UNITED NATIONS JOINT APPEALS BOARD
Observations on the Respondent's Reply of 26 March 2009
Cristina Gomez: Case No. 2009-002

Caveat: The following is the statement of Appellant's observations on Respondent's reply. The facts and contentions as stated by the Respondent are not conceded by the Appellant unless explicitly so stated.

I. Scope of Appeal

Paragraph 3

1. Appellant never asserted that OCHA's decision was improper; rather, she maintained that it was essentially OHRM's decision. In fact, OCHA requested separation on 4 May 2008 and reappointment the following day, i.e., on 5 May 2008, in meetings held between OHRM, the Appellant and OCHA's Sr. Human Resources Adviser. It was OHRM's decision to impose the 3 day break-in-service.

II. Factual Background

Paragraph 5

2. As mentioned in the Appellant's JAB appeal statement, the only break-in-service of 3 days imposed by OHRM occurred when the Appellant moved from one Mission replacement position with DPKO to another Mission replacement position with OCHA on 1 June 2006. The other break is the one she is appealing i.e., from Mission replacement to a temporary position while waiting for the results of the selection in Galaxy, imposed after her separation on 4 May 2008 followed by reappointment on 8 May 2008.

Paragraph 11

3. The Appellant was selected on 15 August 2008 despite the fact that the Central Review Committee endorsed the proposal for filing the vacancy on 16 July 2008. It is a fact that the process of selection was further delayed because OHRM, while proceeding with "*reference checks*" as per ST/SGB/2005/7, refused to accept proof of academic degrees that were verified by UNDP at the time the Appellant was granted a Permanent Appointment in the 70s (a position she resigned from in June 1988 to take care of her small children). Nor would UNDP accept the original "Fact Sheet", a Personal History form where **only verified** dates of birth, marital status, employment, degrees, etc. are included (this was a system-wide form kept in

each staff member's personal file) or the original certified diplomas which the Appellant offered to OHRM.

Paragraph 12

4. The Respondent mentions that the staff member had continuous service since 8 May 2008 but fails to mention that because of the imposed break from 5-8 May 2008, the Appellant lost accrued sick leave entitlement, repatriation grant as well as Home Leave entitlement.

Paragraph 15

5. Respondent asserts that "...*OHRM has no record of having received the request.*" The original request for review of OHRM's decision of 16 September 2008 was sent to the Secretary- General via special delivery as well as via e-mail to the Secretary-General dated 15 October 2008, copied to the ASG/OHRM and the Executive Officer/OSG (a copy of e-mail is attached to this statement). The Appellant is shocked by this inaccurate assertion by Respondent.

III. Considerations

Paragraph 18

6. There is a misquote in Respondent's statement when he quoted from Appellant's paragraph 16. The statement on the appeal reads: "... ***other OCHA staff members in similar contractual situations were extended until the Galaxy process was finalized and were also reappointed without the three days break in service that was improperly imposed on Appellant...***"

Paragraph 19

7. Respondent states that "... ***Appellant's contentions are without merit...***" However, Appellant notes that Respondent did not address the cases that Appellant submitted with regard to staff members who were extended beyond the period of Mission replacement as well as justification, explaining the differences and similarities of each of the cases in respect of those extended without break of three days. Moreover, Appellant is also requesting from Respondent a copy of the written policy (which should have been system-wide disseminated) in respect of this requirement of three days break-in-service.

8. Respondent also states that "... ***a limited exception to the break-in-service requirement applies to staff members appointed outside the staff selection system for purposes of mission replacement, who are not***

require to take a break-in-service before they complete a continuous year of service...". In the case of Appellant, OHRM requested Appellant to have a break-in-service of three days at the end of May 2006 when she moved from a Mission replacement with DPKO to another Mission replacement in OCHA, causing her improper loss of entitlements.

Paragraph 20

9. Respondent contradicts prior statements and action taken when Appellant moved from DPKO to OCHA when Respondent stated that: "***...On 8 May 2008, Appellant was appointed to another temporary appointment with OCHA for a period of six months. In this regard, Appellant was required to take a break-in-service before assuming her appointment to another temporary post in OCHA. Furthermore, as the incumbent of the post.... and Appellant was not moving to another mission replacement post but to a temporary appointment, the exception to the break-in-service requirement would not be applicable to her case***..." implying that the prior imposed 3-day break-in-service in May 2006 was against the practice and caused Appellant a loss in entitlements.

