



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

COLLINS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

George Irving

**Counsel for Respondent:**

Katrina C. Waiters, UNFPA

## **Introduction**

1. The Applicant, a former staff member of the United Nations Population Fund (“UNFPA”), contests the termination of her fixed-term appointment as a result of abolition of her post. She claims that the decision was based on improper motivations and that UNFPA failed to comply with its obligations to make all reasonable efforts to consider her for available suitable posts.

2. The Tribunal concludes that the contested decision was the result of a valid exercise of discretion and UNFPA complied with procedural requirements. The application is therefore dismissed.

## **Factual background**

3. Before the termination of her appointment, the Applicant served as the Technical Advisor at the P-5 level with the HIV/AIDS Branch, Technical Division in UNFPA. The Applicant is an expert in linking/integrating HIV and sexual and reproductive health and rights.

4. On 25 February 2016, the Director of the Technical Division sent an email to the HIV/AIDS Branch staff members, including the Applicant. The Director wrote that in the context of UNFPA’s declining income, its senior management had been reviewing ways to maximize the use of the resources, and in the Technical Division, this meant a functional review of the Division’s work, and at the level of human resources, this would begin by abolishing the post of Chief, HIV/AIDS Branch. The Director further noted that beginning 2017, the HIV/AIDS Branch would be integrated into the Sexual and Reproductive Health Branch.

5. In September 2016, through the interoffice memorandum addressed to the UNFPA Executive Director, the Director of Technical Division noted that due to the resource mobilization shortfall for the 2016 Unified Budget, Results and Accountability Framework (“UBRAF”) budget, funding allocations to all Cosponsors

were reduced by 50 percent in 2016. The Director further noted that the UNAIDS Programme Coordinating Board meeting held in June 2016 presented an additional significant funding shortfall for 2017. The Director wrote that the Technical Division already decided not to renew 21 appointments and a few appointments were maintained through cost-sharing at the country and the regional level. In light of the substantial reduction of available funding in 2016-2017, the Director proposed two alternative scenarios to address the financial shortfalls. The Director noted at the outset that both scenarios have the same implications for the posts funded through UBRAF in the field, and the variations lie in the way headquarters posts would be affected: more incumbents would be affected by Scenario A whereas less funds would be available for programming activities under Scenario B:

a. Scenario A was guided by “a strategic approach” and proposed to abolish all headquarters posts in HIV/AIDS Branch, except one P-5, one P-4, and one P-2/P-3 posts. The Applicant’s post, which was funded from Regular Resources, was also proposed to be abolished. Under Scenario A, due to the abolition of several posts, more UBRAF funding would become available for programming activities.

b. In the Scenario B, only posts funded by UBRAF were considered for potential abolition of post and three posts funded from Regular Resources were excluded from such review. Under this scenario, all headquarter posts in HIV/AIDS Branch were to be abolished except four P-5 posts: three P-5 posts funded from Regular Resources, which included the Applicant’s post, and one P-5 post funded from UBRAF.

6. In the interoffice memorandum dated 14 October 2016 addressed to the Executive Director, the Director of the Division for Human Resources (“Director, DHR”) recommended Scenario A on the basis that it would provide more funding for programmes as the less budget would be allocated to keep staff posts – USD915,518 would be available for programming under the Scenario A and USD616,819 would be available for programming under the Scenario B.

7. On 29 and 30 November 2016, the Applicant spoke with the Director, DHR, to explore her options in anticipation of the proposed reorganization of the Technical Division. The Applicant submitted a detailed note to the Tribunal, which reflects her conversations with the Director, DHR. The Respondent does not dispute the Applicant's record of the conversations but submits that any discussion was informal and exploratory, and no formal offers or promises were made by the Respondent.

8. According to this note, during their first conversation on 29 November 2016, the Director presented three options: the Applicant (a) continues in her current capacity until she retires at the end of December 2017; (b) agrees on a date of separation with payout of termination indemnity; and (c) moves on to a different position not necessarily based in New York where her skillset could be utilized. The Director told the Applicant that the conversation was exploratory and that he was trying to be fair to everyone given potential funding constraints. The Director told her that the separation package would come from the Division of Human Resources budget.

