



Introduction

1. The Applicant, a staff member in the United Nations Stabilization Mission in Haiti (“MINUSTAH”), contests her separation from service following the non-extension of her contract. The Applicant alleges that the decision was unfair, unlawful, and discriminatory. The Applicant requests that she be assigned a suitable available position in any mission. She states that she passed the United Nations examination and has been placed on a roster of pre-approved candidates for three years.

2. On perusal of the application, the Tribunal noted that receivability was a point of contention in this case. On 19 August 2013, the Applicant had requested a management evaluation of the “expiration of [her] appointment”. On 4 October 2013, the Management Evaluation Unit (“MEU”) wrote to the Applicant, concluding that “in accordance with staff rule 11.2(c), given that you submitted your request for management evaluation beyond the 60 day deadline, your request for management evaluation is time-barred”.

3. On 13 January 2014, the Tribunal, in th

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appointment with MINUSTAH, which was to expire on 30 June 2012, would not be further extended. The memorandum stated:

MINUSTAH has completed the review of the offices involved in the retrenchment exercise, intended to effectively address the evolving operational requirements in Haiti, in line with MINUSTAH's 2012–13 budget proposal.

Due to non-availability of post, I regret to inform that your fixed-term appointment with MINUSTAH which expires on 30 June 2012 will not be further extended. In this regard, your separation from the Organization will be initiated and Human Resources Section will be forwarding the necessary separation forms and instructions.

However, kindly note that the Field Personnel Division in the Department of Field Support at the UN Headquarters will continue to explore possibilities for reassignment for staff members who wish to continue in the service of the United Nations either through (a) selection for those staff members who are on the Field Central Review Body roster or (b) provisional reassignment to other field missions pending consideration of application to job openings. Therefore, in the event that you are selected or provisionally reassigned to a position in another mission or UN Office by [close of business] 30 June 2012, your separation from the Organization will no longer be executed.

If you have not gone through a competitive process subject to the review of the Field Central Review Body, you are encouraged to apply to the generic job openings posted on Galaxy for which you are considered suitable. You are also highly encouraged to apply to other positions in organizations of the UN, including job openings in Inspira related to vacancies in HQ and Offices away from HQ for which you consider yourself suitable.

I am truly aware that the uncertainties of the retrenchment process have been stressful and unsettling for everyone involved, and I would like to thank you for your understanding and patience while the process was underway. Please be reassured that the decision not to extend your contract with MINUSTAH is not a reflection of your performance.

10. On 8 June 2012, the Applicant received an email from MINUSTAH Human Resources Office advising her of the separation and checkout procedures.

11. However, by email dated 13 June 2012, she was informed that she would be “Temporarily retained through end of maternity”. On 20 June 2012, she was further notified via email by the Officer-in-Charge, Field Personnel Operations Service, DFS, that her

separation is not going to be implemented as stated in the attached memo dated 29 May 2012. Your fixed term appointment will be extended by MINUSTAH to cover the period of your sick leave and maternity leave. Please be assured that FPD continues to explore possibilities for longer-term reassignment in another mission.

It is common cause that at this time the Applicant was on sick leave as of 24 April 2012, and remained on that status until 12 August 2012, at which point she went on maternity leave until 3 December 2012.

12. On 18 December 2012, the Applicant’s supervisor requested MINUSTAH Personnel Section to extend the Applicant’s contract for a one-year period.

13. That same day, the International Staff Unit, MINUSTAH, responded to the Applicant’s email of 14 December 2012 in which she had advised them of her doctor’s recommendation to take additional sick leave days. The International Staff Unit, MINUSTAH, informed the Applicant that the mission could approve “an interim extension of one month pending the result of your sick leave certification”. The email stated:

If you are cleared to return to work or believe you will be, we will inform FPD to pursue placement possibilities in other missions as a downsize/retrenched staff member. We will also pursue the possibility of internal placement in MINUSTAH.

14. On 4 January 2013, the Applicant received an email from the Personnel Section, MINUSTAH, advising her that her current contract would expire on 31 January 2013, and that the Section is “going to work on [her] renewal”.

15. On 8 January 2013, the Applicant signed a letter of appointment with an effective date of 1 January 2013 for one month, being the aforementioned interim

extension pending certification of sick leave by the Medical Services Division at Headquarters.

16. The Medical Services Division having apparently informed MINUSTAH on 1 March 2013 that her further sick leave would not be certified, the Applicant was informed by notice dated 6 March 2013 and received on 15 March 2013 that

21. According to the MEU, it followed up on 15 August 2013, observing that it had received no further communications

time-barred in each instance and failed to identify any exceptional circumstances for the late filing.

Consideration

25. Whilst, in fairness to all parties, it is the practice of the Dispute Tribunal to deal with cases in chronological order of filing, the General Assembly has requested in its resolution 66/237, adopted on 24 December 2011, that the Dispute Tribunal and the Appeals Tribunal review their procedures in regard to the dismissal of “manifestly inadmissible cases”. It is a matter of record that the Dispute Tribunal, even prior to the aforesaid resolution 66/237, entertained and continues to deal with matters of admissibility or receivability on a priority basis in appropriate cases, and also render summary judgments in appropriate cases under art. 9 of the Rules of Procedure.

26. In the instant case, the Applicant faces

accordance with sec. 8 of ST/AI/2005/2 (Family leave, maternity leave and paternity leave).

28. Upon receipt of the notification of non-certification of further sick leave from the Medical Services Division in early March 2013, the Applicant was thereafter advised by written notification dated 6 March 2013 and received by her on 15 March 2013 that MINUSTAH

the New York Registry. Following the Applicant's several unsuccessful attempts at filing her application via the eFiling portal, on 6 January 2014, the New York Registry uploaded her application to the eFiling portal on an exceptional basis.

33. Accordingly, although the application was uploaded by the Registry to the eFiling portal on 6 January 2014, the Tribunal is satisfied that the Applicant had attempted to submit her application on 2 December 2013 and successfully re-submitted it on 27 December 2013. Therefore, the application with the Tribunal was filed within 90 calendar days of the date of notification of the outcome of management evaluation.

34. The Tribunal will now turn to the Applicant's request for management evaluation.

Management evaluation request

35. The Respondent states that, considering that the Applicant has identified the date of written notification of the contested decision as 15 March 2013, her request for management evaluation should have been submitted by 14 May 2013. However, it was submitted on 19 August 2013, three months after the expiration of th

37. The Applicant indicates in her application and acknowledges in her communication to the Tribunal of 20 January 2014 that she failed to submit her request for management evaluation on time, albeit she states that it was because “[t]he UN Personnel Section in Haiti has promised several times (by phone and email) that they will extend my contract, and this was the reason that I did not submit

108). Further, staff members are presumed to know the Staff Rules, particularly those pertaining to their basic rights, such as the right of appeal (*Diagne et al.* 2010-UNAT-067; *Jennings* 2011-UNAT-184; *Muratore* 2012-UNAT-191; *Christensen* 2012-UNAT-218).

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