



## **Introduction**

1. In her Application dated 3 July 2013, the Applicant alleged that: (a) the African Union - United Nations Mission in Darfur (UNAMID) barred her from resuming duties in El Fasher, Sudan, based on unsubstantiated complaints by the Government of the Republic of Sudan (Sudan); (b) UNAMID refused to investigate or require substantiation of the decision to bar her from the country; (c) she was assigned to Entebbe on a temporary assignment (TDY) and then reassigned to Entebbe to a less suitable position which is not in line with her qualifications and experience as a P-3 Supply Officer; and (d) the Administration failed to institute any investigation into the particular circumstances that led to her removal from her former post and duties in El Fasher with UNAMID.

2. The Applicant submits that these decisions were made on 29 December 2012.

5. While the contested decisions listed in the amended Application are different from those in the original application, they are consistent with the Applicant's request for management evaluation dated 26 February 2013 in which she challenged:

[T]he decisions (of 29 December 2012) rejecting my request to reassign me to a suitable position in line with my qualifications as P3 Supply Officer as set forth in the generic job description and to refuse to institute an investigation into the particular circumstances that led to my removal fro

9. Effective 1 April 2009, the Applicant was reappointed as a Supply Officer at the P-3 level on a one-year fixed-term appointment which was subsequently renewed on a yearly basis.

***The Applicant's Expulsion from Sudan and Reassignment to Entebbe***

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14. On 23 February 2012, UNAMID Administration informed the Applicant of her reassignment to Entebbe as a Supply Officer at the P-3 level, effective 24 March 2012.<sup>5</sup>

15. On 29 February 2012, the Applicant wrote to the Assistant Secretary

20. In a memorandum dated 5 May 2012, the Chairperson of the Panel wrote to the JSR/UNAMID, noting that the Government of Sudan had not provided the Panel with the reasons for the decisions to expel the Applicant and the other staff member, or any supporting evidence.

25. The Applicant also said that she had initially accepted the reassignment in good faith pending regularisation of her status but as time went on it had become clear that no long term solution was being sought. She said she “needed to return to her duties as a P-3 supply officer in line with her TOR and generic job description or find a comparable assignment to the one she had in El Fasher, Darfur”.

26. On 29 December 2012, the Chief of FPOS/DFS, replied to the Applicant:

Dear [Applicant],

Thank you for your letter dated 19 December 2012 to Ms. Haq.

As Ms. Haq had informed you during her meeting with you in Entebbe, DFS has protested in several instances the refusal from the Government of Sudan to authorise your re-entry in the country. Meanwhile as it was unlikely that the Government of Sudan would revisit their decision, DFS has also made all efforts to find a suitable placement for you and you were successfully reassigned to Entebbe to perform the functions of Supply Officer effective 24 March 2011. This placement is not temporary in nature and I understand this has been communicated to you by several DFS officials, including ASG Banbury in the message attached herewith. With the creation of the RSC, Entebbe has become a major Logistic hub and in this context your reassignment from El-Fasher is justified. In addition Entebbe is a family duty station with good

we operate. As you know, the reality today is that the number of posts in field missions is going down, resulting in lower vacancy rates and accordingly less placement opportunities. In a few days UNMIT will close and UNAMA, UNAMI, BINUCA, BNUB will cut a significant number of posts resulting in more than a hundred of our international staff colleagues losing their jobs, in this context, and as I am sure you will understand, our utmost priority is the placement of our colleagues who lose their posts.

I encourage you to continue to work with Field Personnel Division on possible reassignment options bearing in mind the difficulties we are facing as an Organisation.

Wishing you a Happy Holiday season and a Successful New Year.

Best regards

27. In an e-mail dated 8 January 2013, the Applicant wrote to the Chief/FPOS again requesting a reassignment to another position.

28. On 26 February 2013, the Applicant submitted a request for management evaluation.

29. On 8 April 2013, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to uphold the contested decisions.

### **Applicant's Submissions**

30. The lack of any serious inquiry into the origins of the complaints or their relation to the subsequent actions of the Government echoes the findings in *Haydar* UNDT/2012/201. The Respondent should be held accountable for the resulting harm to the Applicant from the lack of compliance with her due process rights as well as the failure to honour the terms of its contractual obligations to her.

