



Judgment No. 2018-UNAT-824



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10. In response to Mr. Mbok's queries about UNDP's 30 September 2014 memorandum, UNDP confirmed by e-mails dated 2 and 10 October 2014 that Mr. Mbok was not being transferred or seconded to UNDP, but that instead he would be reappointed with UNDP. In its 10 October 2014 e-mail, UNDP clarified that neither a transfer nor a secondment would be possible and that, therefore, benefits and entitlements, such as leave, mobility status and repatriation grant, would not be carried over. The e-mail also stated that Mr. Mbok was being separated from his current appointment with MONUSCO and that his appointment with UNDP would be treated as an initial appointment.

11. By Inter-Office Memorandum (IOM) dated 17 October 2014, Mr. Mbok was informed that due to his selection by UNDP, his appointment would be curtailed effective 24 October 2014 and that his separation from MONUSCO would take effect that same day.

12. Effective 25 October 2014, Mr. Mbok was appointed with UNDP on a one-year fixed-term contract at the P-5/Step 7 level. A separation Personnel Action effective 24 October 2014 was finalized on 29 November 2014 indicating that Mr. Mbok was separated, that his appointment had been curtailed by MONUSCO effective 24 October 2014, and that he was to be reappointed to UNDP.

13. He was then paid USD 17,302.58 for his unused leave in April 2015.

14. On 25 October 2016, Mr. Mbok wrote to the United Nations Headquarters inquiring about his return rights to the Secretariat.

15. On 31 October 2016, the Department of Field Support, Field Personnel Division (FPD/DFS) replied that by separating from the Secretariat on 24 October 2014 in order to take up a fixed-term appointment with UNDP, he relinquished his continuing appointment and his return rights to the Secretariat. The e-mail specified that FPD had consulted with UNDP's Policy Unit which confirmed that UNDP no longer granted continuing appointments, therefore, it would not have been possible to transfer Mr. Mbok holding a continuing appointment at the time with the Secretariat.

16. Mr. Mbok replied that same day that he had never relinquished his continuing appointment, that he never separated from MONUSCO, that he laterally transferred from MONUSCO to UNDP, and that he never received a repatriation grant or other entitlements related to separation from service.

17. On 29 December 2016, Mr. Mbok submitted a request for management evaluation of the decision dated 31 October 2016 that he had relinquished his continuing appointment and that he had no return rights to the Secretariat.

18. By letter dated 23 January 2017, the Management Evaluation Unit informed Mr. Mbok that it determined that the decision he challenged had been taken in October 2014 and that, therefore, his request for management evaluation was rejected as time-barred.

19. On 13 March 2017, Mr. Mbok challenged the decision to terminate his continuing appointment before the UNDT in Nairobi.

20. On 24 July 2017, the UNDT issued Judgment No. UNDT/2017/061 rejecting Mr. Mbok's application as time-barred. The UNDT concluded that the 17 October 2014 IOM unambiguously informed Mr. Mbok of MONUSCO's decision to end his appointment, which at this point was a  
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Rules on separation from service; and d) Mr. Mbok's continuing appointment could only be terminated under specific circumstances which were not mentioned in the IOM. Moreover, the payment for unused annual leave referred to by the UNDT was decided by the Administration and if it constitutes a mistake, the Administration cannot use it against the staff member.

23. In addition, the e-mail dated 31 October 2016 contradicts the interpretation by the UNDT. There was no reason for FPD/DFS to consult UNDP in October 2016 in order to reply to Mr. Mbok's e-mail regarding continuing appointments, if indeed the IOM of 17 October 2014 "notified" Mr. Mbok of the termination of his continuing appointment with the United Nations Secretariat. The e-mail of 31 October 2016 was the first notification he received that his continuing appointment had allegedly been terminated. In this regard, it is important to recall that before the UNDT, the Secretary-General relied on correspondence from UNDP, yet Mr. Mbok's continuing appointment was with

26. Mr. Mbok requests that the Appeals Tribunal find his appeal receivable, consider the merits of his case and find that his continuing appointment was not terminated with his move from MONUSCO to UNDP; or, alternatively remand the case to the UNDT for a judgment on the merits. Mr. Mbok also requests that the Appeals Tribunal hold an oral hearing.

The Secretary-General's Answer

27. The UNDT correctly concluded that Mr. Mbok's application was not receivable ~~in~~. The UNDT thoroughly reviewed the chronology of events and the documents and concluded that Mr. Mbok clearly had been aware by October 2014 that neither a secondment nor a transfer from MONUSCO to UNDP was a viable option in his situation and that he would have had to resign from that position in order to take up the appointment with UNDP. The UNDT noted that Mr. Mbok himself declared his intention to relinquish his position with MONUSCO. The UNDT concluded that the 17 October 2014 IOM unambiguously informed Mr. Mbok that he would be separated from MONUSCO, which is part of the Secretariat.

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**THE UNITED NATIONS APPEALS TRIBUNAL**

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that he was informed that his continuing appointment was allegedly terminated because of his acceptance of the offer from UNDP.

39. The IOM of 17 October 2014 clearly conveyed to Mr. Mbok that following his selection by UNDP, his appointment with MONUSCO would be curtailed effective 24 October 2014 and that his separation from MONUSCO would take effect on the same date. The IOM contains a comprehensive explanation of his final check-out and payment of final entitlements. It was a clear and definite administrative decision.

40. We find it inconceivable that Mr. Mbok would not have known that UNDP was not part of the United Nations Secretariat and that accepting a posting with it would necessitate separation from MONUSCO. Indeed, the UNDT opined:<sup>1</sup>

... [I]t is apparent that as early as 1 October 2014, the Applicant was aware that a secondment to UNDP was not an option and that he would have to resign to take up the appointment with UNDP. Since secondment was not a possibility as of 1 October 2014, the Applicant knew or should have known that he would be severing his contractual relationship with MONUSCO, which is part of the Department of Peacekeeping Operations and the United Nations Secretariat, once he signed a letter of appointment with UNDP, which is a Programme that is separate and distinct from the United Nations Secretariat.

41. We find no error in the UNDT's finding that the 17 October 2014 IOM<sup>2</sup>

... (...) unambiguously informed the Applicant of MONUSCO's decision to end his appointment, which at this point was a continuing appointment, by separating him from service on 24 October 2014. The Tribunal holds that the 17 October 2014 inter-office memorandum was an administrative decision because it had a direct and adverse impact on the Applicant's contractual status and had direct legal consequences for him.

42. The 17 October 2014 IOM therefore constitutes the key administrative decision from which time ran to request management evaluation. The UNDT was quite correct in its finding that the FPD/DFS response of 31 October 2016 was a reiteration of the 17 October 2014 decision and was therefore not an appealable administrative decision. The Appeals Tribunal has consistently held that the reiteration of an original administrative decision, if repeatedly

rather, the time starts to run from the date on which the original decision was made. For this reason, a staff member cannot reset the time for management review by asking for a confirmation of an administrative decision that has been communicated to him earlier. Neither can a staff member unilaterally determine the date of an administrative decision.<sup>3</sup>

43. The legal framework applied by the UNDT in deciding the case cannot be faulted. It

