UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2015/004
Judgment No.: UNDT/2015/037
Date: 12 May 2015
Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

Seyfollahzadeh

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Esther Shamash, UNDP

Introduction

1. By application filed on 12 January 2015, completed on 21 January 2015 at the Registry's request, the Applicant, a staff member of the United Nations Development Programme ("UNDP"), Iran, contests and refers to, *inter alia*, her separation from service, her being deprived from after service health insurance and from the benefits of the United Nations Joint Staff Pension Fund ("UNJSPF").

2. The application was served on the Respondent who filed his reply on 26 February 2015.

Facts

3. The Applicant joined UNDP on 1 November 1997, as Secretary (Programme) at the G-4 level, at the UNDP, Country Office, Iran. She was promoted to the G-5 level, to the position of Programme Assistant, on 1 July 2000 and to the G-6 level on 1 July 2003. Her fixed term appointment was converted into a permanent one effective 30 June 2009.

4. In 2011, the Applicant applied and was selected for a National Officer post ("NOB") as Global Fund Project Manager, and started her new appointment in January 2012. This post was funded through project funds.

5. Several emails on file from November 2011 show that the Applicant inquired with Human Resources whether she could keep her Medical Insurance Plan ("MIP") coverage should she accept the project funded NOB post and the latter be abolished after two years. In an email of 28 November 2011, she explicitly referred to the relevant rules, stressing that at the time of separation, "[she would] not be 50 years old" and asked whether she would still be eligible to keep her MIP or whether she would have to meet both criteria, that is age and a minimum of years of contributory service.

6. In response, by emails of 25 and 29 November 2011, a Human Resources Specialist, Office of Human Resources ("OHR"), UNDP, advised the Applicant that "in theory, [she] should be fine to keep the MIP as [she] would meet most of the criteria" and that "[a]t that time, if it should happen that there was resistance, [the Office] would explore the option of finding a way forward".

7. The letter of appointment, signed by UNDP management on 18 December 2011 and by the Applicant on 15 January 2012, states that she was "offered a permanent contract" as Global Fund Project Manager (NOB II), TB Component – Services Limited to GF Project, with an assignment for a fixed-term of one year, from 1 January to 31 December 2012. It further noted that as a permanent staff member, she would "carry over [her] 'permanent status' into the project funded position".

8. A note for the record dated 18 December 2011 was provided to the Applicant in January 2012, stating that she had been selected for an NBO position, in a donor funded project with available funding until the end of September 2013, that, hence, at that stage, "the project [could] only commit to fund an FT contract from 1 January 2012 till 30 September 2013", and that in view of the Applicant's status as a permanent staff member, "at the time of project closure which [would] result in post abolishment, [she] [would] receive termination indemnity as per the UNDP rules and regulations of 'Agreed Separation'".

9. It seems that no new letter of appointment was given to the Applicant beyond December 2012, but she remained in service. Regarding her status and contractual situation, a meeting was held on 14 April 2014 between the Applicant, the Resident Representative, UNDP, Iran, the Deputy Resident Representative, UNDP, Iran, and the Head, H&D Cluster. It was stressed that the Office would not miss any opportunity to retain her in service, and the availability of possible functions on which she could be positioned was discussed. During the meeting, the Applicant referred to a vacant NOB post of PSU that could be considered as an option for her. The Deputy Resident Representative explained to the Applicant

that there was no post available, and that the Country Office could not make any commitment at that point.

10. By letter dated 16 April 2014, the Resident Representative informed the Applicant that the position she was encumbering would be abolished effective 30 September 2014, since it was no longer funded and the functions were no longer needed. She was encouraged to apply for other vacancies, and was told that in view of her status as holder of a permanent appointment she would be given priority consideration over equally qualified candidates who were not permanent or long serving. She was further told that she would be given a three months job search period to focus on finding other job opportunities, from 17 April to 17 July 2014. Finally, in case she would not secure employment during that period, the Applicant was advised that the following three months from 18 July to 17 October 2014 would count as notice of separation period. Thereafter, should she still not have secured a post, she might either undertake a fully funded temporary assignment or take special leave without pay, or apply for agreed separation. She was asked to inform UNDP about her preferred option two weeks prior to the end of her initial search period; otherwise, the Organization would automatically place her on three months' notice of separation period.

