9. The Applicant further contends that (in the 20 February 2015 joint statement, the Respondent indicated that he either disagrees with or has no knowledge of this):

> « Upon the $SSOLFDQW¶V UHWXUQ WR 1HZ <RUN LQ 2012, she sought information and clarification from the Executive Office of DPI on her correct assignment number and mobility count, after noting from her payslip that she had incorrectly received no payment whatsoever in relation to her mobility count. DPI initially informed the Applicant that it was obtaining clarity on this from the Office of Human Resources Management >2HRM´,@but then subsequently told the Applicant that she should contact OHRM directly about the matter. The Applicant did so, but was told by OHRM that she should contact

« On 21 March 2014, the Applicant responded by email to [Chief, Human Resources Services]. In this email, she indicated that she did not believe that an assignment number of 4 was in accordance with the relevant rules of the Organization and requested a meeting with [Chief, Human Resources Services] to discuss the matter.

« On 24 March 2014, the Applicant and [Chief, Human Resources Services] met and discussed the Applicant¶s various moves within the United Nations and the relevant rules of the Organization. During this meeting, [Chief, Human Resources Services] expressed regret about the handling of the matter SHUWDLQLQJ WR WKH $SSOLFDQW¶V DVVLJQPHQW during the length of time that it took the Administration to assess the issue, the different number of Offices and colleagues to whom the Applicant had been advised to address this matter, and the amount of documentation that she had been asked to obtain. At the end of this conversation, [he] stated that it was the Administration¶ GHFLVLRQ WKDW WKH $SSOLFDQW¶V DVVLJQPHQW He informed the Applicant that if she did not agree, she could request an evaluation of this decision from the MEU [Management

13. The Respondent filed his reply on 27 October 2014 contending that the application has no merit. On 1 December 2014, the Applicant filed her UHVSRQVH WR WKH 5HVSRQGHQW¶V UHSO\

14. Pursuant to Order No. 334 (NY/2014) dated 11 December 2014, the Tribunal (Duty Judge) held a case management discussion with the parties on 18 December 2014 to ascertain the facts and law at issue as well as other matters.

15. By Order No. 6 (NY/2015) dated 14 January 2015, the Tribunal (Duty Judge) instructed the parties to file a jointly signed statement outlining agreed and GLVSXWHG OHJDO LVVXHV DQG IDFWV DV ZHOO DV WKH would be amenable to resolving the matter informally either through the United Nations Ombudsman and Mediation Services or through inter partes discussions.

16.

$SSOLFDQW¶V VXEPLVVLRQV

21. 7KH $SSOLFDQW¶V contentions may be summarized as follows:

a. On 8 March 2007, the former administrative instruction ST/AI/2007/1 (Mobility and hardship scheme) entered into force. This was subsequently replaced by the current a

the erroneous assumption that the former administrative instruction survived the abolishment of the Instruction itself;

e. Pursuant to sec. RI 67 $, WKH ³$GPLQLVWU instruction ST/AI/2007/1 on the mobility and hardship allowance is KHUHE\ DEROLVKHG´ HIIHFWLYH specific provision was made that permitted this instruction to have a future legal effect;

f. In light of the express language of ST/AI/2011/6, the Applicant respectfully submits that it is this administrative instruction that applies to the counting of her

> results in respect of a past event. A retroactive statute operates backwards. A retrospective statute operates forwards, but it looks backwards in that it attaches new consequences for the future to an event that took place before the statute was enacted. A retroactive statute changes the law from what it was; a retrospective statute changes the law from what it otherwise would be with respect to a prior event.

i. The application of the mechanism for calculating assignment number set forth in ST/AI/2011/6 for the purpose of determining the amount of the mobility allowance to be paid to a staff member after the entry into force of this administrative instruction is not acting UHWURDFWLYHO\ DV LW GRHV QRW DOWHU D ³GHILQHG EHQHILW´ nor LV LW ³RSHUDWLQJ DW WLPH SULRU WR LWV HQDFWPHQW´ as assignment number, in itself, has no legal effect in the absence of the calculation of that VWDII PHPEHU¶V PRELOLW\ DOORZDQFH and the attendant payment of this allowance to the staff member;

j. The Applicant in the present case is only contesting the determination regarding her

be considered under the rules applicable on the date on which the HQWLWOH;PHQW DURVH´

l. In the pr HVHQW FDVH WKH $SSOLFDQW¶V HQWLW allowance arises each PRQWK XSRQ WKH $GPLQLVWUDWLRQ¶V appropriate mobility allowance and the issuance of this allowance in the $SSOLFDQW¶V SD\FKHFN ST/AI/2011/6 entered into O\ VLQFH IRUFH RQ -XO\ WKH DPRXQW allowance WKH $SSOLF must be calculated in accordance with the provisions of this current administrative instruction. The previous method of calculation set forth in now-defunct ST/AI/2007/1 is no longer relevant;

