

responsibilities expected of the staff member and the creation of a parallel job and the steps taken to sideline the Applicant constitute a *de facto* abolition of her post. The Applicant further responds that she received repeated assurances that the matter would be addressed, and the contested decision was the reversal of a stated course of action, which represents a new decision for the purposes of initiating a management evaluation and is not a mere reiteration of a prior decision.

Facts

4. The following outline of facts is based on the parties' submissions and the documentation on the record and only reflects those circumstances that are relevant to the issue of the receivability.

5. The Applicant joined UNDP on 1 July 1987 and has been performing the functions of Change Release and Testing S2 Tm0 g45.v90(S) FD0135.95 695.pO(leva)6(nt)-11(to)] TJF

9. On 8 October 2014, Ms. SH responded to the Applicant that Mr. CH would continue to work with her on the clarification of the roles and responsibilities while

13. On 26 October 2014, the Applicant wrote an email to Ms. DG, the then

24. On 20 January 2016, Ms. PM, the Chief of Directorate of Bureau for Management Services (“BMS”), wrote an email to the management consulting team within OHR, as follows (emphasis omitted):

Having heard the views of the staff member and management of the office, all parties have agreed that there is overlap in the [job description]s. From what we understand the intention in the second [job description] (Quality Assurance) which is a new post was to develop a profile that that is aligned more to portfolio management given that the first [job description] (Change Release and Testing) is aligned to the change, release and testing function. [The Applicant] has also requested that the title of her position be changed to Quality Assurance Specialist. We are confident that both questions can be resolved amicably.

The request from all parties, including our office/ is therefore for you to review and support alignment of both [job description]s in this context based on existing classification rules and processes. We have also noted that the [job description]s are not consistent with the standards implemented during the structural change process and would be grateful of this alignment is also undertaken and completed.

Grateful of the drafts could be shared with us by 28 January 2016 for

discussion I had with you last December 2015 regarding this case, three deadlines passed to give resolution, and now I don't even know where the case stands.

28. On 7-8 March 2016, the Applicant exchanged emails with a project manager regarding her role in the Yammer Project implementation. Specifically, she questioned why there was a second quality assurance role when there is one project quality assurance role under Prince II standard, the role which she performed.

29. On 23 March 2016, Ms. PM responded to the Applicant stating that this matter had been assigned to another person.

30. On 28 June 2016, in response to another follow-up by the Applicant, Ms. PM wrote that "progress is being made towards resolution and we should have a response by end of the week".

31. On 19 July 2016, in response to another follow-up by the Applicant, Ms. PM wrote that "we request your indulgence in finalizing the case as it involves a second staff member as well".

32. The Applicant received the letter of 28 July 2016 from Mr. BM, the Director of Office of Operations, Legal and Technology Services, BMS, on 2 August 2016:

Multiple reviews of the two Job Descriptions, the "Change Release and Testing Specialist" [job description] and the "Quality Assurance Specialist" [job description], have determined that both Job Descriptions describe activities and duties that are appropriate and necessary. Both positions are currently encumbered, and the staff in the positions fill duties and roles that are currently needed by OIMT. It is the management conclusion that the two Job Descriptions will remain and are not in need of revision. More specifically, neither the title nor the text of the "Quality Assurance Specialist" will be changed.

33. On 10 August 2016, the Applicant submitted her request for management evaluation, and on 8 September 2016, the management evaluation was issued. The management evaluation found the Applicant's request not receivable as the challenged decision has no direct legal consequences affecting her terms and

the recent Project Initiation Document [“PID”] and subsequent PIDs, by removing attribution for her contribution and the organization’s established project management methodology in accordance with the