9. The Director and the Applicant talked again on the same day and the Applicant expressed her interest in continuing her service until her date of retirement and asked under what modalities she could continue in her current capacity. The Director responded that even if she were to continue in her current capacity, there would be changes such as: a different reporting line, the dissolution of the dedicated HIV/AIDS team, and the integration of HIV work into the broader sexual and reproductive health and rights portfolio. A possibility of a separation package was also discussed. Regarding the third option, namely the redeployment to a different post, the Applicant asked if there was a particular post being considered for her, and the Director said that there was nothing specific being considered but that such a position could be anything from deputy to regional adviser wherever there was a vacancy and it would potentially require a geographical move.

10. On the following day, the Applicant spoke to the Director again and she informed him that she definitely wanted to continue in her current capacity. The Director responded that he would note her preference but that there was no guarantee.

11. On 1 December 2016, upon the recommendation of the Director, DHR, the Executive Director decided to abolish the Applicant's post and terminate her fixed-term appointment effective 31 December 2016. The recommendation noted that "due to resources mobilization shortfalls for 2016", funding allocations were reduced by 50 percent in 2016 and were to be further reduced in 2017. Cognizant of this trend, a careful review of the HIV/AIDS posts was conducted under the following guiding principles: "strategic analysis of best way to advance the HIV/AIDS portfolio considering the Global Agenda, financial context and role of business units across the organization[, and] [p]rioritization of funding for the regions and [country offices] (with an emphasis on fast-track countries)".

12. On 2 December 2016, the Applicant was notified that her post was abolished due to "organizational restructuring at UNFPA" and that the termination of her post was to take effect on 31 December 2016. She was further informed that staff rule 9.7 requires that a staff member with fixed-term appointment is to be given not less than 30 calendar days' written notice of termination. She was also told that under para. 7.2.4 of UNFPA Policies and Procedural Manual, Separation from Service Policy, she was entitled to receive a six-month written notice of abolition of the post and that since the policy allows the payment of cash for the remaining period in case of a shorter notice period, the Applicant was to receive cash for the remaining portion of the six months' notice period (in her case this amounted to five months).

13. On 22 December 2016, the Applicant requested a management evaluation of this decision, and pending management evaluation, she submitted the application for suspension of action, which was granted by the Dispute Tribunal. The contested decision was subsequently upheld by management evaluation and the Applicant was separated from service on 28 January 2017.

## Considerations

### *The applicable legal framework and the issues of the present case*

14. The present case concerns a decision to terminate a fixed-term appointment following the abolition of a post.

15. Staff regulation 9.3(a)(i) and staff rule 9.6(c)(i) provide that the Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member for abolition of posts or reduction of staff.

16. UNFPA Policies and Procedural Manual, Separation from Service Policy, para. 7.1.3 provides that, in accordance with staff rule 9.6(c), UNFPA may terminate the appointment for, among other things, abolition of post or reduction of staff. Under paras. 7.1.4 and 7.1.5, the Director, DHR, may recommend the termination of the appointment of a UNFPA staff member to the Executive Director, who has the authority to terminate the appointment. Under paras. 7.2.1 and 7.2.2, an appointment may be terminated if the necessities of service require abolition of a post or reduction of staff, and the determination as to whether the necessities of service require the abolition of a post or the reduction of staff rests within the discretion of the UNDP/UNFPA Executive Board and/or the Executive Director. Under para. 7.2.3, reasons for abolishing a post or reducing the staff may include, but are not limited to: (a) changing programme requirements; (b) expiration of finite mandates or tasks in respect of which the appointment was made; (c) downsizing, restructuring or closing offices; (d) lack of funding; and (e) changes in the functions, duties and responsibilities underlying a post if such changes are treated as an abolition of the current post and the establishment of a new post.

17. It is also well settled jurisprudence that an international organization necessarily has power to restructure some or all of its departments or units, including the abolition of posts, and the Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff, but like any other administrative decision, the Administration

has the duty to act fairly, justly and transparently in dealing with staff members (see *Hersh* 2014-UNAT-433, *Bali* 2014-UNAT-450, *Matadi et al.* 2015-UNAT-592). As the Appeals Tribunal stated in *Sanwidi* 2010-UNAT-084, at para. 40, when judging the validity of the exercise of discretionary authority,

the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

In addition, when a justification is given by the Administration for the exercise of its discretion, it must be supported by the facts (see, for instance, *Islam* 2011-UNAT-115). If the applicant claims that the decision was ill-motivated or based on improper motives, the burden of proving any such allegations rests with the applicant (see, for instance, *Azzouni* 2010-UNAT-081, para. 35; *Obdeijn* 2012-UNAT-201, para. 38).

