.<sup>5</sup>

9. The Applicant was separated effective 1 September 2008.<sup>6</sup> Effective 2 September 2008, the Applicant was reappointed to UNLB and was issued a new Letter of Appointment.<sup>7</sup> The personnel action notification (PA) for the reappointment reflected the Applicant's EOD date as 2 September 2008.

10. On 29 June 2010, the Applicant was selected as a Budget Assistant at the FS-5/9 level with the United Nations Support Office for AMISOM (UNSOA). On 3 November 2014, she was reassigned from UNSOA to MINUSCA.<sup>8</sup>

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<sup>1</sup> Application – Annex 4.

<sup>2</sup> Application – Annex 5; reply- annex 2.

<sup>3</sup> Application – Annex 6.

<sup>4</sup> Reply – Annex 3; application – annex 7.

<sup>5</sup> Application – Annex 7.

<sup>6</sup> Reply – Annex 6.

<sup>7</sup> Reply – Annexes 7 and 8.

<sup>8</sup> Reply – Annex 1.

11. On 12 March 2018, the Applicant exchanged a series of emails with the Regional Service Centre Entebbe (RSCE) claiming that her EOD date was incorrect and requesting that it be changed from 2 September 2008 to 28 February 2000. She was informed that her EOD was correctly reset as 2 September 2008 due to her separation from UNMIS and her reappointment to UNLB.<sup>9</sup>

12. On 12 and 13 March 2018, the Applicant raised the matter of her EOD date with the MINUSCA Chief Human Resources Officer (CHRO), who informed the Applicant that MINUSCA's Client Support Unit (CSU) would take the lead in responding to her and that her case would be reviewed by the DFS/FPD.<sup>10</sup>

13. On 11 April 2018, MINUSCA Human Resources forwarded the Applicant a 10 April 2018 email from FPD, which reiterated that her EOD date was correctly reset to 2 September 2008 following her reappointment to UNLB in the following terms:

We reviewed Ms. Avramoski's concern with colleagues in QUAIMS and have the following observation. It appears that the EOD in Umoja correctly reflects the last separation and reappointment based on Staff Rules 4.17. Of more importance is the fact that this has no impact on her current entitlements and rights. The change in EOD did not identify any entitlements which have been or could be affected negatively by a change of EOD.

“(a) A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18.

(b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.”

We note that the reset in her EOD date to 02 September 2008 reflected following separation without break-in-service and reappointment from UNMIS to UNLB. This was the standard procedure prior to the HR Transition effective 01 July 2009, where a move from non-family to family duty station or vice versa triggered separation and reappointment without break-in-service.

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<sup>9</sup> Application - Annex 1.

<sup>10</sup> Application – Annexes 1 and 2.

14. By letter dated 26 May 2018, the Applicant sought management evaluation of the decision to put her EOD as 2 September 2008 and not 28 February 2000.

## **Submissions**

### *Receivability*

15. The Respondent's contention is that the application is not receivable *ratione materiae*. The change in the Applicant's EOD date is not an administrative decision as defined under art. 2 of the Dispute Tribunal's Statute.

16. The Applicant has not shown that the change in her EOD has produced any legal consequences for her appointment and entitlements. The Applicant's allegation that her eligibility for a continuing appointment has been adversely affected is incorrect. In determining the Applicant's eligibility for a continuing appointment, FPD did count the Applicant's service prior to her separation from UNMIS on 1 September 2008. The Applicant has not shown that her continuing appointment was delayed or that she suffered any harm even if it was delayed. In any event, a continuing appointment does not bestow any additional rights, salary, benefits or entitlements except in cases of a termination or a reduction in force, none of which is relevant to the Applicant.

17. The Applicant's allegation that her mobility allowance has been adversely affected is also incorrect. The Applicant's mobility profile shows that her EOD date for purposes of mobility allowance is 28 February 2000. Her mobility profile also shows that her prior service with UNMISSET, UNMIS and UNLB has been counted towards her mobility allowance. The Applicant has never contested the date of her eligibility for mobility allowance of which she was informed by a PA in June 2010 and upon her first payment on 28 February 2011.

