



the Organization on 17 January 2017 upon her request. The Respondent submitted that this development rendered the application moot and not receivable.

6. For reasons specified below the Tribunal found that the application was irreceivable only in part, on another part it was capable of being resolved on the merits.

Facts

7. Facts summarized below are undisputed and/or result unambiguously from the submitted documents.

8. On 1 March 2003, the Applicant joined the Organization as an Administrative Clerk at the GS-3 level.

9. In March 2005, she was assigned the duties of secretary in the internal Litani magazine, initially under the supervision of a military editor and since 2006 under the direct supervision of the CMPO.

10. In 2009, the LSU was established to include all language assistants working in Naqoura Headquarters, Sector East and West. Administrative support to military branches and units was also grouped under the LSU. As a result, the Applicant was assigned to the LSU at the GS-3 level. Her functional title does not seem to have been firmly established and varies in e-PAS documents as “administrative assistant”

out to be a mistake in a caption describing a photograph, which was spotted only after the magazine had been approved and distributed.

13. On 13 July 2015, the HoM&FC directed that the production of the Litani magazine and all similar publications be moved from the J1 Branch into the Civil and Political Affairs/Public Information Office

towards the Language Assistant support staff and their military supervisors (Application, unnumbered Annex).

19. On 7 and 22 January 2016, the Applicant requested a management evaluation of the decision to assign her different functions.

Submissions on receivability

20. The Respondent's submissions are summarized as follows:

- a. The Applicant separated from the Organization in January 2017 which renders her application moot and not receivable.
- b. The Dispute Tribunal lacks jurisdiction to review the claim of harassment and abuse of authority for the following reasons:
 - i. Neither the 7 nor the 22 January 2016 requests for management evaluation allege harassment or abuse of authority.
 - ii. The Applicant did not exhaust her administrative remedies under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment and abuse of authority). A staff member who alleges harassment and abuse of authority must follow the procedures set out therein.
 - iii. Relying on *Messinger*(2011-UNAT-123) para. 25, the Respondent submits that the Dispute Tribunal is not competent to investigate complaints of harassment and discrimination. The Dispute Tribunal's jurisdiction to review complaints under ST/SGB/2008/5 is limited to inquiring whether there was a proper investigation of the claims.
- c. The UNIFIL Administration has taken no decision with direct legal consequences to the Applicant's appointment in that:
 - i. Contrary to her allegations, the Applicant has not been moved to the LSU. Since 2009, she has been assigned to the LSU and

23. As to whether the application in the present case became irreceivable as a result of the non-implementation of the decision, the Tribunal notes that non-implementation renders an application moot insofar as either the matter is resolved in a manner consistent with the thrust of the application, e.g., the Administration withdrew from the decision or the claim was otherwise satisfied to the effect there is no **gravamen** on the part of the applicant, or the claim cannot be satisfied for objective reasons. (Gehr 2013-UNAT-328; see also Lackner UNDT/2016/105 and Castelli UNDT/2015/057: “the general principle arising from [Gehr] is that where an impugned decision has been corrected by the Administration before a challenge to the Tribunal has been determined; it is in the power of the Tribunal to find that the challenge is moot and therefore not receivable”). However, the question needs to be analysed in relation to the nature and extent of the claim. Specifically, where the non-implementation results from the fact that the grievance prompts an applicant to quit, or change position, the question is what part of the claim can still be satisfied. The application certainly does not automatically become moot in relation to a claim for compensation.

24. In reference to the Applicant’s complaint about the attempted change of her functional title from Team Assistant to Language Assistant, the Tribunal recalls that the Respondent withdrew from the impugned decision and the Applicant retained her functional title of Team Assistant. Accordingly, the claim may be categorized as moot at the time of the filing of the application. The application in this part is not receivable.

25. In reference to the decision to “remove responsibility for the Litani magazine from her to the UNFIL Public Information Office”, the Tribunal finds that latter decision was not the subject of management evaluation. As such, in this part, the Applicant indeed failed to exhaust the obligatory administrative remedies. Notwithstanding the fact that the Respondent did not bring this specific argument on non-receivability, the Dispute Tribunal is competent to review its own jurisdiction even if the parties do not raise the issue, because it constitutes a matter of law and the Statute prevents the Dispute Tribunal from considering cases that are not receivable (O’Neill 2011-UNAT-182; Gehr 2013-UNAT-313;

Christensen2013-UNAT-335). Therefore, and based on UNDT Statute art. 8.1(c), the Tribunal finds that the application is not receivable in the part relevant to the decision to remove responsibility for the Litani magazine to the UNFICIL Public Information Office and in this part it falls to be rejected. The impugned decision will be subject to the Tribunal's consideration only to the extent that it has been put forth as a premise for a subsequent decision to re-assign the Applicant from the J1 Branch to the LSU Office and altogether gave rise to compensation.

