UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2014/050
Judgment No.: UNDT/2014/071
Date: 24 June 2014
Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

KAZAZI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Stéphanie Cochard, UNOG

Introduction

1. By application filed on 18 June 2014 the Applicant, former Executive Head, United Nations Compensation Commission ("UNCC"), contests the decision according to which upon his separation from the Organization on 31 October 2012, he was entitled to repatriation grant only at the single and not at the dependency rate.

Facts

2. The Applicant worked at the UNCC for 21 years, and was separated on 31 October 2012. During that time, his wife also worked at the UNCC, from 1 September 1999 until her separation on 30 June 2005.

3. By email of 24 June 2013, entitled "Miscalculation of the Repatriation Grant on Separation", the Applicant wrote to a Senior Human Resources Officer, Human Resources Management Service ("HRMS"), United Nations Office at Geneva ("UNOG"), claiming that he was deprived of his entitlement to full repatriation grant at the dependency rate. He therefore "reiterate[d] [his] previous request for the payment of full [repatriation grant] at dependency rate for the length of [his] service".

4. The Applicant repeated his request to the same Senior Human Resources Officer, HRMS, UNOG, on 30 July 2013.

5. The Senior Human Resources Officer, HRMS, UNOG, wrote to the Applicant on 23 August 2013, apologising for the long delay in responding, which she noted was due to the fact that his case had first to be consulted internally. After providing a comprehensive explanation for the reasoning of the decision, including the relevant legal provisions, she informed the Applicant that since "both [he] and [his] wife [had been] staff members with the Organization, under the applicable rules and regulations [they] [were] both entitled *only* to repatriation grants at the single rate" (emphasis in original).

6. On 22 September 2013, the Applicant wrote another email, addressed, *inter alia*, to the Chief, HRMS, UNOG, restating his request for the payment of full repatriation grant at the dependency rate.

7. On 25 November 2013, the Applicant sent yet another email to the Chief, HRMS, UNOG, and the Director, Division of Administration, UNOG, referring to his earlier email of 22 September 2013 and expressing his hope that the "misreading of the staff rules [could] be corrected by [the Chief, HRMS] office" and that "otherwise, [the Applicant] appreciate [the Chief, HRMS] formal confirmation of HRMS position so that [he] can appeal against it."

8. By email of the same day, the Chief, HRMS, wrote to the Applicant, stressing that his situation and that of his wife was not straightforward and that he would soon be informed of the outcome of HRMS/OHRM consideration of the matter.

9. On 17 December 2013, the Director, Division of Administration, UNOG, wrote to the Applicant, stressing that "[he had] asked [his] staff at HRMS to carefully reconsider [his] request taking into account all his arguments" and that "following this review, [he] regret[ted] to inform [him] that [he was] not entitled to payment of a repatriation grant at the dependency rate." He noted that the reasons had correctly been explained to him in the email from the Senior Human Resources Officer of 23 August 2013. Finally, he stated that "should [the Applicant] disagree with this administrative decision, [he] may formally file a request for management evaluation to the Management Evaluation Unit pursuant to staff rule 11.2."

10. The Applicant's request for management evaluation, dated 12 and 16 February 2014, of the decision concerning the miscalculation of his repatriation grant was received by the Management Evaluation Unit ("MEU") on 16 February 2014.

11. By letter dated 20 March 2014, the Chief, MEU, informed the Applicant that the MEU had concluded that his request was time-barred and, therefore, not receivable and, on the merits, unfounded.

12. The Applicant filed the present application on 18 June 2014.

Applicant's submissions

13. The Applicant's contentions with respect to *receivability* are:

a. The chronology of events and the communications of 25 November 2013 and 17 December 2013 which he received from the Chief, HRMS, and the Director, Division of Administration, UNOG, respectively, clearly show that the argument according to which his request for management evaluation was not filed on time was not only unjustified but also contradicted by the facts; and

b. He tried for over almost one year to receive a response from HRMS, UNOG, and was asked to be patient and to wait and that he should ask for management review once he received the administrative decision. It is not fair to use the Administration's own delays as an argument against his right to seek management review.

Consideration

14. The Tribunal recalls that pursuant to art. 2.1 of its Statute, it has jurisdiction to consider applications appealing an administrative decision only when a staff member has previously submitted the contested decision for management evaluation and the application is filed within the statutory time limits (see *Egglesfield* 2014-UNAT-402; *Ajdini et al* 2011-UNAT-108).