The Rules and Regulations of the Organization do not provide for retroactive cancellation of Appellant's break-in-service

Paragraph 21

10. Respondent quotes Appellant's statement (first sentence of paragraph 21), the "...***Appellant was convinced that OHRM would agree to her request of extension or reappointment immediately the next day without the three days break in service***..." because this was discussed in the meeting held between the Appellant, the Sr. Adviser on Human Resources Issues and Policy/OCHA, the Officer in Charge and the Human Resources Officer in charge of OCHA administration within Section-B/OHRM. The OIC mentioned in that meeting that Appellant's request of separation/next day reappointment would be considered if the Appellant had been selected through Galaxy and the period between the end of the Mission replacement contract and the selection to a regular position was *"not too long"*. Under the circumstances described in the appeal, Appellant founds little justification, if any, Respondent's action of having imposed a three-day break in service which caused an unnecessary burden on the Appellant.

11. Respondent states "***...Appellant therefore requests an extension of her prior temporary appointment instead of the break-in-service of three days that she had taken in May 2008...***". This request was in line with other OCHA cases however, in fact, on her appeal, Appellant requested that she be reappointed the following day after separation, i.e., separation on 4 May 2008 and reappointment on 5 May 2008.

Paragraph 22

12. Respondent states that: "... ***Appellant's request for an extension of her prior temporary appointment is not consistent with the practice of the Organization...***" This is inaccurate since, as mentioned above, there were other similar cases of extension without a break-in-service of 3 days. Moreover, Appellant requested in her appeal that she be separated and reappointed the following day and is also requesting that Respondent submits clarification regarding the cases mentioned in the appeal statement in respect of staff members on Mission replacement status that were extended beyond the day of return of the staff member who was on mission and also that Respondent produces a copy of the written policy distributed system-wide regarding the compulsory three day break-in-service.

Paragraph 23

13. Respondent's assertion here is simply incomplete. Appellant's request was based on the fact that there are other cases of staff members extended beyond the day of return of the staff on Mission. However, in her appeal as well as in the meeting mentioned above and contacts by the Sr. Adviser with OHRM, it was requested that the Appellant be separated and be reappointed the following day, action which the Respondent did not agree to take. The fact is that Appellant should have being regularized well in advance but, because of the well known ***delaying tactics used by the Chief of Human Resources Section of OCHA as well as the harassment and abuse of authority Appellant was subjected to by the Chief of Human Resources/OCHA, -- which OHRM was well aware of***– and due to the fact that this was also discussed in the meeting between OHRM and OCHA, the Appellant considers that her request is within her rights. Despite various signals that the Chief of Human Resources Section/OCHA's actions and behavior was inappropriate and was extremely harmful to the well being of staff members, including the Appellant, she was allowed by the system to delay the process. The Chief of Human Resources Section of OCHA (in this position from 1 May 2007 through 31 October 2008) was thus able to continue with her ***abuse of authority and harassment against the Appellant*** until such time that the Chief was re-assigned to another position within OCHA.

14. Appellant is surprised that in Respondent's reply, there is no reference to this behavior and actions by the Chief of Human Resources of OCHA which had ***caused so much harm, prejudice and extreme mental and physical anguish to the Appellant*** – all well known by OHRM, the Ombudsman, OCHA's Sr. Management as well as other staff within OHRM – especially since all of the above is in contradiction to the Secretary-General's policy on **Prohibition of discrimination, harassment, including sexual harassment**

and abuse of authority as contained in ST/SGB/2008/5 of 11 February 2008; as well as of Article 101, paragraph 3 of the Charter of the United Nations. Every staff member has the right to be treated with dignity and respect, ant to work in an environment free from discrimination, harassment and abuse. Consequently, **any form of discrimination, harassment, including sexual harassment, and abuse of authority is prohibited**.

15. In view of the fact that Respondent's is well aware of these acts of harassment and prohibited conduct and yet failed to even mention it in his reply, it can be deduced that Respondent's silence in this regard actually amounts to approval of such improper conduct by senior staff members. By requesting the three days break-in-service because the Galaxy selection was not finalized at an earlier date (all of which indeed was a product of the actions taken by the Chief of Human Resources Section/OCHA), OHRM clearly contradicted the provisions of its own ST/SGB/2008/5 that Respondent is mandated to uphold.

16. Respondent's assertion that: ***"...nor was it appropriate for OHRM to nullify the break-in-service based on the decision which was made three months later..."*** is flawed. Appellant rather contends that OHRM could have taken corrective action by nullifying the three days break-in-service because of the reasons mentioned above.

Paragraph 24

17. Appellant is requesting the JAB to disregard the request submitted by the Respondent and instead pay heed to the facts submitted by Appellant which clarify the situation and exposes the acts of wrongdoing by senior staff members now being defended by the Respondent.

Respectfully Submitted

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15 May 2009