18. The change in the Applicant's EOD does not affect her retirement benefits or her years of participation in the United Nations Joint Staff Pension Fund (UNJSPF). The UNLB reappointment PA shows her UNJSPF participation date as 1 August 2000.

19. As additional argument, the Respondent avers that the Applicant did not request management evaluation in accordance with applicable deadlines. The time limit for requesting management evaluation of an administrative decision runs from the date an applicant was first notified of that decision.

20. The reappointment PA with UNLB shows that the Applicant's EOD date was changed in 2008. This has been reflected in every PA since then. Accordingly, the Applicant has known, or should have known, since 2008 that her EOD date had been reset to 2 September 2008. The time to request management evaluation started to run from 2008. The Applicant's 26 May 2018 request for management evaluation was, therefore, over 10 years late.

21. The Applicant admits that at the latest, she identified the change in the EOD on 12 March 2018. Her claim was, however, that she was only informed about the meaning of it after she had received the email from FPD on 11 April 2018. Her management evaluation request was thus well within the applicable deadline.<sup>11</sup>

### *Merits*

22. The Applicant maintains that her EOD is a wrong reflection of employment record as since February 2000 until the day of the filing of the application she had no break in service. She requests that it be corrected and all benefits affected by the error be calculated accordingly and paid to her.

23. The Respondent invokes staff rule 104.3(a) of ST/SGB/2002/1 (Staff Rules and Staff Regulations of the United Nations and Staff Rules 100.1 to 112.8) which provides that a former staff member who is re-employed shall be given a new appointment unless he or she is reinstated under staff rule 104.3(b). According to staff rule 104.3(a), under the new appointment, the staff member's terms shall be fully applicable without regard to any period of former service, except that such former service may be counted for determining seniority in grade. The staff member's service shall only be considered as having been

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<sup>11</sup> Paragraph VIII(2) of the application.

continuous if the staff member is reinstated. If a former staff member is reinstated, it shall be expressly stipulated in his or her letter of appointment.

24. The same idea is currently expressed under section 3.14 of ST/AI/2013/1 (Administration of fixed-term appointments). A former staff member who is re-employed under staff rule 4.17 shall be given a new appointment unless he or she is reinstated under staff rule 4.18.

25. Under section 2.5.4.2 of the On-boarding of Staff for United Nations peace operations Standard Operating Procedure (On-boarding SOP) in effect when the Applicant moved to UNLB, a staff member who moved from a 100-series Special mission to a 100-series Established mission had to be reappointed. A Special mission was defined as a duty station where mission subsistence allowance is payable, and where the assignment of a staff member on mission detail does not entail a change of official duty station. Special missions are non-family duty stations whereas an Established mission was defined as a duty station where assignments of one year or longer give rise to an assignment grant. Current operations which are defined as established missions are UNDOF, UNFICYP, UNIFIL, UNLB, UNMOGIP, UNSCO, and UNTSO.

26. Consistent with the On-boarding SOP, in 2005 the Applicant was reassigned rather than reappointed from UNMISSET, a Special mission, to UNMIS, also a Special mission.

27. Prior to the harmonization of the conditions of service effective 1 July 2009, staff members serving with an Established mission were entitled to some entitlements, such as hardship allowance, non-removal element of the mobility allowance and post adjustment allowance, that staff members serving with Special mission were not entitled to. The On-boarding SOP provided that the movement from a Special mission to an Established mission had to be considered as reappointment because appointment in the two types of missions provided for different entitlements. When the movement was within the same type mission, which did not involve change in the staff member's entitlements, the On-boarding SOP provided that this movement had to be considered as reassignment.

28. The Applicant served on a 100-series contract with UNMIS. The Applicant's appointment with UNMIS expired and she separated from service with UNMIS. She then moved from a Special mission, UNMIS, to an Established mission, UNLB. She therefore was reappointed with UNLB. Consequently, the Applicant signed a new letter of appointment with UNLB. The 10 July 2008 FPD fax stated that the Applicant would be reappointed and her PA reflected a reappointment. Contrary to the Applicant's allegation, she was informed that she had to be separated and reappointed.