18. If a staff member's appointment is terminated as a result of the abolition of a post, under staff rule 9.6(e), subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, staff members shall be retained in the following order of preference: (i) staff members holding continuing appointment; (ii) staff members recruited through competitive examinations for a career appointment; (iii) staff members holding fixed-term appointments.

19. In *Timothy* 2018-UNAT-847, the Appeals Tribunal held that staff rule 9.6(e) creates an obligation on the Administration to make reasonable and good faith efforts to find suitable placements for the redundant staff members whose posts have been abolished. The Administration is bound to demonstrate that all reasonable efforts have been made to consider the staff member concerned for available suitable posts.

20. Nevertheless, while efforts to find a suitable post for the displaced staff member rest with the Administration, it is lawful and reasonable to expect that the

affected staff members cooperate fully in the process: the relevant person(s) is/are required to cooperate fully in these efforts and must show an interest in a new position by timely and completely applying for the position. The Appeals Tribunal held that it was erroneous for the Dispute Tribunal to hold that staff members are entitled to be retained without having to apply for vacant job openings (*Timothy*, paras. 45-46).

21. Once the application process is completed, however, the Administration is required by staff rule 9.6(e) to consider such staff members on a preferred or non-competitive basis for the position in an effort to retain him or her (*Timothy*, para. 47).

22. Regarding the definition of “suitable posts” in which a staff member’s services can be utilized under staff rule 9.6(e), the Appeals Tribunal held that “suitable posts” include posts at the displaced staff member’s grade level or even at a lower grade, if, in the latter case, the staff member has expressed an interest by way of application thereto (*Timothy*, paras. 56-58).

23. In light of the applicable legal framework, the Tribunal will have to address the following issues:

- a. Was the decision to abolish the Applicant’s post and to terminate her appointment the result of a lawful exercise of discretion?
- b. Did the Organization comply with its obligations to make all reasonable efforts to place the Applicant, whose post was abolished, for available suitable posts as required by staff rule 9.6(e)?

*Was the decision to abolish the Applicant’s post and to terminate her appointment the result of a lawful exercise of discretion?*

24. The Tribunal will assess if the decision to abolish the post encumbered by the Applicant and to terminate her appointment was lawful.

25. In the present case, the reason given to the Applicant for the impugned decision is the “organizational restructuring at UNFPA”, and the 1 December 2016 memorandum, in which the recommendation to abolish the Applicant’s post and terminate her fixed-term appointment was approved, noted “resources mobilization shortfalls for 2016” as a reason for the impugned decision. The Respondent submits that due to the declining financial resources in both the UBRAF budget and the Regular Resources budget beginning in 2014 and continuing through 2017, UNFPA decided to integrate the HIV/AIDS Branch into the Sexual and Reproductive Health Branch, and after a thorough review of the Technical Division’s posts, UNFPA decided to abolish the Applicant’s post and terminate her appointment.

26. In response, the Applicant claims that the Respondent’s explanations for the contested decision have changed between the financial reason (declining financial resources) and the programmatic reason (redundancy of her role resulted from the merge of two branches), and that ill-motivation can be inferred from the allegedly changing and unconvincing explanations for the contested decision. Further, the Applicant questions the validity of both the financial and the programmatic justifications on various grounds, and claims that the contested decision was based on improper motives, namely, the managers’ desire to eliminate the Applicant who was working from home and UNFPA’s attempt to rush her separation before the increase of the mandatory retirement age.

27. Having reviewed the record on file and publicly available information about UNFPA’s financial situation at the relevant times, the Tribunal finds that the reason given to the Applicant for the impugned decision, namely, the organizational restructuring at UNFPA, is supported by the facts. Evidence shows that UNFPA suffered the significant financial shortfalls in both the Regular Resources and UBRAF funding in 2015 and 2016, and UNFPA, facing such a precarious financial situation, undertook the genuine organizational restructuring which resulted in the abolition of the Applicant’s post and the termination of her appointment. While the Applicant claims improper motives, the Tribunal finds that she presented no supporting evidence and thus did not meet the burden of proof in this regard.