11. By email of 1 May 2014 from a Human Resources Associate, Human Resources Unit (HRU), UNDP, Iran, in response to some questions raised by the Applicant by email of 21 April 2014, she was given explanations with respect to her status. Under point "8. MIP", in response to a question with respect to the status of her MIP, the email states that "[the Applicant] will not have medical coverage once separated from the system".

12. According to the Respondent, prior to the email of 1 May 2014, on 29 April 2014, the Applicant had a Skype conference call with a Human Resources Specialist, OHR, Headquarters, and with the Human Resources Associate in the Human Resources Unit, UNDP, Iran, during which it was clarified that she would not be eligible for after service health insurance ("ASHI") upon her separation.

13. Following her receipt of the above-mentioned email from Human Resources; UNDP, of 1 May 2014, by email of the same day, the Applicant requested a meeting, which was held on 4 May 2014, between her, a staff member from the Human Resources Unit, UNDP, Iran, and the Deputy Resident Representative. According to the Applicant, during that meeting, it transpired that in view of the contradictory responses the Applicant had received, the Country Office would need to seek further clarification on the matter of the MIP. Also according to the Applicant, another meeting was held on 13 May 2014, at which it was again agreed that more clarifications were needed. Thereafter, also according to the Applicant, on 18 May 2014, the Deputy Resident Representative advised her to seek clarifications from Headquarters, with respect to the MIP issue, which had initially been discussed with Headquarters in 2011, before contacting the MIP Focal Point.

14. In an email of 22 May 2014 to the Applicant, the Deputy Resident Representative noted that the question on MIP coverage post separation still needed some clarification and that "on the MIP coverage there is lack of clarity in the advice given to [her] by K. [on 29 November 2011]. While extant policies do not allow for what K. has clarified we need to have clarity and we are waiting for the same". The Applicant states that she then wrote to the Human Resources Unit at Headquarters, but did not receive a response.

15. On 23 May 2014, the Applicant wrote to the MIP Focal Point, seeking his advice on her MIP status upon agreed termination. The Deputy Resident Representative sent a follow up to the MIP Focal Point on the same day, noting that it was necessary to provide the Applicant with a "clear clarification".

16. By email of 27 May 2014, the MIP Focal Point informed the Applicant that he had looked at the emails she had sent him and noted that she would not be eligible for ASHI, which, as per the guidelines for abolition of posts, required that she be "at least 50 years old".

17. In subsequent communications, the Applicant requested the Deputy Resident Representative to raise the issue with HQ, which he noted he was willing to do to explore other options.

18. On 23 June 2014, the Office of Staff Legal Assistance ("OSLA") wrote to a Legal Specialist, Legal Support Office, UNDP, with respect to the abolition of the Applicant's post as of 30 September 2014, and to the terms of the letter of 16 April 2014, noting that it appeared that UNDP was not making sufficient efforts to assist the Applicant in securing further employment. OLSA also raised concerns regarding medical coverage after separation, referring to the email of 27 May 2014.

19. On 18 July 2014, the Applicant, through OSLA, submitted a request for management evaluation of the decision not to provide her with after-service healthcare (ASHI/MIP), referring to a notification of said decision on 27 May 2014. No other issues were included in this request.

20. By email of 30 September 2014, the Deputy Resident Representative informed the Applicant that the Country Office had secured additional funding to cover the cost of the post until 31 December 2014, and that UNDP, Headquarters, had advised that the notice separation period, ending 17 October 2014, would be maintained. The temporary assignment would follow the notice period, thus running from 18 October to 31 December 2014, and, in case no further additional funding was found, the Organization would proceed with her separation effective 31 December 2014.

21. In reply to her inquiry in August 2014, the Applicant was informed, only on 31 December 2014, that she could use her 60 days annual leave instead of converting them into payment. The Applicant remained in service beyond 31 December 2014 for administrative purposes, that is, annual leave and subsequently certified sick leave, which, at the date of the hearing, was still ongoing.

22. After failing to reach an informal settlement (cf. Order No. 41 (GVA/2015) of 20 February 2015), the Applicant filed the present application on 12 January 2015; it was served on the Respondent who was granted until 26 February 2015 to file his reply.

23. On 17 February 2015, the Respondent filed a motion to strike out the application as being manifestly inadmissible, which was rejected by the above-referenced Order No. 41 (GVA/2015).

24. The Respondent filed his reply on 26 February 2015, and the Applicant filed observations thereon on 28 February 2015.

25. By Order No. 57 (GVA/2015) of 12 March 2015, the parties were convoked to a case management discussion that was held on 21 April 2015. Upon the Tribunal's order, the Applicant informed the Tribunal after the hearing that she did not wish to withdraw her application.