26. Finally, in reference to the decision about removing the Applicant from the J1 branch to the Office of the Chief of LSU, the Respondent's argument that the UNFICIL Administration has taken no decision with direct legal consequences to the Applicant's appointment, the Tribunal notes that the impugned decision entailed for the Applicant a change of her placement of work (within the same duty station), the supervisor and, largely, the nature of her duties. It is moreover alleged to have been motivated by harassment and retaliation. As such, this decision is capable of being reviewed for compliance with the terms of her appointment. In reference, however to the claim that the decision be reversed, the Tribunal finds that the claim cannot be satisfied upon her separation from service and that in this part the application has become moot and not receivable.

27. The only part in which the application is receivable is the claim for compensation for the alleged harm caused by the decision to re-assign the Applicant from the J1 Branch to the LSU Office, to which the Tribunal now turns.

28. Regarding the Respondent's contention that the Dispute Tribunal "is not competent to investigate complaints of harassment and discrimination" because "the Dispute Tribunal's jurisdiction to review complaints under ST/SGB/2008/5 is limited to inquiring whether there was a proper investigation of the claims", and that "the Applicant did not exhaust her administrative remedies under ST/SGB/2008/5", the Tribunal feels compelled to dwell a bit on the Respondent's arguments in order to dispel potential misconceptions.

29. At the outset, the Tribunal recalls that art. 2.1(a) of the UNDT Statute provides that the Tribunal shall be competent to hear and pass judgment on an application [...]

To appeal an administrative decision that is alleged to be in

functions and are largely independent of each other. Proceedings under
ST/SGB/2008/5

outcome of the procedure on corrective measures under section 5.20 to UNDT (e.g, Nwuke2010-UNAT-099). The latter, however, is a remedy particular to the avenue of proceedings pursuant to section 5 of ST/SGB/2008/5 and decisions

40. In the case at hand, the Tribunal notes that the Applicant consistently alleged that the Administration acted with a malicious intent, moreover, the Respondent's reply is inaccurate because Applicant actually did expressly allege harassment and abuse of authority in her management evaluation request of 5 January 2016 (Respondent's Annex 1, page 6). In accordance with the aforesaid, this allegation falls to be evaluated as a factual circumstance relevant to the motives underlying the impugned decision; however, it has no qualitative impact on receivability or otherwise procedural effect of the claim.

Submissions on merits

Applicant's case

41. For more than 10 years, while in her substantive post of Team Assistant, she has discharged h

45. On 11 August 2015, using the excuse that the production of the Litani magazine had been moved from the J1 Branch, the Chief of the LSU moved her out of the J1 Branch.

46. On 10 November 2015, the CHRO approved the Chief of LSU's decision to "reassign" her to a post of Team Assistant in the Office of the Chief of the LSU. The decision was taken very quickly and applied hastily and on very short notice. The decision maker took advantage of her absence from work on sick leave to relocate her without consulting her. The other civilians in her similar situation working in the other Military Branches as Team Assistants were not moved and are still working in their respective branches.

47. She was framed and unlawfully accused of making mistakes by DDMS Mr. Bendinelli to cover mistakes made by the staff of the HoM&FC and to disgrace her before the HoM&FC. She was used as a scapegoat for these mistakes. Her Performance Appraisal for 2014-2015 is proof of her achievements and the great job she was doing. All the actions taken towards her show that there has been "a clear abuse of authority and harassment". Specifically, the decision by the Chief LSU to re-assign her in his office came immediately after MEU confirmed her function as Team Assistant and the decision not to move her to the Italian Battalion; it had no operational basis and was meant to harass and retaliate against her.

48. The irreparable harm caused by this administrative decision was taking away from her the her

consistently affirmed by the United Nations Appeals Tribunal (UNAT) in its jurisprudence (Hepworth 2015-UNAT-503; Gehr 2013-UNAT-329; Rees 2012-UNAT-266).

50. The Applicant was assigned to different functions due to the operational changes that resulted from the movement of the Litani magazine production to the Public Information Office. Consequently, the Applicant could not continue to perform functions that no longer existed in her office. Further, her post, grade and level remained the same and her proposed new tasks would be in accordance with her job description.