29. The Applicant's EOD date, therefore, correctly reflects her reappointment on 2 September 2008 as provided in former staff rules 104.3(a) and (b) and ST/AI/2013/1. The Applicant has produced no evidence or cited to any staff regulation or rule to support her claim that she was reassigned.

### **Considerations**

30. The Applicant identifies the contested decision in the present case as the "refusal by FPD to correct an error" in her official records of service.

31. In response to the Respondent's contention that the application is belated, the Tribunal recalls that data input in the human resources management system may, in certain circumstances, become the expression of an administrative decision.<sup>12</sup> In this case, an administrative act effecting the Applicant's move to UNLB done back in 2008 entailed reflecting the Applicant's EOD as 2 September 2008. The Tribunal, however, agrees with the Applicant that spotting the "EOD" on personnel action notifications is not obvious, neither is the meaning of it clear and unambiguous. The relevant administrative decision triggering the time limits here is the distinct and separate decision refusing to change the EOD date. The facts on record demonstrate that the Applicant requested the Administration to change her EOD on 13 March 2018 and the decision by DFS/FPD refusing her request was communicated to her on 11 April 2018. As the Applicant was notified of the refusal to change her EOD on 11 April 2018, she was well within the 60-

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<sup>12</sup> *Eng Order No. 193 (NBI/2017)*, at para 35.

day deadline of requesting management evaluation which she did on 28 May 2018. The request for management evaluation was therefore not time-barred.

32. It is settled law that to be reviewable, an administrative decision must have the key characteristic in that it must “produce direct legal consequences” affecting a staff member’s terms or conditions of appointment. What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.<sup>13</sup> An administrative decision must have a “direct” impact and not be only a prefatory act for subsequent decisions.<sup>14</sup>

33. The Tribunal recalls that the insertion of data in the information management system does not produce legal relations; rather, it is supposed to correctly reflect them as well as the facts relevant for the staff member’s status.<sup>15</sup> Where the entry is incorrect, however, there is a discord which may misinform administrative decisions which rely on it (for example calculation of entitlements) as well as the staff member as to his or her status, for example regarding the applicable regime of mandatory retirement age.<sup>16</sup> As a matter of principle, a staff member may, therefore, have legal interest in having the entry corrected. The Respondent maintains that the Applicant did not identify any benefits that have actually been negatively affected as a result of determining her EOD date of 2 September 2008 nor did she proffer any evidence of the same. As a matter of law, however, they may be numerous, including: eligibility for continuous appointment, accrual of various entitlements, regime determining retirement age and access to after service health insurance. The Tribunal will therefore examine the question on the merits.

34. The crux of the matter lies in whether the entry is accurate as to the fact or legal relation asserted by it. In this regard, the Tribunal is convinced by the Respondent’s submissions on the merits that the rules and procedures applied to establish the Applicant’s EOD date were due consequences of the fact that she

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<sup>13</sup> *Ngokeng* 2014-UNAT-460, para. 27, citing *Bauzá Mercére* 2014-UNAT-404, para. 18, as well as *Wasserstrom* 2014-UNAT-457.

<sup>14</sup> *Lee* 2014-UNAT-481.

<sup>15</sup> *Eng*, *ibid.*

<sup>16</sup> *Siri* Order No. 306 (NBI/2015) Corr. 1.

had been reappointed in 2008. The choice of reappointment as modality of the Applicant's move is clearly borne out by personnel actions of separation and reappointment and acknowledged by her in the memorandum of understanding with respect to annual leave from 2008. It is thus outside the temporal jurisdiction of the Tribunal. Accordingly, the EOD date as determined has had no unlawful impact on the Applicant's terms of appointment including all her benefits and entitlements. The impugned decision refusing to change it was, therefore, correct.

**Conclusion**

35. This application is dismissed.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 16<sup>th</sup> day of May 2019

Entered in the Register on this 16<sup>th</sup> day of May 2019

*(Signed)*

Eric Muli, Legal Officer, for,  
Abena Kwakye-Berko, Registrar, Nairobi