

# UNDT/2013/015, Simmons

## UNAT Held or UNDT Pronouncements

Regarding the first administrative decision, the Respondent submitted that this claim was time-barred because the Applicant had failed to request management evaluation of the contested decision in a timely manner even though the Management Evaluation Unit (“MEU”) had actually granted the Applicant leave to file the request after the time limit had already expired; a decision which the Under-Secretary-General of Management had subsequently affirmed in the management evaluation letter. As for the second administrative decision, the Respondent contended that the claim in relation to the relevant vacancy was not receivable because the vacancy had been withdrawn and the decision to do so was of “general application” and therefore not an appealable administrative decision. With regard to the third administrative decision, the Respondent contended that the allegations of abuse and harassment by the Administration were rejected in two earlier cases before the Dispute Tribunal, namely Simmons UNDT/2011/084 and Simmons UNDT/2011/085. The Tribunal found that the Applicant’s claims concerning the first and the second decisions were receivable, while that relating to the third decision was not (*res judicata*).

## Decision Contested or Judgment/Order Appealed

The Applicant appealed three administrative decisions: two non-selection decisions and the non-completion of one performance evaluation report.

## Legal Principle(s)

Doctrines of waiver and estoppel: If the MEU, as an integral part of the Secretariat, has already effectively declared the request for management evaluation receivable under its own time limits, the Respondent is estopped, when the same claim is pending before the Dispute Tribunal, from arguing the opposite position under the

doctrines of waiver and estoppel. Extending deadlines for request for management evaluation: Section 10 of ST/SGB/2010/9 read together with staff rule 11.2(c) provides that the Respondent has delegated the authority to extend the 60 days' deadline for filing the request for management evaluation where informal resolution efforts of the Ombudsman are pending. It does not follow automatically that the MEU is authorised to extend this deadline in other situations on an "exceptional" basis as the MEU did in this case. Granting exception to provisions in AIs: It is only reasonable to conclude that the Respondent's authority to make exceptions to the Staff Rules, which are promulgated by the Respondent himself, extends to administrative issuances, such as ST/SGB/2010/9, that are ranked lower in the legal hierarchy than the Staff Rules. MEU's powers to grant exceptions: Under staff rule 12.3(b), it would appear that—as an exception to the Staff Rules—the Respondent has the power to extend the time limits set out in staff rule 11.2(c) in other situations than the specific reference to informal resolution efforts by the Ombudsman, provided that the other mandatory requirements described in staff rule 12.3(b) are satisfied. Accordingly, for the MEU to do so, it could be argued that the Respondent would be required to have properly delegated his authority to grant such exception to the MEU, which the Under-Secretary-General of Management also appears to imply in her management evaluation letter. Given that the MEU is the entity in the Secretariat charged with handling the process of management evaluation under sec. 10 of ST/SGB/2010/9, there would be no reason to believe that the MEU would not possess delegated authority to extend the deadline for filing the request for management evaluation and properly to act on behalf of the Under-Secretary-General for Management and the Respondent. Under the law of agency, the MEU would appear to have the apparent, or ostensible, authority to deal with issues regarding the handling of management evaluation requests on behalf of the Respondent, including the grant of exceptions to sec. 10.2(d) and thereby extend the time limit to situations other than those where a case is pending before the Ombudsman.

Costa 2010-UNAT-036: The General Assembly's intention behind art. 8.3 of the Statute could not have been that a staff member should be unfairly shut out from exercising her/his rights to appeal where the exceptional and/or compassionate circumstances warrant a waiver of the requirements to file a request for management evaluation within certain deadlines. Was the withdrawal of the vacancy an appealable administrative decision? It follows that the administrative decision to withdraw the vacancy had a direct impact on the Applicant's rights under the terms of her appointment or contract of employment in that she would otherwise have been an eligible candidate that could likely have been appointed to this

particular post.

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Simmons

## Entity

UN Secretariat

## Case Number(s)

UNDT/NY/2011/051

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

2 Nov 2013

## Duty Judge

Judge Meeran

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Subject matter (ratione materiae)

Temporal (ratione temporis)

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2010/9

Staff Rules

- Rule 11.2(c)
- Rule 12.3(b)

UNDT Statute

UNAT Statute

- Article 2.1(a)

## Related Judgments and Orders

UNDT/2013/006

UNDT/2009/051

UNDT/2011/084

UNDT/2011/085

2010-UNAT-036

2011-UNAT-182

2010-UNAT-058