Considerations on merits

Applicable standard

51. In evaluating whether the impugned decision gave rise to compensation the Tribunal has to determine as a preliminary issue whether the decision was unlawful. In this regard, the United Nations Appeals Tribunal has consistently affirmed that the reassignment of staff members' functions comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate and that such decisions may be set aside on limited grounds. (Gehr 2012-UNAT-236; Kamunyi2012-UNAT-194; Allen 2011-UNAT-187; Kaddoura 2011-UNAT-151; Hepworth 2015-UNAT-503, Rees 2012-UNAT-266). On a general note, in the seminal case of Sanwidi2010-UNAT-084, UNAT stated:

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, 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.

52. Based on the UNAT jurisprudence, this Tribunal

Whethemandatory rules have been violated

53. Staff regulation 1.2(c) provides that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her

that moving the Applicant to another office once at least half of her responsibilities disappeared, was not irrational or capricious.

57. As held by UNAT in **Rees2012-UNAT-266**, an accepted method for determining whether the reassignment of a staff member to another position was

Whether the decision has been issued in accordance with due process

60. The Applicant complains that the decision-maker took advantage of her absence from work on sick leave to reassign her to a position of her

application has been found receivable only to a limited extent, an analysis of the sequence of impugned decisions is needed for a proper determination.

65. The Tribunal understands that the Applicant may be disappointed and frustrated due to the fact that, after 10 years of apparently satisfying and well appreciated work at the J1 Branch consisting in the preparation of the *Litani* magazine, she was to be moved out of her work niche in what she perceives as a punitive action. Yet, the Applicant seems to take a very subjective and self-centered view on the matter. The Applicant disregards the fact that the production of the *Litani* was not taken from her. It was taken from the military pillar/J1 Branch and its commander and transferred to another unit of the mission. This decision does not target the Applicant.

66. The decision of the HoM&FC that “all this type of UNIFIL media” be placed under the responsibility of the Director of Political and Civil Affairs/ Public Information Office, is not a punitive measure; rather, it must be seen as an organizational correction, which is by all means reasonable. The Public Information Office is an entity competent to deal with publications, it is expected to possess relevant expertise both in editing work and in public relations, and, as such, to be equipped to take full responsibility for the content and form of the issuances. Placement of the *Litani* magazine at the J1 Branch, no matter how hitherto successful, is less appropriate. As demonstrated in this case, in the absence of an editor there was no designated person to own responsibility for the magazine, including mistakes.

67. The decision to re-assign the Applicant from the J1 Branch to the Office of the Chief LSU – as well as the preceding, unimplemented decision to re-assign her as Language Assistant – was taken in direct consequence of the transfer of the edition of the *Litani* magazine to the Public Information Office. As discussed above, there was a valid reason for these decisions and not, as the Applicant presents it, an excuse.

(Application, Annex 7, unnumbered Annex A) and the high rating accorded to the Applicant in e-PAS documents by the Chief LSU (Applicant Annex 9.6-9.9).

68. The accusation of retaliation on the part of Chief LSU has no basis; insofar as the Applicant suggests such retaliation followed her submission for management evaluation, the impugned decisions are chronologically earlier than the request for management evaluation. In any event, as held by UNAT in Rees “The staff member reserves the right to seek redress through informal or formal complaint procedures pursuant to ST/SGB/2008/5.[...] having failed to do so, her insistence on different reporting lines is without merit.”

69. Considering the aforesaid, the Tribunal sees no *prima facie* indications of harassment, abuse of authority or retaliation against the Applicant.

Conclusion

70. The Tribunal finds that the following claims put forth by the Applicant in her application are not receivable:

- a. To rescind the decision on attempted change of her functional title from Team Assistant to Language Assistant.
- b. To rescind the decision to “remove responsibility for the Litani magazine from her to the UNFIL Public Information Office”.
- c. To rescind the decision about removing the Applicant from the J1 branch to the Office of the Chief of LSU.

71. The Tribunal finds, however, that the Applicant’s claim for compensation for the decision to reassign her from the J1 Branch to the LSU Office cannot succeed because the Administration did not exceed its discretion. Onerousness of the impugned decision is purely subjective. The Applicant cannot insist on a restructuring of the Organization to suit her wishes. The impugned decision did not violate the terms of the Applicant’s appointment and she did not meet her burden of proving her allegations of harassment.

JUDGMENT

72. The Application is dismissed in its entirety.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 13th day of February 2017

Entered in the Register on this 13th day of February 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi