



Judgment No. 2017-UNAT-743



Counsel for Ms. Jean: Didier Sepho
Counsel for Secretary-General: Ernesto Bondikov

THE UNITED NATIONS A

6. The Job Opening for the newly reclassified post of Staff Assistant at the G-6 level with OSAA was published on 22 January 2014.

7. Ms. Jean attended a number of meetings on 11, 12, 19 and 25 June 2014 concerning her employment in OSAA. The Secretary-General provided to the Dispute Tribunal four e-mails, respectively dated 11 June 2014, 12 June 2014, 25 June 2014 and 28 August 2014. Below each e-mail were one or multiple icons titled "Minutes of the meeting. 11.6.14. docx; Minutes of the meeting.12.6.14.docx; Minutes of the meeting. 19.6.14.docx; and Minutes of the meeting. 25.6.14.docx". None of the minutes was signed or dated. According to the minutes, Ms. Jean was verbally informed at those meetings that her post had been reclassified to the G-6 level and had been advertised, and that OSAA and DESA would assist her in applying for alternative employment in other departments at the G-4 or G-5 level. She was encouraged to make every effort to apply for other available positions before the expiry of her fixed-term appointment. The Executive Officer of DESA also drew Ms. Jean's attention to the possibility of an agreed termination. Those meeting minutes were not shared with Ms. Jean until the proceedings before the UNDT.

8. On 26 August 2014, by interoffice memorandum, an Administrative Assistant from the Executive Office, DESA, informed Ms. Jean that her separation from service would take place effective close of business on 31 August 2014 and advised Ms. Jean of the applicable separation procedures.

9. On 29 August 2014, Ms. Jean filed a request for management evaluation of the decision not to renew her fixed-term appointment. She stated that she was notified of the contested decision on 26 August 2014. Ms. Jean was informed on 1 October 2014 that the Secretary-General had decided to uphold the non-renewal decision.

10. On 16 December 2014, Ms. Jean filed an application with the Dispute Tribunal, seeking rescission of the contested decision and the issuance of a new fixed-term appointment, or alternatively, compensation for material and moral damages. The Dispute Tribunal conducted hearings for two days on the issue of receivability of Ms. Jean's application as raised by the Secretary-General.

14.

Considerations

20. The main issue before us is the determinatio

While it may have been reasonable to conclude that Ms. Jean had knowledge by June 2014 that her appointment would probably not be renewed, to extract from these meetings a legal notification implies extending their meaning to purposes not expressly specified by the parties or otherwise clearly supported by the record. A staff member's knowledge of a decision is not necessarily the same thing as a staff member receiving notification

timely request for management evaluation on 29 August 2014. Thus, and contrary to the Dispute Tribunal's conclusion, her application was receivable *ratione materiae*.⁵

27. Given the above, the case has to be remanded to the UNDT for consideration on its merits, pursuant to Article 2(3) of our Statute. We find it appropriate to remand the case to a different Judge of the Dispute Tribunal, pursuant to Article 10(2) of the Appeals Tribunal's Rules of Procedure.

Judgment

28. Judgment No. UNDT/2016/044 is vacated and the case is remanded to the Dispute Tribunal for full consideration of its merits by another Judge.

⁵ It was also receivable *ratione temporis* as she filed her application to the Dispute Tribunal within the applicable time limit therefore.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Knierim

Entered in the Register on this 22nd day of June 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar