UNITED NATIONS

UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY2009/058
JAB/2009/002

Date: 1 March 2010

Original: English

Before: **Judge Goolam Meeran**

Registrar: **Ms. Hafida Lahiouel**

CRISTINA GOMEZ

v.

SECRETARY-GENERAL OF THE UNITED NATIONS

RESPONDENT'S CLOSING SUBMISSION

Counsel for Applicant:

Mr. Duke Danquah, Office of Staff Legal Assistance

Counsel for Respondent:

Mr. Steven Dietrich, ALS/OHRM

UNITED NATIONS DISPUTE TRIBUNAL

Case No. UNDT/JAB/2009/058

CRISTINA GOMEZ

v.

SECRETARY-GENERAL OF THE UNITED NATIONS

RESPONDENT'S CLOSING SUBMISSION

---

1. Respondent reiterates his position that the staff rules require that the Applicant take a break-in-service between appointments.

2. As articulated in the Respondent's Reply, the Applicant was selected for a temporary vacancy as an Administrative Officer at the P-4 level in OCHA for six months effective 8 May 2008. The Applicant was advised to take a mandatory break-in-service because she had moved from one temporary appointment as a mission replacement to another temporary appointment. The record shows that, at that time, the Applicant was not yet selected for the Galaxy post, 07-ADM-OCHA-413641-R-New York, and, as such, OHRM could not have advised her to take a break-in-service pending the completion of the selection exercise. While it is OHRM's policy, after the selection is made, to extend a temporary appointment pending pre-recruitment formalities, such as reference checks and/or medical clearance, the policy does not

policy does not allow temporary appointments be extended on these grounds before the selection process is complete.

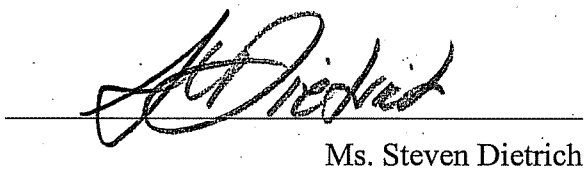
3. In this case, the record shows that when the Applicant's temporary appointment as a mission replacement ended upon the return of the incumbent of the post on 4 May 2008, the selection process for the Galaxy post was ongoing. The Central Review Committee (CRC) cleared the recommended list of candidates on 16 July 2008, subject to approval under ST/SGB/2005/7 ("Designation of staff members performing significant functions in the management of financial, human and physical resources") before the selection is made. Respondent therefore asserts that it was not appropriate for OHRM to have extended the Applicant's temporary appointment on the assumption of her being selected before the selection process was completed or to nullify the break-in-service based on the decision that was made more than three months later, on 15 August 2008.

4. Respondent submits that former Staff rule 104.14 requires a review by a central review body for an appointment of one year or more. As a result, a break-in-service is required before the staff reaches a full year of continuing service for those whose appointments are not reviewed by central review bodies. In this case, upon the completion of service as a mission replacement,

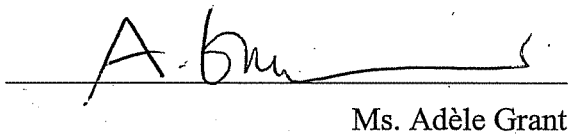
the Applicant was selected for another temporary vacancy in OCHA for a period of six months.

5. Given that this selection process was not reviewed by a central review body, as mentioned in the Respondent's Reply, a break-in-service was required due to the different nature of the two appointments, namely: the mission replacement appointment being regulated by rules that differ from those governing regular temporary appointments.

6. In view of the foregoing, the Respondent respectfully requests the Tribunal to find in favour of the Respondent since no rights of the Applicant have been violated and there is no cause to seek relief.



Ms. Steven Dietrich
Legal Officer, ALS, OHRM



Ms. Adèle Grant
Chief, ALS, OHRM