15. Staff rule 11.2(c) provides with respect to the time limits to file a request for management evaluation that:

> A request for management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

16. The Tribunal notes that the Appeals Tribunal has consistently held that the statutory time limits have to be strictly enforced (*Mezoui* 2010-UNAT-043; *Laeijendecker* 2011-UNAT-158; *Romman* 2013-UNAT-308). It further recalls that pursuant to art. 8.3 of its Statute and the established jurisprudence of the Appeals Tribunal, it has no discretion to waive the deadline for management evaluation or administrative review (*Costa* 2010-UNAT-036; *Rahman* 2012-UNAT-260; *Roig* 2013-UNAT-368; *Egglesfield* 2014-UNAT-402).

17. Moreover, according to the longstanding jurisprudence of the Appeals Tribunal, the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to the statutory timelines; rather, the time starts to run from the date the original decision was made (*Sethia* 2010-UNAT-079; *Odio-Benito* 2012-UNAT-196).

18. In the present case, the Applicant filed his request for management evaluation on 16 February 2014, against the decision of 17 December 2013 from the Director, Division of Administration, UNOG.

19. It is not clear from the case file when exactly the Applicant was originally informed that his repatriation grant would be calculated at single rate. It appears, however, that at the time of his email of 24 June 2013, he had already been informed that he was entitled to repatriation grant only at the single rate, hence his request for reconsideration of that decision.

20. In any event, the Tribunal notes that the terms of the email from the Senior Human Resources Officer to the Applicant of 23 August 2013, which is on file, are unambiguous in that they clearly convey to him the decision that, upon his separation, he was only entitled to repatriation grant at the single rate, not at the dependency rate. That email, which also contains a comprehensive explanation of the decision's rationale, including an analysis of the relevant legal provisions, clearly contains all the elements of an administrative decision, by which the Applicant was informed by a competent authority that his entitlement under ST/AI/20000/5 (Repatriation grant) was limited to a repatriation grant at the single rate. Therefore, the 60 day statutory time-limit to request management evaluation of that decision started to run on 23 August 2013 at the latest.

21. The Tribunal considers it relevant to examine whether thereafter, the Administration conducted a revision of its original decision on the basis of new facts or information, unknown at the time of the decision of 23 August 2013, susceptible to reset the time limit under staff rule 11.2(c). However, it results from the various communications of the Applicant, after the decision of 23 August 2013, that he simply reiterated his earlier request, without adding any new factual information allowing the Administration to conduct a genuine review of his situation, which could have resulted in a new administrative decision. As such, the email dated 17 December 2013 of the Director, Division of Administration, merely constitutes a confirmation of the earlier decision of 23 August 2013, and did not reset the 60-day time-limit set forth under staff rule 11.2(c).

22. The Tribunal notes that the wording of the email of the Chief, HRMS, of 25 November 2013 and particularly that of the Director, Division of Administration, of 17 December 2013 are unfortunate, in that they seem to suggest to the Applicant that he was still on time to file a request for management evaluation. However, the fact of the matter is that these emails were sent to the Applicant at a time when the 60-day deadline for management evaluation—even taking as the date of the original decision the email of 23 August 2013—had already elapsed for a considerable time. Indeed, after the unambiguous wording of the decision of 23 August 2013, which according to its explicit terms had been taken after internal consultations within HRMS, the Applicant contented himself to write follow-up emails on 22 September 2013 and thereafter on 25 November 2013, instead of pursuing the matter through a formal request for management evaluation in a timely manner.

23. It follows from the above, that the wording of the emails to the Applicant of 25 November 2013 and 17 December 2013 though misleading had no impact on the deadline to timely file a request for management evaluation. Indeed, the Applicant, who underlines that he is a lawyer, is an experienced staff member who is "deemed to be aware of the provisions of the Staff Rules" (*Egglesfield* 2014-UNAT-402 referring to *Diagne et al.* 2010-UNAT-067).

24. In view of the foregoing, the Tribunal cannot but conclude that the present application is irreceivable, *ratione materiae*. The Tribunal finds that the issue discussed above is a matter of law, which may be adjudicated even without serving the application to the Respondent for reply and even if it was not raised by the parties (see *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335). Therefore, the Tribunal decides on the present application by summary judgment, in accordance with art. 9 of its Rules of Procedure, which provides that the Tribunal may determine, on its own initiative, that summary judgement is appropriate.

Conclusion

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

The application is rejected.

(*Signed*)

Judge Thomas Laker

Dated this 24th day of June 2014

Entered in the Register on this 24th day of June 2014

(*Signed*)

René M. Vargas M., Registrar, Geneva