Parties' submissions

26. The Applicant's principal contentions are:

Receivability

a. With respect to the Respondent's argument that the request for management evaluation was late, the Applicant notes that when she received the email from the Human Resources Unit on 1 May 2014, she made efforts to get clarification from different involved bodies on the information received from HRU, Headquarters, and that the information obtained was confusing, even for the Country Office; hence, a request for management evaluation could not be filed before such clarification was obtained and OSLA was better placed to decide when such a request should be filed;

b. With respect to the other claims contained in her application, they had been raised, *inter alia*, with the Senior Management of the Country Office, the Staff Council, Ombudsman, OSLA, and the Director, Regional Bureau for Asia and the Pacific, UNDP, HQ, since March 2013 and they cannot be rejected;

Merits

c. The overall process was unfair, starting with a confusing "one year contract"; she was provided with wrong facts and information and would not have accepted a less secure project funded post if she had been advised correctly by Senior Management;

d. The NBO post at the PSU was never abolished and the Organization's declining to place her against that available position was in contradiction of her rights as a permanent staff member; the post is still available and she was not given any reason for not being considered for it;

e. In July 2014, the Country Office rejected her request for a detail assignment to North Korea for four to six months, on the grounds that, at the time, the post she was encumbering was to be abolished as of 30 September 2014, and, hence, she could not be placed against it beyond 17 October 2014; however, the Country Office was aware that the donor was ready to fund her post until 31 December 2014;

f. She had 60 days of accrued annual leave balances and despite her having sought advice on this as early as August 2014, the Country Office informed her that she could use that balance instead of commuting it into a one-time payment only on 31 December 2014, as such adding to her stress;

g. At the time of her application, she had not yet received her separation papers;

h. With respect to the ASHI, she was assured in 2011 that she could keep medical insurance upon separation; therefore, she had a legitimate expectation in this respect and the offer made by the Organization was inadequate, unfair and unjust;

i. As a staff member with 17 years of excellent service, she was misguided and humiliated; the handling of her case caused lots of stress to her which worsened her health condition; and

j. The Organization made no effort to place her within the Country Office while other staff members with similar functions have been recruited;

k. She requests:

i. "Recognition of her status as a permanent employee and immediate placement in a similar position at the same level within the Country Office";

ii. "[Keeping her] Medical Health Insurance";

iii. "Continuation with the [UNJSPF]";

iv. "Financial compensation for the period of [her] unemployment";

v. "Financial compensation for all the damage done to [her] physical and emotional health, [her] financial stability and [her] sense of self-worth and self-respect"; and

vi. "Disciplinary action to be taken against all the [Country Office] senior managers who have been responsible in taking such malicious and humiliating decisions that have ruined [her] personal and professional life and career. They should be penalised appropriately".

27. The Respondent's principal contentions are:

a. The Applicant only requested management evaluation of the decision "not to provide her with after service healthcare";

b. Therefore, in light of staff rule 11.2(a) and art. 8.1(c) of the Tribunal's Statute, the other claims contained in the application that were not previously submitted to management evaluation—namely her separation from UNDP Iran, her being deprived from the benefits of the UNJSPF upon her separation from service, "the 'decision on avoiding [her] deployment … within the Country Office'"; and "the 'decision on rejecting [her] other career development opportunities'"—are not receivable;

c. Further, with respect to the decision not to provide her with after service healthcare, the application is not receivable *ratione temporis*, since by filing her request for management evaluation only on 18 July 2014, the Applicant failed to request timely management evaluation: the decision was communicated to the Applicant by email of 1 May 2014; the subsequent decision of 27 May 2014 constitutes a mere confirmation of that previous decision; as such, it did not stop the statutory deadline under staff rule 11.2(c) for contesting the decision; under its Statute, the Tribunal cannot waive the deadlines for management evaluation;

d. The response the Applicant received on 29 November 2011 was not unequivocal, and pursuant to clause 7.2 of UNDP Rules on MIP, she is not entitled to after service health coverage, since at the time of her separation she was not yet 50 years old.; and

e. The application should be rejected in its entirety.

Consideration

28. The Tribunal recalls that pursuant to art. 2.1 of its Statute, it has jurisdiction to consider applications only against administrative decisions for which, where required, an Applicant has first filed a request for management evaluation before filing an application with the Tribunal, and both within the statutory time-limits (see *Egglesfield* 2014-UNAT-402; *Ajdini et al.* 2011-UNAT-108).

