



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/006

Judgement No.: UNDT/2011/053

Date: 15 March 2011

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

WARINTARAWAT

v.

**SECRETARY-GENERAL
OF THE UNITED NATIONS**

JUDGEMENT

Counsel for Applicant:

n.a.

Counsel for Respondent:

Jerôme Blanchard

Application

1. In an application received and recorded at the Registry of the Dispute Tribunal on 4 December 2009, the Applicant disputes the decision of the Assistant Secretary-General, Controller, Office of Programme Planning, Budgets and Accounts, to outsource the medical insurance plan for local staff to GMC Services.
2. He asks the Tribunal to rescind:
 - (a) The above decision as it applies to local staff working in Bangkok;
 - (b).. The decision of the Chief of the Administrative Services Division at the Economic and Social Commission for Asia and the Pacific (“ESCAP”) whereby the documents necessary for the reimbursement of medical expenses must be produced in English.

Facts

3. The Applicant holds a permanent appointment and carries out the duties of a Language Reference Assistant at ESCAP in Bangkok.
4. In an e-mail dated 9 December 2008, the Chief of ESCAP’s Administrative Services Division reminded local staff that requests for reimbursement of medical expenses must be accompanied by original receipts, invoices and medical certificates in English or with an English translation.
5. In a memorandum dated 7 August 2009 entitled “Appointment of GMC Services as a third-party administrator of the medical insurance plan for local staff” and addressed, in particular, to administrative heads of offices away from headquarters, the Assistant Secretary-General, Controller, announced that an agreement would be signed with the company mentioned.
6. On 14 August 2009, the Chairman of the ESCAP Staff Council sent a memorandum to the Chief of ESCAP’s Administrative Services Division outlining staff concerns regarding the possibility that had been raised earlier, namely that the procedures for reimbursement of local staff’s medical expenses would be changed and that management of their medical insurance plan, previously the responsibility of the Administrative Services Division, would be transferred to a private-sector subcontractor.
7. In a memorandum dated 17 August 2009, the Chief of the Administrative Services Division at ESCAP advised the Chairman of the Staff Council that the decision had been taken at Headquarters and forwarded a copy of the memorandum of 7 August 2009 referred to above.
8. On 20 August 2009, the ESCAP Staff Council sent the personnel concerned the memoranda of 7 and 17 August 2009.
9. On 1 September 2009, the Applicant submitted a request for management evaluation of the decision of the Assistant Secretary-General, Controller, Office of Programme Planning, Budgets and Accounts to outsource the medical insurance scheme for local staff to GMC Services.
10. On 15 September 2009, the Management Evaluation Unit notified the Applicant that his request had been rejected as inadmissible.
11. On 4 December 2009, the Applicant resubmitted his request to this Tribunal.
12. By Order No. 2 (NY/2010) dated 11 January 2010, the Tribunal transferred the request, which had been filed in French with the New York registry, to the Geneva registry.
13. On 22 January 2010, after asking the Tribunal for a deadline extension, which was granted, the Respondent submitted its Answer. On 8 and 18 February 2010 respectively, the Applicant and Respondent sent comments. On 26 February 2010, the Applicant submitted final comments.

14. On 18 January 2011, the Tribunal asked the parties if they had any objections to a decision being made without a hearing, based on the written record. On 19 and 26 January 2011 respectively, the Applicant and Respondent replied that they had no objection to the Tribunal's decision being made based on the written record.

Parties' contentions

15. The Applicant's contentions are:

(a) The decision contested is unlawful because it was taken without consulting the executive committees of representative staff bodies. The medical insurance plan for local staff and former local staff is fundamental to their living and working conditions; but paragraphs (f) and (h) of Rule 8.1 of the provisional Staff Rules provide that administrative instructions or directives on issues relating to staff welfare, including conditions of work and general conditions of life, shall be transmitted in advance to the executive committees of the representative staff bodies concerned for consideration;

(b) Contrary to the view of the Management Evaluation Unit, the decision contested is appealable because it was a unilateral decision having a direct legal effect on many staff members, including the Applicant;

(c) The requirement that current and former local staff produce the necessary documents for reimbursement of medical expenses in English has major disadvantages. It is costly and sets a de facto limit on the protection afforded staff in the event of a health problem.

16. The Respondent's contentions are:

(a) The application is inadmissible because the decision contested is not an administrative decision within the meaning of Article 2.1 (a) of the Statute of the Dispute Tribunal and Rule 11.4 (a) of the provisional Staff Rules. It is not of a personal nature and does not produce direct legal effects on the Applicant. Outsourcing of the responsibilities to GMC Services does not bring about any change in the medical insurance plan's membership conditions or coverage;

(b) On the merits, the decision to outsource management of the medical insurance plan for local staff does not affect the welfare of the staff concerned, including their conditions of work or general conditions of life. That decision relates only to claim processing and does not affect the plan's membership conditions or coverage. The Respondent had not, therefore, been under any obligation to apply Rule 8.1 of the provisional Staff Rules and consult the representative staff bodies' executive committees;

(c) Even though it was not so obliged, the Administration had, during 2009, consulted the ESCAP Staff Council on the issue of outsourcing management of the medical insurance plan, as appears from the minutes of the Joint Advisory Committee;

(d) Insofar as it relates to the decision of 9 December 2008 requiring staff to produce the necessary documents for the reimbursement of medical expenses in English, the application was inadmissible because no management evaluation had been requested in that connection and it was not an appealable individual decision. Moreover, that decision had remained and would remain inoperative, as GMC Services had the requisite expertise to handle claims in several languages, including Thai.

Judgement

17. With the agreement of the parties, this case is being decided without a hearing.

18. The Applicant challenges the decision to outsource management of the medical insurance plan for local staff to GMC Services as regards personnel serving in Bangkok.

19. However, the Respondent asserts that the application is inadmissible on the grounds that the decision contested is one not appealable to this Tribunal.

20. Article 2.1 of the Statute of this Tribunal provides:

The Dispute Tribunal ... shall be competent to hear and pass judgement on an application filed by [any staff member] against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

21. In its judgement UNAT-2010-58 *Andati-Amwayi*, the Appeals Tribunal stated that the general decisions whereby the United Nations organizes the operation of its services are not administrative decisions that are reviewable by the Tribunal:

We take note that the requirement for UNON staff members to possess MIP cards or a Grounds Pass in order to access medical services on credit was for the overall effective administration of the Organization’s staff medical insurance plan. The requirement was of general application to all staff and cannot be deemed to affect the terms of appointment or contract of employment of any one staff member.

22. In this particular case, the Administration’s decision to outsource medical claims processing to a company outside the Organization is an administrative measure that has no immediate, direct effect on the Applicant’s working conditions.

23. The Applicant also challenges the decision whereby the Administration allegedly required staff to produce the documents necessary for reimbursement of medical expenses in English; regardless of whether that decision was applied or not, such a decision is of the same nature as mentioned above and cannot be reviewed before this Tribunal.

24. Thus, the Tribunal has no jurisdiction, under the above provisions, to set aside the decisions contested.

25. Only an individual negative administrative decision on an application by the Applicant based on the decisions criticized above could give rise to a valid challenge to their legality before this Tribunal, even though the Tribunal cannot, as shown above, request their cancellation.

26. The Tribunal must therefore declare the application inadmissible.

Decision

27. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

Judge Jean-François Cousin
So ruled this 15th day of March 2011

Entered in the Register on 15 March 2011

Víctor Rodríguez, Registrar, Geneva
