



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/056
Judgment No.: UNDT/2015/065/Corr.1
Date: 23 July 2015
Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

LOPEZ CHAVARRIO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

José Domingo Gutierrez Alarcón

Counsel for Respondent:

Tamara Shockley, UNICEF

Notice: This Judgment has been corrected in accordance with article 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 16 September 2014, the Applicant, a former staff member in the Colombia Office of the United Nations Children’s Fund (“UNICEF”), filed an application, in Spanish, with the Dispute Tribunal in New York, together with supporting documents in both Spanish and English.
2. The application was filed on her behalf by her Counsel. The Applicant seeks the following relief (translated):
 - a. “Compensation for the termination of her appointment owing to the abolition of the post, as confirmed by documents in her personnel file showing that the appointment was terminated by official letter No. COL/PER/RJG/cded 0595 of 23 December 2009, signed by [UNICEF representative]”;
 - b. “[The R]etirement benefit to which she is entitled and deferred payment thereof in accordance with article 30 et seq. of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF), once she reaches the age of 55”;
 - c. “Award of a disability benefit pursuant to article 33 of the aforementioned Regulations, on the ground that illness has incapacitated her for service as a result of rheumatoid arthritis, a disease that affects the joints, causing loss of function and functional disability”.
3. On 23 October 2014, following receipt of the English translation of the application, the Respondent filed his reply in English, together with three annexes (one of which was in Spanish), contending that the application is not receivable for the following reasons:

- a. The Applicant did not file a request for management evaluation prior to the submission of her application;
 - b. The Dispute Tribunal does not have jurisdiction over the Applicant's claims for UNJSPF benefits; and
 - c. The Applicant did not follow the correct procedure for claiming compensation for injury or illness attributable to official duties, which is set out under Appendix D (Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations) of the United Nations Staff Rules.
4. The Respondent argues, in the alternative, that the Applicant has received the appropriate separation payments under UNICEF policy and has been paid the appropriate pension benefits under the UNJSPF Regulations and Rules.

Case management and further submissions

5. The Tribunal issued a number of case management orders for the purpose of identifying and clarifying the respective contentions of the parties. By Order No. 294 (NY/2014), dated 29 October 2014, a Duty Judge ordered the Applicant to file comments on the reply, addressing, in particular, the Respondent's points on receivability and satisfaction of claims. By Order No. 20 (NY/2015), dated 4 February 2015, the Duty Judge ordered the Respondent to file comments on the Applicant's submission in response to the reply. By Order No. 105 (NY/2015), dated 4 June 2015, the Duty Judge ordered that once the parties' submissions were received, the case would join the queue and be assigned to a Judge in due course, and that the parties refrain from filing any further documents until they are notified that the case has been assigned to a Judge.
6. Taking into account the need to translate the application, the reply, the comments on the reply, and the response to the Applicant's comments on

the reply, the full case file became available to both parties in their respective working languages on 9 July 2015.

7. On 14 July 2015, the case was assigned to the undersigned Judge.

Facts

8. It is common ground that the Applicant worked for UNICEF from January 1995 until 30 June 2010 as a Janitor at the G-1 level. The Applicant served on a fixed-term appointment from 27 January 1995 to 31 December 2002. The Applicant re-joined UNICEF on a temporary fixed-term appointment from 1 July 2002 to 30 June 2010.

9. The parties also agree that on 23 December 2009, the UNICEF representative in Colombia informed the Applicant that she would receive a final extension of her contract until 30 June 2010. After the expiration of her contract, the Applicant was employed by an external agency. Accordingly, the Applicant separated from service with UNICEF on 30 June 2010.

10. The documentary evidence attached to the application and the reply shows, and this is not contested by the Applicant, that on 22 November 2010, the Applicant notified the UNJSPF that she had separated from service with UNICEF. The evidence on record also shows that, on 21 February 2011, the Applicant notified the UNJSPF that she elected the withdrawal settlement benefit. On the same day, she instructed that the relevant cheque should be sent to the UNICEF Colombia Office. On 6 May 2011, the UNJSPF cheque was sent to the UNICEF Colombia Office and given to the Applicant. The Applicant admits she received the withdrawal settlement in May 2011 but claims that she should also have received, among other things, a deferred retirement benefit from the UNJSPF. The legal basis of this contention is unclear.

11. The documentary evidence shows that during the Applicant's service with UNICEF, the Medical Division of the United Nations never placed the Applicant on

long-term certified sick leave nor did the Applicant file a claim for compensation in the event of illness in accordance with Appendix D of the Staff Rules. In her comments on the reply, the Applicant states that “UNICEF Colombia acknowledged illness certificates and granted leave”. She admits that there was no administrative decision in this respect but states that the purpose of the application is to “safeguard a right”.

Consideration

12. As a preliminary matter, the Tribunal must consider the Respondent’s claims that the application is not receivable because: (a) it is time-barred; (b) no management evaluation request was submitted by the Applicant; (c) the application does not identify contestable administrative decisions; and (d) the Dispute Tribunal has no jurisdiction over claims concerning UNJSPF benefits.