31. Although the Applicant has maintained her grade level, this action constitutes a disguised disciplinary decision in violation of staff regulation 1.2 that requires the complaints or 7981 Pf9

32. As the Applicant was unable to return to her former post through no fault of her own, the Respondent must make good faith efforts to find her a suitable assignment in accordance with the terms of her contract of employment. Instead, she has been kept in an uncertain state made more precarious by the possible downsizing of the mission.

### **Respondent's Submissions on Receivability**

#### ***Timeliness***

33. The amended Application is not receivable as she failed to request management evaluation of the decisions to bar her from resuming her duties in El Fasher and to reassign her to Entebbe within the 60 day time limit stipulated in staff rule 11.2(c).

#### ***Administrative Decision***

34. The Applicant does not challenge an administrative decision as defined in article 2.1 of the UNDT Statute.

35. The Dispute Tribunal does not have subject-matter jurisdiction because no final administrative decision under article 2.1(a) of the UNDT statute has been taken.

36. Under article 2.1(a) of the Statute, the Dispute Tribunal is competent to hear and determine an appeal against a contested administrative decision, not a reiteration of a previous administrative decision taken on 24 March 2012. Accordingly, the Applicant has failed to identify a contestable administrative decision that directly affects

**Applicant's submissions on Receivability**

37. In her response to the Respondent's submission on receivability the Applicant submitted that a contested decision may entail an action or a failure to act and cites the case of *Tabari* 2010-UNAT-030.

### **Considerations on Receivability**

42. The Tribunal does not accept the Applicant's submission that the Respondent made a contestable administrative decision concerning her reassignment on 29 December 2012.

43. The Applicant was clearly informed of the decision to temporarily reassign her to Entebbe on 22 December 2011.<sup>8</sup>

44. This decision was subsequently reiterated on 23 February 2012 and became effective on 24 March 2012.<sup>9</sup>

45. There can be no doubt that the Applicant was aware of the decision at the time it was made, and in any case well before December 2012.

46. The Applicant herself wrote to the ASG/DFS on 29 February 2012 requesting his intervention with the Government of Sudan, which correspondence the ASG responded to on 1 March 2012.

47. In her letter of 19 December 2012, the Applicant did not ask for a new or different decision from that which she had queried on 29 February 2012. It was reiteration of her concerns about the reassignment and the reasons for it.

48. Similarly, the Chief/FPOS' response to that letter on 29 December 2012, as reproduced above, was a reiteration of the reasons for the decision to reassign the Applicant in February 2012.

49. It is settled law that a decision is considered final when the Organisation decides to take a particular course of action, which has direct legal consequences on the rights and obligations of a staff member as an individual.<sup>10</sup>

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<sup>8</sup> Respondent's Annex 2.

<sup>9</sup> Respondent's Annex 3.

50. It is also settled law that timelines as stipulated in article 7.1(a) of the Rules of Procedure and article 8.1(d)(i) of the Statute must be strictly observed. The United Nations Appeals Tribunal (UNAT) has consistently held that:

Strict adherence to filing deadlines assures one of the goals of our new system of administration of justice: the timely hearing of cases and rendering of judgments.<sup>11</sup>

51. The principles governing the issue of whether a reiteration of a decision already made constitutes a new decision for the purposes of article 7.1(a) of the Rules of Procedure and article 8.1(d)(i) of the Statute have been established by the Tribunal in *Ryan* UNDT/2010/174; *Bernadel* UNDT/2010/210 and by UNAT in *Sethia* 2010-UNAT-079.

52. The jurisprudence is consistent in that reiterations of administrative decisions which are repeatedly questioned by a staff member do not serve to reset the clock in respect of the stipulated timelines for a challenge of those decisions. Time begins to run from the date the decision was originally made. Repeated restatements of the original claim will not alter the deadline for a challenge against the impugned decision.

53. A new decision is one that is made under new circumstances and is, as such, subject to review.

54. The Tribunal finds that the Respondent did not make a new contestable administrative decision concerning her reassignment on 29 December 2012. It confirmed the original decision made in February 2012. As the Applicant did not seek management evaluation of the original decision within the required 60 days, her application is not receivable by the Tribunal.

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<sup>10</sup> UN Administrative Tribunal Judgment No. 1157, *Andronov* (2003).

<sup>11</sup> *Cooke* 2012-UNAT-275 referring to *Mezoui* 2010-UNAT-043 and *Tadonki* 2010-UNAT-005.

55. The