

17. On 17 November 18, the Director of Administration, ODC wrote to the Appellant assuring her that complaints of abuse of authority and harassment are taken seriously, advised her to consider informal resolution of the dispute, and invited her to resubmit her complaint to comply with sec. 5.13 of S.S.B. 85 should she decide to pursue the matter formally.

13. On 3 November 18, the Appellant sought a review by management evaluation of the decision to temporarily reassign the functions previously performed by her.

14. On 3 December 18, the Appellant submitted a formal complaint under S.S.B. 85. She explained that the ongoing investigation on allegations against her had made amicable resolution impossible.

15. On 15 February 19, the Under Secretary General for Management informed the Appellant that the Secretary General has decided to uphold the impugned decision, based on the findings and recommendations of the Management Evaluation Unit ("MEU").

16. On 16 April 19, ODC informed the Appellant that a fact-finding panel was going to be established to investigate her allegations.

17. In its letter the Appellant's submission that the RR's decision to reassign her functions were not programmatic just as it was a "disputed disciplinary measure" based on a "pre-determined conclusion" of the ongoing investigation into the allegations against the Appellant. She contends that, in fact, evidence of a continuing pattern of harassment and abuse of authority that are as to the subject of a formal investigation based on complaints by the Appellant. In RR, the Appellant argues, as used the reassignment of her functions to do what she has been unable to do legally to get the Appellant out of the way.

18. The Appellant asserts that she holds a contract with DP and contends there is no evidence that the RR consulted with the matter before reassigning her functions. She further alleges that the MEU finding that there is no evidence to support the contention that the investigation is being conducted at the behest of the RR's

fawed, as there is ample and clear evidence as to what and who triggered the investment.

19. The Appellant says that the Respondent's actions have damaged the Appellant's professional reputation and standing in Albania.

↑ . The Respondent takes the position that the application should be dismissed on grounds of relevancy. According to the Respondent, the decision to reassign the Appellant's functions pending the completion of the investment process does not create any legal consequences regarding the Appellant's terms of employment. It was an interim measure that did not impede on her terms of appointment.

↑ 1. The Respondent submits that the application also acknowledges the fact that the decision the Appellant seeks to impugn was taken in proper exercise of its discretion to make decisions on the structure of the Organization and its workflow. It was thus a decision that was lawfully made, in the interest of both the Organization and the Appellant. The Appellant, according to the Respondent, has not adduced any evidence to show that the decision was tainted by improper motives or any other extraneous factors, so as to vitiate the presumption of propriety and regularity in the decision-making process.

↑↑ . The Respondent submits that the impugned decision was taken in accordance with staff rule 1.1(c). It was an interim measure to mitigate risk to the Organization with external partners and stakeholders. The measure was taken without any prejudice to the outcome of the investment, and is less severe than the alternative of administrative leave.

↑ 3. Under art. 1.1(a) of its Statute, the Tribunal is competent to hear and pass judgment on applications challenging an administrative decision by the Respondent. An application is not receivable if the subject matter is not an administrative decision. The said rule further stipulates that for the application to be receivable, the administrative decision contested must be non-competence

w t t e staff member's terms of appo ntment, w c nc ude app cab e prov s ons n t e regu ator framework.

↑ 4. e nterpretat on and app cat on of t s ru e ave been extens ve addressed b t s r buna and A n t e r dec s ons.

↑ 5. e c ass ca def n t on of w at const tutes an "adm n strat ve dec s on" as set out n s wort restat ng:

t s acceptab e b a adm n strat ve aw s stems, t at an "adm n strat ve dec s on" s a un atera dec s on taken b t e adm n strat on n a prec se nd v dua case (nd v dua adm n strat ve act), w c produces d rect ega consequences to t e ega order. us, t e adm n strat ve dec s on s d st ngu s ed from ot er adm n strat ve acts, suc as t ose av ng regu ator power (w c are usua referred to as ru es or regu at ons), as we as from t ose not av ng d rect ega consequences.

. (emp as s added)

↑ 6. e Respondent contends t at t e re ass gnment of t e App cant's dut es d d not cause an d rect ega consequences n er terms of appo ntment. us, accord ng to t e Respondent, t e app cat on s not rece vab e

↑ 7. owever, as Counse for t e App cant po nts out, t e dec s on ad an mpact on er funct ons, w c wou d ave been part of t e terms of reference of er spec f c pos t on. e r buna f nds t at t e dec s on d d ndeed m t er work, t e d rect consequence of w c was t at s e was no onger perform ng t e funct ons s e was emp o ed to do. e r buna 's f nd ngs n D ↑ 17 18 supports t e po nt made. n , t e r buna exp a ned t at:

77. [W] e t ere s no contest t at staff regu at on 1↑ (c) confers aut or t on t e Secretar enera to ass gn staff members to su tab e dut es and off ces, t e argument t at e can a so n t e

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strength of that authority alone simply and arbitrarily remove staff members from their duties is not unimpeachable. It has been well established by judicial pronouncements that an administrative authority must be exercised judicially and in the best interests of the Organization.