28. The Tribunal will first review UNFPA's financial situation at the relevant times, which is the stated underlying reason for the restructuring of the HIV/AIDS Branch, Technical Division. As shown below, the Tribunal finds that evidence supports the UNFPA's justification that it undertook the restructuring due to "resources mobilization shortfalls for 2016".

29. HIV/AIDS activities and staff costs at UNFPA are funded either by Regular Resources or UBRAF.

30. In terms of the Regular Resources, according to the midterm review of the integrated budget 2014-2017 dated 7 April 2016, while UNFPA was on track to achieve the revenue targets for Regular Resources in 2014, during 2015, "the global financial outlook changed significantly, mostly driven by adverse exchange rates against a strong United States dollar".<sup>1</sup> As a result, Regular Resources in 2015 totalled USD398 million, falling short of the USD478 million projected. Based on these financial trends, as well as communications received from key donors for 2016, the contribution revenue projections for Regular Resources for 2016 and 2017 have been updated from USD482 million to USD340 million, and from USD486 million to USD350 million, respectively.<sup>2</sup> The revised integrated budget was approved by the Executive Board in June 2016.<sup>3</sup> UNFPA funding issues were discussed again by the Executive Board in September 2016, which noted that the currency fluctuations could affect the resource levels of UNFPA and encouraged member states to increase their contributions to Regular Resources.<sup>4</sup>

31. UBRAF budget also experienced similar issues beginning 2015. UBRAF provides the United Nations system-wide funding for HIV/AIDS related work to various United Nations agencies, who are called UNAIDS Cosponsors, and UNFPA

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<sup>1</sup> United Nations Population Fund Midterm review of the integrated budget, 2014-2017, DP/FPA/2016/3, II.B. Financial context (7 April 2016).

<sup>2</sup> United Nations Population Fund Midterm review of the integrated budget, 2014-2017, DP/FPA/2016/3, paras. 15-16 (7 April 2016).

<sup>3</sup> Decisions adopted by the Executive Board in 2016, DP/2017/2, number 2016/10 (21 September 2016).

<sup>4</sup> Decisions adopted by the Executive Board in 2016, DP/2017/2, number 2016/18 (21 September 2016).

is one of them.<sup>5</sup> The UNAIDS Programme Coordinating Board is the body which, among other things, reviews and approves UBRAF budget for each financial period.<sup>6</sup> According to the 2015 financial report, donor governments paid only 83 percent of the targeted UBRAF budget as at 31 December 2015, and thus the available fund balance of UBRAF at the year end, which was to be used as the working capital in 2016, decreased below the minimum level. The report warned that this “could have profound implications for the working of the Joint Programme and could hamper the Joint Programme’s operations and its ability to deliver results”.<sup>7</sup> The UNAIDS Programme Coordinating Board, which reviews and approves UBRAF budget, called the situation “unprecedented and unexpected financial shortfall due to a decrease of contributions by donor governments as well as currency fluctuations” at the 38<sup>th</sup> meeting in June 2016.<sup>8</sup>

32. According to the Total Technical Division Regular Resources table submitted by the Respondent (Annex RXI of the Respondent’s submission dated 10 September 2019), the total Technical Division Regular Resources “ceiling” was reduced in 2015-2017: 11 percent in 2015, 10 percent in 2016, and 3 percent in 2017, respectively. Further, the Technical Division’s expenses under UBRAF budget declined substantially from approximately USD2.6 million in 2015 to USD1.8 million in 2016 (Annex RXII of the Respondent’s submission dated 10 September 2019).

33. Against this background, UNFPA senior management started to take actions for the restructuring of the HIV/AIDS Branch, which resulted in the termination of

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<sup>5</sup> UNAIDS Programme Coordinating Board, UNAIDS Unified Budget, Results and Accountability Framework 2016-2021, UNAIDS/PCB (37)/15.19, 5. Budget and Resources Allocation (20 October 2015), [https://www.unaids.org/sites/default/files/media\\_asset/20151103\\_UNAIDS\\_UBRAF\\_PCB37\\_15-19\\_EN.pdf](https://www.unaids.org/sites/default/files/media_asset/20151103_UNAIDS_UBRAF_PCB37_15-19_EN.pdf).

<sup>6</sup> UNAIDS, “UNAIDS Programme Coordinating Board”, <https://www.unaids.org/en/whoweare/pcb>.