13. In her application, the Applicant does not explicitly identify the decisions that she is contesting. Rather, she identifies benefits and entitlements to which she claims she is entitled. She states in her application, however, that she was first notified or came to know about the relevant decisions in August 2010.

14. Her written application also states that she did not submit a request for management evaluation, as required by art. 8(c) of the Dispute Tribunal’s Statute and staff rule 11.2(a). The Respondent noted this in the reply. In her response to the reply, the Applicant stated that the application should be accepted because she sent a “request” to UNICEF dated 10 May 2013, and a “similar letter” to the UNJSPF.

15. Article 8 of the Dispute Tribunal’s Statute provides the statutory framework on the receivability of an application before the Dispute Tribunal, and states:

Article 8

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

(ii) In cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant's receipt of the administrative decision;

...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

...

16. There is no letter or request for management evaluation dated 10 May 2013 on the file. A letter dated 14 May 2013, addressed to UNICEF, the UNJSPF and the International Civil Service Commission, requests the same benefits and entitlements to which the Applicant claims she is entitled in the application. However, she does not identify any decision or decisions for review. Even if this letter were to be construed as a request for management evaluation, it would be out of time, as staff

rule 11.2(c) requires that such a request is to be sent within 60 calendar days of notification of the administrative decision to be contested.

17. In any event, the Applicant is also time barred from pursuing this claim given the deadlines set out in arts. 8.1(d) and 8.4 of the Dispute Tribunal's Statute.

Abolition of post

18. The Applicant claims that her post was abolished in June 2010. The case record establishes that the Applicant was formally notified in December 2009 of the decision to discontinue janitor services in the UNICEF Colombia Office, well before the expiration of her fixed-term contract on 30 June 2010. The Applicant did not appeal the decision to abolish the post upon its notification to her nor upon the expiry of her contract on 30 June 2010. The Applicant states that she had sent a management evaluation request to UNICEF in May 2013. However, pursuant to art. 8.4 of the Dispute Tribunal's Statute, the Tribunal is statutorily prohibited from reviewing a contested decision made more than three years after the Applicant's receipt of the said contested administrative decision.

Disability benefit

19. Notwithstanding the disagreement between the parties regarding the submission of a claim for compensation under Appendix D of the United Nations Staff Rules at the relevant time, the Applicant's claim regarding the award of a disability benefit is also statutorily time-barred in accordance with art. 8.4 of the Tribunal's Statute.

Retirement benefit

20. Article 4 of JSPB/G.4/Rev.17 (Regulations Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund) of 1 July 2010, in effect at

the date the Applicant claims she was first notified of the contested decision(s), states:

Article 4

Administration of the Fund

(a) The Fund shall be administered by the United Nations Joint Staff Pension Board, a staff pension committee for each member organization, and a secretariat to the Board and to each such committee.

(b) The administration of the Fund shall be in accordance with these Regulations and with Administrative Rules consistent therewith which shall be made by the Board and reported to the General Assembly and the member organizations.

(c) The Board may appoint a Standing Committee which shall have the power to act on behalf of the Board when it is not in session and may, subject to article 7, delegate its powers under these Regulations to the staff pension committees of the member organizations.

...

21. Article 48 of JSPB/G.4/Rev.17 states that “[a]pplications alleging non-observance of these Regulations arising out of decisions of the Board may be submitted directly to the United Nations Appeals Tribunal ...”.

22. In *Terragnolo* 2015-UNAT-517, the Appeals Tribunal stated that:

The UNJSPF Regulations and Administrative Rules clearly state that the exclusive authority to administer the UNJSPF is vested in UNJSPF’s Board and, as such, the Secretary-General has no role in UNJSPF’s administration.

23. The Dispute Tribunal is not competent to hear and pass judgment on the Applicant’s claim in respect of a retirement benefit to which she is allegedly entitled under the regulations of the UNJSPF, as the jurisdiction of the Tribunal under art. 2.1 of its Statute is limited to applications filed against decisions of the Secretary-General.

Conclusion

24. In view of the finding that the application is not receivable pursuant to arts. 8.1 and 8.4 of the Tribunal's Statute and in accordance with the Appeals Tribunal's judgment in *Terragnolo*, it is not necessary for the Tribunal to consider the merits of the application.

Observation

25. As a former lowly paid G-level staff member, the Applicant, who would not necessarily know the law, instructed a private lawyer to represent her. Given the nature of the defects in the pleadings prepared by her Counsel, including the failure to observe basic legal and procedural requirements within the United Nations regulatory framework and Staff Rules, Counsel may wish to review the bill of costs, if any.

IT IS ORDERED THAT:

26. The application is rejected.

(Signed)

Judge Goolam Meeran

Dated this 23rd day of July 2015

Entered in the Register on this 23rd day of July 2015

(Signed)

Hafida Lahiouel, Registrar, New York