





7. Appended to the jointly-signed statement, the Applicant filed some documents *ex parte*. Considering the particular content and the circumstances of the present case, the Tribunal decides to maintain this status and not share them with the Respondent.

8. For the reasons set out below, the application is rejected.

## **Facts**

9. In the parties' jointly-signed statement of 28 April 2020, they set out the agreed facts as follows (emphasis in the original):

### **Employment history**

... On 11 January 2004, the Applicant was granted an initial Fixed-Term Appointment as a Legal Officer with the Office of Legal Affairs at the UN Secretariat, at the P3 level, step 6 in Vienna, Austria. On 11 December 2006, she was competitively selected and seconded from the UN to the then Legal Support Office (LSO) at UNDP, New York on a Fixed-Term Appointment as a Legal Specialist at the P4 level, step 2 for an initial period of 2 years. On 10 December 2008, based on her good performance as set out in her 2008 performance assessment, her secondment to UNDP was extended for a maximum of another two years.

... In 12 March 2009, in recognition of her exceptional work record, the Applicant was promoted to the P5 level, step 1 as a Legal Advisor in UNDP.

... On 12 May 2010, the Applicant, in view of the upcoming expiry of her secondment from the UN, applied for a transfer into UNDP on or before 10 December 2010 as set out in an email to [name redacted, Ms. LL], Senior Advisor, Bureau of Management/Office of Human Resources (BOM/OHR).

... On 2 March 2010, UNDP initiated a One-Time Review to convert staff who had served in UNDP for five or more years as permanent staff members. On 24 August 2010 by an or before

Legal Office (LO) (then-LSO) on a new Fixed-Term Appointment at the P5 level, step 2.

... On 14 January 2011, the Applicant was advised that she would retroactively be deemed to have had no break-in-service between the end of her secondment from the UN and effectively transferring her to UNDP.

... On 1 December 2012, the Applicant was reassigned to the position of Management Advisor, Business Solutions in the Bureau of Management (BoM, now Bureau for Management Services (BMS)) at the P5 level, step 4 to head a corporate project (POPP [unknown abbreviation] Project) on behalf of the Bureau of Management Services. On 21 May 2014, following a UNDP-wide Structural Review Process, a new UNDP structure and change process was launched. On 1 October 2014, the Applicant was selected and appointed to the position of Chief of Directorate, BoM (now BMS) after an internal competitive selection process replacing the previous Head of the Directorate. The Applicant served as Chief of Directorate from 1 October 2014 to 21 August 2018.

... On 14 June 2018, the Applicant was placed on medical leave for 23 working days [reference to footnote omitted].

Assistant Administrator and Director, BMS, at the Assistant Secretary-General (ASG) level from 22 February 2012 to 31 March 2017. At the time of [Ms. SM's] appointment, the Applicant supervised several BMS Directorate staff, including a Management Specialist at P3 level, [name redacted, Ms. EZ].

... On 16 March 2017, the Director-designate, BMS informed the Applicant by email that she was interested in having a Special Assistant at the P3 level to support her, although she deferred the final decision on this until after taking office [reference to annex omitted].

... On 18 May 2017, in a meeting with the Applicant, the Director, BMS informed the Applicant that the P3 Management Specialist on Temporary Appointment would be reporting to her and would serve as her Special Assistant [reference to the application omitted].



... Starting in February 2018, the Parties engaged in informal resolution efforts.

... On 13 March 2018, the Applicant submitted a complaint of workplace harassment, abuse of authority and retaliation against the Director, BMS to UNDP's Office of Audit and Investigation (OAI).

... On 17 April 2018, the Applicant wrote to the Administrator copying the Office of Audit and Investigations and the Ethics Office.

... From 11 May 2018 until 17 June 2018, the Applicant was on sick leave. She returned to work on 18 June 2018 but had to leave again on 19 June 2018, and was on sick leave until the end of her tenure as Chief of Directorate[.]

... On 13 June 2018, OAI completed its assessment, declining to open a formal investigation on the grounds that there was insufficient evidence to warrant an investigation.

... On 29 June 2018, a memorandum from [Dr. CH], Senior Medical Officer, UN Medical Division to [Mr. DB], Director of the Office of Human Resources, advised that before the Applicant could be returned to her work, alternate working arrangements conducive to the Applicant's recovery be put in place.

... On 1 August 2018, the then counsel for the Applicant wrote to the Respondent to inform it that the Applicant considered that mediation had failed.

... The Applicant was offered the position of Special Advisor to the Director, OHR with the expectation that this would enable her to continue with her career which she accepted.

10. The Tribunal notes that in the jointly-signed statement, the parties also included

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rejected the Respondent's claim and found the application receivable on a preliminary basis and without prejudice to any substantive findings made in this Judgment. The Tribunal now fully endorses all findings made in Order No. 54 (NY/2020), which is published on the Dispute Tribunal's website.

*The issues*

12. Regarding how to define the issues at stake, the Appeals Tribunal has held that "the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review". When defining the issues of a case, the Appeals Tribunal further held that "the Dispute Tribunal may consider the application as a whole". See *Fasanella* 2017-UNAT-765, para. 20, as also affirmed in *Cardwell* 2018-UNAT-876, para. 23.

13. In the application and the appended annexes, the Applicant lists a range of administrative decisions, which she, in essence, claims prove that she has unlawfully been divested of her core functions as Chief of the Directorate in BMS/UNDP as certain of her previous responsibilities were transferred to others.

14. In light thereof, and as neither party has objected to the definition of the issues set out in Order No. 54 (NY/2020), this is maintained as follows:

- a. Whether the cumulation of certain decisions regarding the Applicant amounted to an unlawful divestiture of her core functions as Chief of the Directorate?
- b. If so, as remedies, is the Applicant entitled to any or all of these decisions to be rescinded and/or compensation according to art. 10.5 of the Dispute Tribunal's Statute?









Case No. UNDT/NY/2018/021

Judgment No. UNDT/2020/082