<sup>7</sup> UNAIDS Programme Coordinating Board, Financial report and audited financial statements for the year ended 31 December 2015, UNAIDS/PCB (38)/16.8, page 9 (30 May 2016), [https://www.unaids.org/sites/default/files/media\\_asset/20160530\\_UNAIDS\\_PCB38\\_16-8\\_Financial\\_Report\\_EN.pdf](https://www.unaids.org/sites/default/files/media_asset/20160530_UNAIDS_PCB38_16-8_Financial_Report_EN.pdf).

<sup>8</sup> 38<sup>th</sup> Meeting of the UNAIDS Programme Coordinating Board Decisions, paras. 7.7 and 7.9 (30 June 2016), [https://www.unaids.org/sites/default/files/media\\_asset/20160630\\_UNAIDS\\_PCB38\\_DECISIONS\\_FINAL\\_EN.pdf](https://www.unaids.org/sites/default/files/media_asset/20160630_UNAIDS_PCB38_DECISIONS_FINAL_EN.pdf).

the Applicant's appointment. The Tribunal finds that the internal communications and memoranda show that UNFPA conducted a genuine organizational restructuring. Through the 25 February 2016 email, the Director of the Technical Division advised the HIV/AIDS Branch staff members that UNFPA senior management had been conducting a functional review of the Technical Division's work due to the declining funding, and that the HIV/AIDS Branch would be integrated into the Sexual and Reproductive Health Branch beginning 2017. The Director also informed staff members that the post of Chief, HIV/AIDS Branch was abolished, which was the beginning of the human resources review at the HIV/AIDS Branch.

34. Before deciding to abolish the Applicant's post, UNFPA conducted a review of the all HIV/AIDS Branch posts, as shown in the internal memorandum of September 2016 from the Director of the Technical Division to the UNFPA Executive Director. In this memorandum, the Director wrote that due to the significant funding reductions in UBRAF budget in 2016-2017, the Technical Division already decided not to renew 21 appointments and a few appointments were maintained through cost-sharing at the country and the regional level. Two alternative scenarios were proposed to further reduce human resources costs, and in the October 2016 internal memorandum, the Director, DHR recommended one scenario to the Executive Director, which would result in the abolition of the Applicant's post. The Executive Director approved the recommendation and decided to abolish the Applicant's post and terminate her appointment.

35. While the Applicant argues that the UBRAF budget reduction cannot be a reason for the contested decision considering her post was funded from Regular Resources, the Tribunal does not find that the decision was unreasonable just because the Applicant's post was funded from a different budget source, considering that UNFPA considered various factors in the restructuring and relied on correct information (i.e. which post was funded from which funding source) in reaching its conclusion: as the Appeals Tribunal held in *Sanwidi*, the Dispute Tribunal's role is not to consider "the correctness of the choice made ... amongst the various courses of action open to him".

36. The Applicant also questions the financial justification of the impugned decision on the ground that the cost saving effect of the termination of her appointment was minimal given that she received a substantial amount of cash at her separation. In response, the Respondent submits that the financial saving from the abolition of the Applicant's post was calculated based on pro forma costs of the post, not based on circumstances of each individual staff to be affected, and presented the table showing pro forma costs of each post (Annex VI of the Respondent's Reply). Further, the Respondent submits that separation costs are charged to a specific separation fund and the costs saved from the abolition of the post was made available for the Technical Division's fund, the explanation of which is consistent with what the Applicant was told by the Director, DHR, during their conversation in November 2016. Therefore, the Tribunal accepts the Respondent's explanation and finds no merit in the Applicant's claim in this regard.

37. The Applicant further challenges the impugned decision on the ground that the integration of the HIV/AIDS Branch into the Sexual and Reproductive Health Branch did not render the Applicant's work redundant. The Applicant provides detailed explanations about her field of work, questions the wisdom of the decision that the Applicant's role would be handled by the HIV Coordinator and be distributed across the Branch under the new structure, and contends that her role cannot be simply replaced in this way and such decision is based on the fundamental misunderstanding of the field of linking/integrating HIV. However, the Tribunal's role is to decide whether the contested decision is legal, rational, procedurally correct, and proportionate, not whether the Organization's choice was correct among the various available courses of action. Even if it was unwise to abolish the Applicant's post and this was a result of the misunderstanding of the significance of the Applicant's role, that is not a valid ground to interfere with the Organization's decision.