m. 67 $, GHILQHV ³DVVLJQPHQW´ DV ³HLWKHU a staff member to a duty station or transfer of a staff member to a new duty station for a SHULRG RI RQH \HDU RU ORQJHU´ 8 ST/AI/2007/1, it contains no restrictions regarding assignment count for service on mission detail;

n. In the present case, the Applicant was sent on a mission detail assignment to UNMIT for the period of 15 February 2009 to 14 May 2010. As indicated by the personnel action form related to this assignment, the Applicant was transferred from Headquarters and her new GXW\ VWDWLRQ EHFDPH 'LOL (DVW 7LPRU 7KXV mission to detail to UNMIT during this period falls squarely within the definition of assignment for purposes of calculating assignment number and determining the amount of the attendant mobility allowance;

o. Similarly, unlike ST/AI/2007/1, there are no provisions in ST/AI/2011/6 that provide that, XSRQ D VWDII PHPEHU¶V UHW the parent duty station, this service shall be treated as a continuation of the prior assignment at the parent duty station. Accordingly,

the $SSOLFDQW¶V UHWXUQ WR 1HZ <RUN LQ 0D\ 2011, counts as another assignment under ST/AI/2011/6. This is consistent with the manner in which the Administration counted the $SSOLFDQW¶V VHFRQG DVVLJQPHQW WR 810,6 during the period of April 2011 to November 2012, and her return to her parent duty station as two separate assignments;

p. In light of the foregoing, the Applicant submits that her assignments and resulting mobility count are as follows:

i. 15 April 2003 ±14 February 2009. Initial appointment to New York, United Nations Headquarters (UNHQ) ² H-1;

ii. 15 February 2009 ±14 May 2010. Mission detail assignment to Dili, UNMIT ² D-2;

iii. 15 May 2010 ±13 April 2011. New York, UNHQ ² H-3;

iv. 14 April 2011 ±15 November 2012. Assignment to Dili, UNMIT ² D-4;

v. 16 November 2012 ±present. New York, UNHQ ² H-5.

q. As remedies, the Applicant requests, inter alia, three months of net base salary as moral damages for the undue del D\ LQ WKH $GPLQLVWUDW response to her requests for clarification of her assignment number, which caused her significant stress. The Applicant had been requested by OHRM to request various assurances from senior officials within the Administration regarding the terms of her assignments to the various duty stations. The Applicant duly complied with this request and has sought resolution of this matter for three years, during which time she was shuttled between numerous offices, receiving no response from anyone in the Administration until 24 March 2014.

service (that is, from 15 April 2003 to 30 June 2011) is determined by the previous methods of counting assignments as established by ST/AI/2000/2 and ST/AI/2001/9 (which were abolished on 31 December 2006) and ST/AI/2007/1 (which was abolished on 30 June 2011);

d. The Applicant argues that, as the new method of counting assignments in ST/AI/2011/6 is more generous to staff members, there is no restriction on applying it retroactively. Carried to its logical conclusion, WKH $SSOLFDQW¶V DUJXPHQW ZRXOG PHDQ WKDW required to apply any change to the salaries, entitlements or allowances that are favourable to staff members on a retroactive basis. This would lead to an unreasonable result and would have a chilling effect on any proposals to improve the conditions of service of staff;

e. In addition to violating the principle against retroactivity, the $SSOLFDQW¶V LQWHUSUHWDWLRQ GRHV QRW W ST/AI/2011/6 reflected the significant changes to the conditions of service for internationally-recruited staff introduced from 1 July 2009 onwards;

f. 67 $, ZDV SURPXOJDWHG IROORZLQJ WKH approval of new contractual arrangements and the harmonization of conditions of service for staff in its resolutions 63/250 and 65/248. In resolution 63/250, the General Assembly requested the Secretary-General to discontinue the practice of assigning staff from Headquarters to missions on travel status basis for a period of more than three months;

g.

reflected in the old method of counting of assignments under section 2.6(a) of ST/AI/2007/1;

h. The new method of counting assignments in ST/AI/2011/6 was updated to reflect the discontinuance of the practice of assigning staff from Headquarters to missions on travel status basis for a period of more than three months (see sec. 2.5). In addition, the MSA was also abolished and staff rule 4.8(b) was introduced, which provides for a change of official duty station upon assignment to a field mission for a period exceeding three months;

i. As such, the Ap S O L F D Q W ¶ V L Q W H U S U H W D W L R Q R I
a retroactive basis to her mission detail assignment and return to New
< R U N Z R X O G E H F R Q W U D U \ W R W K H * H Q H U D O $ V V H P
such assignments and the introduction of staff rule 4.8(b). The new method of counting of assignments in ST/AI/2011/6 goes hand-in-hand with all of the changes to the conditions of service of staff following the D G R S W L R Q R I * H Q H U D O $ V V H P E O \ ¶ V U H V R O X W L R Q

Consideration

Receivability

23. The Tribunal notes that the Applicant, a current staff member, was notified of the contested decision on 24 March 2014. The Applicant filed requests for management evaluation on 16 and 23 May 2014, which is within 60 days from the date of notification of the contested decision. On 28 May 2014, the Management Evaluation Unit acknowledged receipt of the requests and informed the Applicant that the management evaluation would be completed no later than 22 June 2014. The Applicant filed the present case with the Tribunal on 22 September 2014, within 90 days from the date when the management

evaluation was to be completed. On 23 September 2014, the Applicant received the management evaluation.