Applicant's submissions

65. The Applicant's principal contentions may be summarized as follows:

a. The management evaluation found the Applicant's claim not receivable on the grounds that a staff member has no right to question another staff member's job description, but the failure to clarify work assignments within the context of an office work plan and in apparent contradiction with formal job descriptions has direct legal consequences for the Applicant. The creation of a parallel job and the steps taken to sideline the Applicant constitute a

employee's functions is a breach or a violation of a staff member's rights;

c. The right to a job description that accurately reflects the duties and responsibilities expected is an essential element in the proper classification of posts and people. It is self-evident that job descriptions should reflect reality and aim to distinguish between functions and responsibilities of staff as they also serve to regularize and rationalize the working environment. Furthermore, the job description is presently of particular importance in UNDP as it was used to determine job matching in the latest round of retrenchment, which is expected to be repeated in the near future;

d. The gravamen of the Applicant's claim revolves around the
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prejudicial all efforts at settling cases amicably by precluding a further review. As the Appeals Tribunal held in *Fiala* 2015-UNAT-516 at para. 40,

What was relayed to her was not a mere restatement of the position which was adopted by the Administration in its communications of 28 September 2006 and 28 September 2007, but rather the fruits of the review undertaken in 2009. We are fortified in this conclusion by the contents of a draft unsigned facsimile of 27 February 2009 from FPD/DFS where reference is made to a "careful review" having been carried out pursuant to MONUC's request of 22 February 2009. Thus, there was no re-setting of the deadline for challenging the May 2006 decision, as contended by the Secretary-General.

Respondent's submissions

66. The Respondent's principal contentions may be summarized as follows:

The contested decision is not an administrative decision subject to judicial review

a. First, the contested decision is not an administrative decision subject to judicial review since the refusal to amend the job description and functional title of the Applicant's colleague produces no direct legal consequences affecting the Applicant's terms and conditions of appointment;

b. For the purposes of art. 2.1 (a) of the Dispute Tribunal's Statute, it is not sufficient for the Applicant to merely establish that there was an administrative decision with which she disagrees. To have standing before the Tribunal, the Applicant must show that a contested administrative decision applies in an individual case and affects her legal rights (*Li* UNDT/2014/

c. The Applicant encumbers a properly classified post with a personal grade commensurate with the duties and responsibilities she performs, in accordance with staff regulation 2.1. As far as the Applicant's rights are

there is no administrative decision subject to judicial review under staff rule 11.2 (a), the application is not receivable;

The Applicant failed to request a management evaluation of the contested decision within the required time

h. The Applicant was notified of the decision she contests—the refusal to grant her request to amend the title and job description of the Quality Assurance Specialist position—through the response of the then Deputy Director of OIST on 14 October 2014 following his meeting with the Applicant. As indicated, the Applicant was notified by the then Deputy Director of the decision to deny her request on 14 October 2014. The decision of 14 October 2014 denying the Applicant’s request clearly stated that this was due to the fact that “1. The title of the position is defined in the [Structural Change] BoM Organogramme; 2. The [job description], including the job title, has been approved (classified) by OHR; 3. The position, using the current job title and [job description], was recently competed via the [Structural Change] Job Fair, and the position was offered and accepted less than two weeks ago”. The Applicant acknowledged receipt of this decision in her email of 20 October 2014 to the then Director of OIST and expressed her

on the matter, the Applicant was obligated to file a request for management evaluation by 5 January 2015 at the latest, which she failed to do;

l. In fact, following the email of 1 December 2014 sent by the then Director of OIST, the Applicant, as indicated, confirmed her agreement in emails with the decision to use the work plan in her emails on 23 February 2015 and 1 March 2015. Notwithstanding this agreement, it appears she thereafter changed her mind and reverted to her previous claim that the work plan was a short-term solution by appealing to OHR to remove the purported duplication in job descriptions. She then sought the same at the Directorate, BMS. On 28 July 2016, she received the notification of the Director, Office of Operations, Legal and Technology Services, BMS, which she now contests. While the Respondent does not question the right of the Applicant to change her mind as to whether she agreed that the solution resolved her grievances, doing so clearly does not reset the statutory deadline for the filing of requests for management evaluation;

