

# **UNDT/2015/103, Mafessanti**

## UNAT Held or UNDT Pronouncements

The Tribunal found that by filing her request for management evaluation only on 21 April 2015, the Applicant failed to respect the 60 day time limit under staff rule 11.2(c), which started to run as of 5 January 2015, the day of her signature of the letter of appointment. Subsequent responses from OHRM in response to queries from the Applicant were merely confirmative decisions of the original decision of 5 January 2015. The Tribunal found the application irreceivable, *ratione materiae*.

## Decision Contested or Judgment/Order Appealed

The Applicant contests the decision to find her ineligible for reinstatement from her fixed-term appointment (“FTA”) with the United Nations Assistance to the Khmer Rouge Trials (“UNAKRT”) as of the taking up of her current post on a FTA. Despite the explicit wording of staff rule 4.18(c), which provides that “if a former staff member is reinstated, it shall be so stipulated in ... the letter of appointment”, the Applicant’s letter of appointment with respect to her current FTA, which she signed on 5 January 2015, did not contain such a provision. On 17 February 2015, the Applicant engaged in email exchanges with OHRM inquiring whether she would be reinstated, on the basis of her FTA with UNAKRT, but was informed by email of 24 February 2015, that in light of her having held a temporary appointment between the two FTAs, reinstatement was not possible. The Applicant further followed up, by sending to OHRM jurisprudence from 2012 and 2014, inquiring as to how OHRM position was compatible with said jurisprudence.

## Legal Principle(s)

Letter of appointment: The content of the letter of appointment, detailing the legal position and rights of a staff member, complies with the criteria of an administrative decision in that it is unilateral, taken by the Administration in a precise individual

case, and produces direct legal consequences to the legal order. Date of administrative decision: If a letter of appointment places a staff member on a certain category and level, said staff member is on notice, as of the date of signature of the letter of appointment, of the Administration's decision to put him/her on that category and level. The same applies if a letter of appointment, despite the explicit wording of a relevant rule, does not provide for a certain legal position (e.g. reinstatement). In the absence of new facts or information, unknown at the time of the issuance of the letter of appointment, subsequent exchanges between the staff member and the Administration cannot trigger a new administrative decision, susceptible to reset the clock with respect to the time limit under staff rule 11.2(c).

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Mafessanti

## Entity

UNAKRT

## Case Number(s)

UNDT/GVA/2015/155

## Tribunal

UNDT

## Registry

Geneva

## Date of Judgement

3 Nov 2015

## Duty Judge

Judge Laker

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Administrative decision

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

## Applicable Law

Staff Rules

- Rule 11.2(c)
- Rule 4.18(a)
- Rule 4.18(c)

UNDT Statute

- Article 2.1
- Article 8.3

## Related Judgments and Orders

2014-UNAT-402

2011-UNAT-108

2010-UNAT-043

2011-UNAT-158

2013-UNAT-308

2010-UNAT-036  
2012-UNAT-260  
2013-UNAT-368  
2010-UNAT-079  
2012-UNAT-196  
2015-UNAT-557  
2015-UNAT-521  
2014-UNAT-470  
2012-UNAT-273  
2015-UNAT-516  
2012-UNAT-218  
2011-UNAT-184