

UNDT/2012/185, Samuel Thambiah

UNAT Held or UNDT Pronouncements

Identification of contested decisions: An application must properly single out each and every administrative decision that an applicant wishes to contest in a clear and concise manner, failing which the application could be deemed irreceivable. Nevertheless, the Tribunal has an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested. Promises binding on the Administration: Where a staff member claims that he or she had a legitimate expectation arising from a promise made by the Administration, such expectation must not be based on mere verbal assertions, but on a firm and express commitment made individually to the staff member by a competent authority of the Administration. Scope of the application: The scope of an application is defined by the request for management evaluation.

Decision Contested or Judgment/Order Appealed

The Applicant, a former UNICEF staff member, was informed on 1 December 2010 that her post would be abolished with effect on 31 May 2011 and that, consequently, she would be separated from service, unless she was appointed to another position. Before the Tribunal, she contested the decisions, allegedly conveyed to her on 21 May 2011, to separate her from service due to the abolition of her post, to separate her while she was on “certified”, “service-incurred” sick leave, and not to select her for posts for which she had applied. With respect to the first decision, the Tribunal considered that the decision to abolish the Applicant’s post and consequently to separate her from service on 31 May 2011 had been conveyed to her on 1 December 2010 and that, as she had failed to contest it within the relevant time limit, she could no longer challenge it before the Tribunal. It further considered that the Applicant had not demonstrated that she had been promised that the abolition of her post would be postponed in the event she was not appointed to another position by 31 May 2011. As regards the second decision, the Tribunal found that the Applicant failed to request review of the decision refusing to certify her sick leave, as provided for in staff rule 6.2(j), and that she could thus not challenge it before the Tribunal. It further noted that a decision had not yet been made on her Appendix D compensation claim and that it was premature for her to challenge the decision to separate her while she was on “service-incurred” sick leave. As for the decisions not to select her for posts for which she had applied, the Tribunal found that the Applicant’s claims were time-barred as she had failed to file her application within the 90-day time limit.

Legal Principle(s)

N/A

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Samuel Thambiah

Entity

UNICEF

Case Number(s)

UNDT/GVA/2011/67

Tribunal

UNDT

Registry

Geneva

Date of Judgement

28 Nov 2012

Duty Judge

Judge Laker

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Separation from service

Applicable Law

Administrative Instructions

Staff Regulations

- Regulation 9.3

Staff Rules

- Rule 9.7(b)

UNDT RoP

- Article 11.2
- Article 6.2

UNDT Statute

- Article 8.1

UNICEF Administrative Instructions

- CF/AI/2009-009
- CF/AI/2010-001

Related Judgments and Orders

UNDT/2009/089

UNDT/2010/159

UNDT/2010/203

UNDT/2011/085

UNDT/2011/115

UNDT/2011/177

UNDT/2012/133

UNDT/2012/149

2010-UNAT-049

2011-UNAT-138

2011-UNAT-153

2011-UNAT-179

2012-UNAT-238