m. The fact that the Administration repeatedly engaged with the Applicant to resolve her grievances only speaks to the commitment of the Organization to try to resolve matters and should not be considered as resetting the administrative decision. Allowing the messages of management reiterating the decision to reset the administrative decision would enable staff member to keep the same administrative decision alive by seeking resolution of the matter through successive layers of management. To conclude otherwise would have significant consequences for the efforts of management to address grievances and a chilling effect on informal resolution of staff member's grievances, informal resolution being in accordance with the General Assembly resolution 63/253 (Administration of Justice at the United Nations);

n. While the Applicant relies on *Fiala*

BMS was the “first statement in writing setting forth that position”, this contention is, at best, misleading. The circumstances of the present case are entirely distinguishable from the situation in *Fiala* as there was, in that case,

71. The Respondent claims that issues relating to the job description of the Quality Assurance Specialist only concern her colleague's terms of appointment and the Applicant has no right to challenge such. However, a close review of the Applicant's claims shows that the Applicant contests the inconsistencies and duplications in the job descriptions and duties between her job description and her colleague's job description because it allegedly affected her individual rights adversely. Specifically, she claims that the contested decision, by attributing the Applicant's job functions and duties to her colleague in the latter's job description, affected her rights to have a job description that accurately reflects her responsibilities and accomplishments. The Applicant claims that her colleague's job description gave credit for her professional accomplishments to her colleague, who performs separate and distinct functions, and the contested decision sidelined and marginalized her in the office. The Tribunal notes that the Applicant joined UNDP in July 1987 and has been performing the functions of Change Release and Testing Specialist since 1 June 2008. It is of some significance that the quality assurance role has been removed from the Applicant's performance management documents. Surely, this has impacted on the Applicant's terms and conditions.

72. If the Applicant's allegations are found to be substantiated, it may follow that the Applicant was deprived of her functions in violation of the Organization's rules, such as rules governing classification and/or realignment, especially considering that the Applicant was officially notified twice that there was no change to her functions and her post and yet she submits that her functions were in fact changed in a way that her primary and defining functions were shifted to her colleague. While staff regulation 1.2(c) gives the Secretary-General broad discretionary powers when it comes to organization of work, it is not unfettered and can be challenged on the basis that the decision was arbitrary or taken in violation of mandatory procedures or based on improper motives or bad faith (*Pérez-Soto* 2013-UNAT-329, para. 29).

73. When a staff member alleges, as the Applicant does in this case, that the contested decision is not in compliance with his or her contract of employment, the

Tribunal is competent to hear and decide the case under its Statute. Therefore, the Tribunal finds that the contested decision is an administrative decision subject to judicial review.

74. The Tribunal observes that the Applicant cites two cases, *Karmel* and *Chuteaux, supra*, where UNAdT found, *inter alia*, that there had been manipulations in the processes of redeployment and abolishment of posts of long serving staff members, whilst creating similar parallel posts, which were then occupied by other staff members performing the same functions. Whilst the Applicant's post has not been abolished in this instance, she appears to suggest that the pattern of events and the manner in which the Administration has dealt with her case, and the overlapping of functions may result in this eventuality in the foreseeable future. Any submissions in this regard are of course a matter for the merits.

Did the Applicant fail to file a request for management evaluation within 60 days from receiving the contested decision?

75. Staff rule 11.2(c) provides that “[a] request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days

staff member. This communication seems to be a clear and definitive notification of the administrative decision not to amend the Quality Assurance Specialist's job description. The question then is whether the Administration subsequently made a new and separate decision by unambiguously re-examining a prior decision.

83. On 5 November 2014, the Administration and the Applicant agreed to use work plans to define and distinguish responsibilities between the two jobs, and subsequent communications show that parties were working toward this goal. However, on 20 March 2015, the Applicant again requested that necessary adjustments be made to the job descriptions, and several communications between the Administration and the Applicant followed.

84. On 20 January 2016, Ms. PM, the Chief of Directorate of BMS requested the management consulting team of OHR to “review and support alignment of both [job descriptions] based on existing classification rules and processes”, noting that “ther% Ó sj d xC

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