29. With respect to the time limits to file a request for management evaluation, staff rule 11.2(c) provides:

> 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.

30. The Appeals Tribunal has consistently held that the Tribunals must strictly adhere to and enforce statutory filing deadlines (*Mezoui* 2010-UNAT-043;

Laeijendecker 2011-UNAT-158; *Romman* 2013-UNAT-308; *Eng* 2015-UNAT-520). It further ruled that pursuant to art.8.3 of its Statute, the Dispute Tribunal 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).

31. The Appeals Tribunal further held that "unawareness" or "ignorance of the law is not an excuse" for a staff member to fail to comply with the statutory time limits (see *Diagne* 2010-UNAT-067; *Sheepers* 2012-UNAT-211; *Cremades* 2012-UNAT-271; *Nianda-Lusakueno* 2014-UNAT-472). It is a staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the internal system of administration of justice (*Amany 2*015-UNAT-521). Further, any reliance on the advice allegedly received from OSLA with respect to the scope and timing of the request for management evaluation does not help the Applicant's case when statutory requirements have not been met (cf. *Scheepers* 2012-UNAT-211).

32. Finally, pursuant to settled jurisprudence, the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to the statutory time limits, which start to run from the date of the original decision (*Sethia* 2010-UNAT-079; *Odito-Benito* 2012-UNAT-196; *Cremades* 2012-UNAT-271).

Receivability ratione materiae

33. The Tribunal observes that the Applicant only filed a single request for management evaluation, namely that of 18 July 2014, which exclusively covers the issue of her ASHI/MIP after separation. As such, none of the other issues referred to in her application were subject to a request for management evaluation, and the Tribunal cannot but conclude that with respect to the remaining issues raised by the Applicant in her application, not covered by a request for management evaluation, the application is irreceivable *ratione materiae*.

34. With respect to the decision not to grant the Applicant ASHI/MIP coverage after separation, the Tribunal has to examine whether the request for management evaluation was made timely.

35. To determine the relevant date from which the 60-day deadline under staff rule 11.2(c) started to run with respect to the administrative decision, namely that the Applicant does not qualify for ASHI/MIP after separation, the Tribunal has to assess when a final decision in this matter was taken and notified to the Applicant.

36. The Tribunal finds that the terms of the email of 1 May 2014 were unambiguous with respect to the fact that the Applicant would not be granted ASHI coverage upon her separation. Further, said email was sent by the Human Resources Unit, UNDP, Iran, and, as such, clearly emanated from a competent authority; moreover, the email explicitly referred to prior consultations with respect to the Applicant's case with UNDP Headquarters. Therefore, the Applicant should have filed a request for management evaluation by the end of June 2014. However, she did so only on 18 July 2014.

37. The Tribunal observes that while some mention was made in subsequent communications, including by UNDP, Iran, to the need for further clarification, this was based on the "lack of clarity in the advice given to [the Applicant] by K. [on 29 November 2011]" and that "extant policies do not allow for what K. ha[d] clarified". Thus, it seems that the lack of clarity, as referred to by the Deputy Resident Representative, resulted from the "advice" provided by K. in 2011—considered to be in contradiction with respect to the applicable policies—rather than from the decision of 1 May 2014, which was found to be in accordance with the Country Office understanding of the relevant provision of the guidelines.

38. More importantly, the Tribunal notes that the response email of 27 May 2014 did not refer to any new fact or information (see *Fiala* 2015-UNAT-516) that was not considered at the time of the email of 1 May 2014. As such, the Tribunal finds that the decision of 27 May 2014 constitutes a mere confirmation of the earlier and unambiguous decision of 1 May 2014, and cannot be qualified as a "new" administrative decision, taken on the basis of new information/facts, unknown at the time of the decision of 1 May 2014.

39. As a consequence, and in view of the above referenced jurisprudence of the Appeals Tribunal with respect to confirmative decisions, the Applicant's request for management evaluation on 18 July 2014, more than two weeks after the expiration of the statutory deadline, is to be considered late. Therefore, the application with respect to the decision to deny the Applicant ASHI coverage after separation is equally irreceivable *ratione materiae.*

Conclusion

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

The application is rejected.

(*Signed*)
Judge Thomas Laker
Dated this 12th day of May 2015

Entered in the Register on this 12th day of May 2015
(*Signed*)
René M. Vargas M., Registrar, Geneva