38. The Applicant further claims that the contested decision was based on improper motives, but the Tribunal finds that the Applicant did not provide any evidence in support of this claim and hence did not meet the burden of proving

allegations of ill-motivation. While the Applicant made some allegations in her submissions (e.g. someone told her that she was viewed as a troublemaker due to her telecommuting arrangement; her colleagues complained about her telecommuting; her supervisor denied her attendance at the 2016 International AIDS Conference because she was not engaged in the daily activities of the Organization due to her telecommuting), she failed to present any written evidence or call any witness to support any of these allegations even though she was given an opportunity to make such request.

39. In light of its prior findings, the Tribunal finds no merit in the Applicant's argument that the justifications for the contested decision were inconsistent and unconvincing and the contested decision was based on ill-motivations. UNFPA's justification for the contested decision was consistent and reasonable: the evidence as described above clearly shows that UNFPA suffered significant financial shortfalls in its revenues in 2015-2016 and thus undertook the restructuring because of such financial situation. The restructuring effort was a complex exercise and the evidence shows that various factors, including the financial situation and UNFPA's strategy for HIV/AIDS programmes, impacted its restructuring exercise, and there is no evidence that the decision was affected by ill-motivations. Therefore, the Tribunal finds that the contested decision was the result of a lawful exercise of discretion.

*Did the Organization comply with its obligations to make all reasonable efforts to place the Applicant, whose post was abolished, for available suitable posts as required by staff rule 9.6(e)?*

40. The Tribunal will now assess whether the Administration made all reasonable efforts to place the Applicant, whose post was abolished, for available suitable posts as required by staff rule 9.6(e).

41. In this case, the Respondent submits that posts and job descriptions of all staff members assigned to the HIV/AIDS Branch were considered for possible match during the restructuring exercise, and at the conclusion of the restructuring exercise,

the Applicant's job description and post was decided not to be a match to any available or suitable post within the merged Branch.

42. In response to the Respondent's claim that there was no suitable or available post that could have been offered to the Applicant, the Applicant claims in her submission dated 22 June 2017 that over 30 vacant posts at the P-4, P-5, and D-1 levels were available that could have accommodated her. However, the Applicant admits that she did not apply for any vacant posts due to the short time between the notification of the decision (2 December 2016) and the scheduled effective date of termination (31 December 2016) and also because she did not believe that she would have been given fair consideration due to the bias against her. The Applicant submits that the lack of any concrete support to retain her did not motivate her to apply for other posts; even though she expressed an interest in staying in current capacity during her conversation with the Director, DHR, she received no information about any possible reassignment. The Applicant also claims that she could have been placed at the P-4 Innovation Technical Specialist post at the HIV/AIDS Branch, the post of which was filled shortly after the termination of the Applicant's appointment. In response, the Respondent claims under UNFPA's Policy and Procedures Manual, it was not possible to consider the Applicant for a post at a lower grade level.

43. The Tribunal notes that the matching exercise that the Respondent claims to have conducted during the restructuring exercise, which was done before deciding to abolish the Applicant's post and to terminate her appointment, does not meet the Organization's obligation under staff rule 9.6(e). The Organization's obligation under staff rule 9.6(e) is an obligation toward a specifically displaced staff member due to the abolition of post, and such general matching exercise based on job descriptions does not count as an effort to find a suitable post under staff rule 9.6(e). Also, the Appeals Tribunal clearly stated in *Timothy* that the suitable post under staff rule 9.6(e) includes posts at a lower grade level if the staff member expressed an interest.

44. Nevertheless, as the Appeals Tribunal held in *Timothy*, the Organization's obligation to make reasonable efforts to find a suitable post under staff rule 9.6(e) is

premised on the requirement that the affected staff member shows an interest in a new position by timely and completely applying for the position. In this case, the Applicant admitted that she failed to do so. While the Applicant felt that the notice period given to her was short and she did not trust the good faith of the Organization, she was given the notice of termination as required by staff rule 9.7 and her belief of bias does not excuse her from her own obligation to fully cooperate in the process by applying for the vacant positions. Therefore, this claim is dismissed.

### **Conclusion**

45. In light of the foregoing, the Tribunal rejects the present application.

*(Signed)*

Judge Joelle Adda

Dated this 19<sup>th</sup> day of November 2019

Entered in the Register on this 19<sup>th</sup> day of November 2019

*(Signed)*

Nerea Suero Fontecha, Registrar, New York