24. Therefore, the present application is receivable ratione personae, ratione materiae, and ratione temporis.

Applicable law

25. The former Staff Rules (ST/SGB/2002/1) provided in staff rule 101.6 (Change of official duty station) that:

> **Rule 101.6**
>
> **Change of official duty station**
>
> A change of official duty station shall take place when a staff member is assigned from one office of the Organization to another for a fixed period exceeding six months or transferred for an indefinite period. Detailment of a staff member from his or her official duty station for service with a United Nations mission or conference shall not constitute change of official duty station within the meaning of these Rules.

26. Effective 1 July 2015, the new provisional Staff Rules (ST/SGB/2009/7) went into effect, which stated in staff rule 4.8(b):

> **Rule 4.8**
>
> **Change of official duty station**
>
> «
>
> (b) A change of official duty station shall take place when a staff member is assigned from a duty station to a United Nations field mission for a period exceeding three months.

27. ST/AI/2007/1 (Mobility and hardship scheme), abolished on 1 July 2011 provided as follows regarding GHWHUPLQDWLRQ RI WKH VWDII PHPE number:

Section 1

General provisions

Purpose

1.1 The mobility and hardship scheme includes the following non-pensionable allowances:

(a) A mobility allowance, which varies according to the number of assignments and the purpose of which is to provide an

(c) As provided in respect of the hardship allowance in section 3.2 below [see ST/AI/2007/1].

Amount

1.7

the incidents in question occurred before ST/SGB/2008/5 was promulgated it is not applicable in this case.

32. In

Columbia, Canada, as referred to by the Applicant in his submissions, are of no relevance to the present case.

7 K H $ S S O L F D Q W¶V assignment to UNMIT

38. The Tribunal notes that, as results from the uncontested facts, the Applicant was appointed in 2003 at the P-2 level in DESA, New York. The Applicant was promoted to the P-3 level in 2008 and she continued to work in New York until 14 February 2009. The parties agree that this was correctly counted as the Applicant ¶V last assignment.

39. Starting from 15 February 2009 until May 2010, the Applicant was deployed to UNMIT at the P-3 level, during which period she received MSA and continued to receive post adjustment and allowances applicable to her official duty station in New York. The Applicant, who had five years of prior consecutive service in the United Nations, was eligible to receive MSA in accordance with sec. 1.10 of ST/AI/2007/1 because she was on m9(c)4(9.96 9wETBT1 0 0 1 153.74 385.51 Tm[(of)3( )-1

field mission for a period exceeding three months. However, this rule was applicable only to assignments starting on or after 1 July 2009 and was not retroactively applicable to assignments that started prior to this change, which continued to be governed by the terms and conditions established at the beginning of such assignments. Moreover, this rule remained provisional until 1 January 2011, when ST/SGB/2011/1 (Staff T/Rnments

started to question the method of calculation of the number of her assignments, relying on ST/AI/2011/6. However, she started to raise her claims in November 2012, more than two years after she came back from UNMIT and more than a year after ST/AI/2011/6 went into effect.

45. The Tribunal concludes that the period May 2010 to April 2011 does not represent a third assignment of the Applicant, but a continuation of her first assignment in accordance with sec. 2.6(a) of ST/AI/2007/1, and the Administration correctly counted the number of her assignments at the level H-4. 7KH $SSOLFDQW¶V UHTXHVW WR-5 JUDQW KHU PR
is to be rejected.

$SSOLFDQW¶V UHTXHVW IRU FRPSHQVDWLRQ IRU XQGXH

46. The Applicant requests three months ¶ QHW EDVH moral damages \ DV
for her alleged significant stress caused by the delay in the Administr4(l2.wi6d95[(7(y)20( )] T/F4

RI WLPH ZLWKLQ ZKLFK WKH $SSOLFDQW¶V to and LQTXLU\ VK
constitutes a breach of the $SSOLFDQW¶V a timely decision. UHFHLYH

49. However, as the Appeals Tribunal stated in Antaki 2010-UNAT- ³QRW
every violation will necessarily lead to an award of compensation. Compensation
may only be awarded if it has been establitia9t70(-)] TJET405C/e69(e)n.stablsta-