78. [It is imperative here to closely examine the circumstances surrounding the request and rationale for the removal of the Applicant ...

...

97. Where indeed the Organization acts without proper justification, as in this case, to remove a staff member from a position he had properly earned, the claim of an exercise of discretion will fail because discretion must be exercised judicially ...

...

16. It is certain and proper that it is the duty of the Respondent to determine whether the Respondent acted in good faith ...

8. There is no merit to the Respondent's contention that a decision to reassign the duties of a staff member has no legal consequences and cannot be challenged. It is a decision that is appropriate to the subject of judicial review, involving a close examination of the circumstances to determine whether the decision was regular or unlawful.

9. The Tribunal finds the application material relevant and will proceed to consider the merits.

3. As explained in the above circumstances must be examined to determine whether the Respondent's discretionary reassignment of duties was properly exercised, so that the decision can be upheld.

31. An administrative decision, such as the one contested in this case, can be challenged on the grounds that the Respondent has not acted fairly, justly, or transparently or was motivated by bias, prejudice, or improper motives. A jurisprudential principle recognizes a presumption of regularity in the performance of administrative functions and decisions making it difficult for the Applicant to establish an

of these grounds of challenge to bear the entire burden of proving that the respondent's application is proper.

32. The Respondent's response to the allegations, as a minimum, bears the burden of proof to justify its administrative action or decision. Once that minimum burden is discharged, the burden remains with the staff member to prove that the actions of the Respondent were improper or unjustified. Steps must be done by clear and convincing evidence.

33. In this case, the Applicant's challenge to the contested decision was made based primarily on a misperception as to the actual events that took place leading to the decision. The Applicant complained that the decision to temporarily reassign her functions pending conclusion of the investigation into the allegations against her was taken solely by the RR. This view was based on the communication of the decision by email of 9 October 2018 from the RR to the Applicant.

34. The Applicant contended that the RR had no authority to make such a decision, staff regulations 1.1 vests this authority in the Secretary General or officer as well as delegated authority to make decisions in disciplinary matters. The officer as well as delegated authority, the Applicant submits, are

t's primary aspect of the Applicant's case, namely that the RR acted unilaterally, improperly and without authority in reassigning her duties.

36. More substantively, the Applicant's submissions that the decisions are unlawful because they fall outside the regulator's scope of interim measures to be taken during an investigation, and cannot be justified as falling within the broad discretion of the Organisations in reassigning staff members, are also without merit.

37. Firstly, the Applicant's reading of staff rule 1.4 (a) is misconceived. There is nothing in the rule to support the contention that no interim administrative measure or other administrative leave can be implemented pursuant to staff rule 1.4 (a). The rule grants the Respondent the discretion to decide whether to place a staff member on administrative leave while an investigation is in progress. There is nothing in the rule that indicates that all the Respondent's other administrative decisions, including reassignment of duties, are to be curtailed during an investigation.

38. Secondly, the Applicant's submission that the reassignment of duties is not justified, as not rebutted the presumption of regularity in the exercise of the Respondent's discretion in the use of resources and personnel. Staff regulation 1.4 (c) provides that staff members are subject to assignment by the Secretary-General to any of the activities or offices of the Organisations.

39. The jurisprudence of the United Nations Tribunal (both first and second instance) clearly underscores that the reassignment of staff and duty assignments falls within the Organisations' discretion. The submissions were decisions made in exercise of this discretion are shown to have been improperly motivated or taken in breach of mandatory provisions that the presumption of regularity is rebutted. This is for the Organisations to determine whether a reassignment is in its interest.

4 . Accord ng to t e App cant, t e re ass gnment dec s on n t s case was not “programmat ca just f ed” but was nstead a d sgu sed d sc p nar measure used

er best interests with those of the Organization. These reasons are supported by the evidence.

46. The Tribunal finds that the Applicant has failed to meet her burden of proving an improper motive, irregularity or unfairness on the part of the Respondent in the decision to reassign her duties. Therefore, the presumption of regularity stands.

47. In view of the foregoing, the Tribunal finds:

That the application is receivable as a matter of course and is dismissed.

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Judge Eleanor Donaldson (one)

Dated this 6th day of March 2011

Entered in the Register on this 6th day of March 2011

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René M. Vargas M., Registrar, (one)