





examination of the request”. She further added that “Article 7 of the UNDT [r]ules of [p]rocedure refers also to an application to the UNDT after having written to the SG requesting a management evaluation. In view of the response obtained from the SG’s office ... [she was] therefore submitting [her] request to the UNDT, which [she] hoped [was then] considered valid”.

7. By letter dated 29 October 2009 addressed to the parties, the Dispute Tribunal informed them that in accordance with Staff Rule 11.2 (a), article 8 paragraph 1 of the its statute and the applicable jurisprudence, the Tribunal was not in a position to examine the present case before the mandatory evaluation procedure has been completed. Accordingly, the judge entrusted with the examination of the case recommended that the Applicant withdraw her application by Thursday, 5 November 2009 and advised her to continue with the management evaluation procedure. The parties were also informed that the Tribunal intended to decide on the case by summary judgment if the application was not withdrawn.

8. By letter dated 4 November 2009, which was received by the Dispute Tribunal on 5 November 2009, the Respondent confirmed that no request for management evaluation from the Applicant has been received by the Deputy High Commissioner’s Office. The Applicant did not respond at all.

#### Considerations

9. According to article 9 of the rules of procedure of the United Nations Dispute Tribunal (UNDT RoP), which are based on article 7.2 of the statute of the United Nations Dispute Tribunal (UNDT statute), the Dispute Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may usually happen when there is no dispute as to the material facts and judgment is restricted to a matter of law. It may be even more appropriate for issues with reference to whether an application is receivable. The crucial question in this case - the absence of a management evaluation decision – is such matter of law.

10. According to Staff Rule 11.2 (a) a staff member wishing to formally contest an administrative decision shall, as a first step, submit to the Secretary-General a request for management evaluation of the administrative decision. The

Dispute Tribunal in its jurisprudence has declared that “[this provision] must be interpreted in such a way as to give effect to the underlying philosophy embodied in [it]. The Tribunal takes the view that the underlying philosophy of [this provision] is to allow management the opportunity to rectify an erroneous, arbitrary or unfair decision... [This provision] cannot be interpreted to mean that management evaluation is optional. It is not”. (UNDT/2009/054, Nwuke, citing UNDT/2009/035, Caldarone)

11. The Article 8 paragraph 1 of the UNDT statute states that:

“An application shall be receivable if... (c) an Applicant has previously submitted the contested administrative decisions for management evaluation, where required; and (d) the Application is filed within the following applicable deadline:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days after the applicant’s receipt of the response by management to his or her submission; or

b. Within 90 calendar days after the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for another offices...”

12. By memorandum dated 24 July 2009, the Under-Secretary-General for Management delegated the authority to the Deputy High Commissioner, UNHCR, to carry out the functions of management evaluation governed by Staff Rule 11.2, effective 1 July 2009.

13. The IOM-FOM No. 034/2009 dated 1 July 2009 on the new administration of justice system, in its paragraph 1.1 states that “within UNHCR, the management evaluation will be carried out by the Executive Office under the responsibility of the Deputy High Commissioner” and that “the decision of the Deputy High Commissioner will constitute the management evaluation”.

14. In the present case, the Tribunal notes that the Applicant, a staff member of UNHCR, requested management evaluation of the administrative decision according to Staff Rule 11.2 (a) on 28 September 2009. According to the clear words of the rule, the requirements are fulfilled if the request is addressed to the Secretary-General. Therefore, the Applicant's letter to the Secretary-General has to be considered as a valid request for management

