Introduction

1. On 17 May 2010, the Applicant, a former Learning Specialist at the P-4 level in the Organizational Learning and Development Section ("OLDS"), United Nations Children's Fund ("UNICEF"), filed an application with the Dispute Tribunal. In the application form, without any further specification, the Applicant describes the administrative decision that she wishes to contest as the "[r]ejection of [her] [a]ppeal" by the Director, Division of Human Resources ("the Director"), UNICEF, dated 22 December 2009. A perusal of the case file reveals that this decision primarily concerned the closure of a case that the Applicant had previously brought against the Chief of OLDS ("the Chief") for harassment and abuse of authority. However, in a detailed narrative appended to the application titled "Application", under the heading "Legal Arguments", the Applicant appears to also refer to some other administrative decisions, particularly one concerning the abolishment of her former post with UNICEF.

2. On 17 June 2010, the Respondent filed and served his reply in which he contends that the application is without merit. As a preliminary matter, the Respondent submits that "the sole issue receivable before the Tribunal is the decision taken by the Director, [Division of Human Resources], to accept the findings of the [Office of Internal Audit] Closing Report and not to take any action on her complaint of harassment and abuse of authority against the alleged offender. All other pleas proffered by the Applicant are not receivable".

3. In Order No. 279 (NY/2011) dated 23 November 2011, the Tribunal ordered the Applicant to file and serve a response to the Respondent's contention on receivability. The Tribunal further ordered each party to state whether the issue of receivability could be considered on the papers, which they both confirmed. All orders were complied with by 14 December 2011. However, in his submission and without having first sought proper leave from the Tribunal, the Respondent allowed

himself to comment on the Applicant's response to Order No. 279 (NY/2011). These comments have therefore not been taken into consideration in the following.

4. In light of the parties' agreement and the particular circumstances of the present case, the Tribunal will proceed with the determination of the receivability matter without holding a hearing.

Facts relevant to the issue of receivability

5. The following chronology is based on the submissions of the parties and the appended documentation.

6. By letter dated 28 July 2009, the Applicant was advised that her post would be abolished by the end of the year and her fixed-term appointment would be terminated. It was emphasised that the decision was final and not subject to further review.

7. In response, by letter dated 23 September 2009, the Applicant notified the Human Resources Specialist, OLDS, that she requested early separation by 13 November 2009.

8. On 29 September 2009, the Chief informed the Applicant that her early separation request had been granted and that her Performance Evaluation Review ("PER") process had to be completed. Some correspondence regarding the PER subsequently ensued.

9. The Office of Internal Audit ("OIA") produced two investigation reports regarding the Applicant's complaint of harassment and abuse of authority, both dated 9 November 2009: (a) a short version, which was later provided to the Applicant, and (b) a long version, which apparently was not shown to the Applicant and which the Respondent has produced to the Tribunal under seal.

10. By email of 15 December 2009 to the Director, the Applicant explained that she had been notified that the investigation into her complaint had been concluded,

but that she had not received any official notification; rather, the OIA had informed her that this had to come from the Director's office. She expressed that she "strongly believe[d] that the abolition of [her] post was improperly motivated and connected to [her] complaint". She also contended that she had requested protection from retaliation, but that when no action was taken, she had decided to leave her post with OLDS as this caused her stress and other frustration. Furthermore, she stated that she feared that the retaliation would continue in that she would not be selected for other posts she had applied for. She therefore requested a copy of the investigation report and a formal written notification from the Director's office.

11. By letter dated 22 December 2009, the Director provided the short version of the investigation report to the Applicant noting that, on 2 December 2009, she had requested a copy of the investigation report from the OIA, although she had apparently misspelled her email address. The Director further stated that her letter constituted the "formal" reply to the results of the OIA investigation, and quoting the investigation report that was provided to the Applicant, the Director simply repeated the conclusion of this report, namely that "[t]here [was] no evidence to support the allegations of harassment made by [the Applicant] against [the Chief]". The Director further noted that the report found that "there [was] no evidence to suggest that the decision to abolish [the Applicant's] post was based on interpersonal issues". However, this latter quote is only mentioned in the long version of the investigation report, which was produced by the Respondent under seal, and not in the short version of the report provided to the Applicant. The OIA had therefore decided to close the case and pursuant to para. 10 of CF/AI/2009-004 notified the Applicant of this decision, also requesting the Director's office to formally advise the Chief that "OIA will be taking no action".

12. In her request for management evaluation of 20 January 2010, the Applicant contested "the content and conclusion of both procedural and substantive grounds" of "the investigation of [her] complaint of harassment and abuse of authority against … [the] Chief of [OLDS]". Furthermore, the Applicant submitted that she believed that

"the abolition of [her] post was improperly motivated and the result of an ongoing pattern of harassment and abuse of authority". Finally, she stated that she requested "an independent management review of the basis for this decision with a view to its rescission and replacement with a proper investigation by an independent third party", although failing to specify to which decision she actually referred.

13. As noted above, in the application form filed with the Dispute Tribunal on 17 May 2010, the Applicant defined the contested decision as the "[r]ejection of [her] [a]ppeal" by the Director Division of Human Resources, UNICEF but, in a detailed narrative attached thereto, made different legal submissions about harassment, her supervisor abusing her authority, and the handling of the Applicant's complaint in this regard.

14. As indicated earlier, in his reply of 17 May 2010, the Respondent contends that the only receivable issue before the Tribunal is the decision taken by the Director to accept the findings of OIA, and the failure to take any action on the Applicant's complaint of harassment and abuse of authority.

15. In response to the Respondent's receivability submission and Order No. 279 (NY/2011), the Applicant contends that:

> [A]ll legal issues cited in the application are relevant and admissible for consideration, specifically, the Respondent's contractual obligation to the Applicant regarding her working environment; requirements of due process in handling harassment complaints and evaluation performance; and whether the actions of the Respondent amounted to a pattern of harassment of authority and abuse of authority.

Consideration

Receivability of the decision to abolish the Applicant's post

16. The question to be determined in the present Judgment is whether the scope of the case is limited to the propriety of the decision of the Director to reject the Applicant's complaint against the Chief for harassment and abuse of authority, or

whether the abolishment of her former post is also an independent issue to be considered by the Tribunal.

The Applicant's identification of the contested administrative decision(s)

17. Under art. 8 of the Statute of the Dispute Tribunal, an application is only receivable if the Dispute Tribunal is competent to hear and pass judgment pursuant to art. 2 of its Statute. In accordance with art. 2, an applicant may appeal an administrative decision that is alleged to be in non-compliance with her/his terms of appointment or her/his contract of employment. Accordingly, to be receivable, an

Conclusion

21. The Tribunal finds that the only decision before it is that concerning the Director's dismissal of the Applicant's complaint against the Chief for harassment and abuse of authority.

22. Nevertheless, the facts surrounding the decision concerning the abolishment of the Applicant's post in OLDS, UNICEF, as well as any other relevant administrative decision, may still form part of the underlying factual background insofar as the Tribunal finds these pertinent to determining the substantive case.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 10th day of October 2012

Entered in the Register on this 10th day of October 2012

(*Signed*)

Hafida Lahiouel, Registrar, New York