



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Nerea Suero Fontecha

GERMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. On 7 November 2018, the Applicant, an Associate Economic Affairs Officer at the P-2 level with the United Nations Economic Commission for Latin America and the Caribbean (“ECLAC”) in Santiago, Chile, filed an application contesting a decision regarding his relocation grant following his temporary assignment to Bogotá with the United Nations Verification Mission in Columbia (“UNVMC”). In the standard application form UNDT/F.1E, the Applicant, who is unrepresented, describes the contested decision as “the Secretary-General decided to uphold the UNVMC contested decision”, identifies the decision-maker as the Under-Secretary-General for Management, and states that he was notified of said decision on 28 September 2018, the date of the management evaluation letter. On the face of it, therefore, it appears that he is challenging the outcome of his request for management evaluation, which upheld UNVMC’s decision to pay him USD1,500, instead of USD18,000, as relocation grant for his assignment with UNVMC. As relief, he seeks the balance of the relocation grant in the amount of USD16,500.

2. On 7 December 2018, the Respondent filed the reply on the merits but also submitting as a preliminary point that the application is not receivable *ratione materiae* because the Applicant does not contest an administrative decision under art. 2.1(a) of the Tribunal’s Statute. Specifically, the Respondent submits that the Applicant’s challenge to the outcome of his request for management evaluation is not a reviewable administrative decision (*Kalashnik* UNDT/2015/087 (affirmed by the Appeals Tribunal in 2016-UNAT-661), *Staedler* UNDT/2014/046, *Hassanin* UNDT/2014/006). The Respondent maintains that the Tribunal is only competent to review the underlying administrative decision that a staff member alleges violates his or her contract of employment or terms of employment.

Background

3. On 12 May 2017, the Applicant was offered a temporary assignment as a Procurement Officer at the P-3 level at UNVMC in Bogotá, Columbia for a period of 364 days.

4. The offer letter provided that his mission assignment may be extended up to a maximum of two years only, and had two options for the Applicant to choose, namely, shipment of personal effects or relocation shipment. The accompanying document explained the difference between these two options: the Applicant could choose an entitlement to 100 kg of unaccompanied shipment of personal effects or payment of USD1,200 (which was subsequently apparently increased to USD1,500) in lieu of having the Organization arrange for the shipment. By accepting the offer, the Applicant indicated that he chose the relocation shipment option.

5. Since the Applicant was to reach the mandatory retirement age of 62 on 30 June 2018, the Applicant's temporary assignment was set for the duration of 11 months from 30 July 2017 through 30 June 2018.

6. Following the change in the mandatory retirement age from 62 to 65, in April 2018, the Applicant requested an extension of the temporary assignment for the full duration of 364 days up to 30 July 2018. As a result, the temporary assignment was extended until 30 July 2018, which equates to 366 days, not 364 days.

7. On 1 August 2018, the Applicant returned from his assignment with UNVMC to service with ECLAC.

8. On 6 August 2018, ECLAC requested UNVMC to retroactively extend the temporary assignment until 31 July 2018 (i.e. one additional day) as the Applicant travelled on 1 August 2018 and ECLAC needed to process his return assignment Personnel Action form as of 1 August 2018. UNVMC agreed and extended the assignment until 31 July 2018.

9. On 8 August 2018, the Applicant requested payment of the relocation grant reserved for a staff member whose assignment is for a total period of one year or longer on the basis that his assignment with UNVMC exceeded 364 days. By the email response on the same day, UNVMC denied the Applicant's request, relying on sec. 17.4 of ST/AI/2016/4, which provides as follows:

... When an assignment of less than one year is subsequently extended so that the total period reaches one year or longer, inclusive of the period of payment of a daily subsistence allowance, the staff member may be entitled to payment of the difference between the amount payable in lieu of unaccompanied shipment entitlements under section 9.3 above and the amount paid in lieu of shipment of personal effects under section 9.1. The payment of the balance of the relocation grant shall be made only when the extension of the assignment occurs at least six months prior to the expected end of the assignment at the duty station.

10. On 15 August 2018, the Applicant requested a management evaluation of UNVMC's decision.

11. On 28 September 2018, the Applicant was informed that the Secretary-General had decided to uphold the contested decision as recommended by the Management Evaluation Unit ("MEU").

Consideration

12. Whilst, in fairness to all parties, it is the practice of the Dispute Tribunal to deal with cases in chronological order of filing, the General Assembly has requested in its resolution 66/237, adopted on 24 December 2011, that the Dispute Tribunal and the Appeals Tribunal review their procedures in regard to the dismissal of "manifestly inadmissible cases". It is a matter of record that the Dispute Tribunal, even prior to the aforesaid resolution 66/237, entertained and continues to deal with matters of admissibility or receivability on a priority basis in appropriate cases.

13. It is the Appeals Tribunal's consistent jurisprudence that an applicant must identify, or define, a specific administrative decision capable of being reviewed (see,

for instance, *Planas* 2010-UNAT-049, *Chriclow* 2010-UNAT-035, *Appellant* 2011-UNAT-143 and *Reid* 2014-UNAT-419).

14. In this case, the Respondent submits that the Applicant identified the outcome of his request for management evaluation as a contested decision, which is not a reviewable administrative decision.

15. It is settled law, as confirmed by the Appeals Tribunal in *Kalashnik* 2016-UNAT-661, that the contested decision which may be reviewed by the Dispute Tribunal is not the Administration's response to the request for management evaluation, but the administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member.

16. It is also important to note that when deciding the scope of the case, the Tribunal is not limited to the parties' own identification and definition of the contested administrative decision(s) and may, based on the submissions, seek to identify the subject(s) of judicial review by itself. See, for instance, the Appeals Tribunal in *Fasanella* 2017-UNAT-765, para. 20, where it stated:

... Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review. As such, the Dispute Tribunal may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed.

17. Furthermore, in the case of *Zakaria* 2017-UNAT-764, at para. 22, the Appeals Tribunal stated:

... The role of the Dispute Tribunal in characterizing the claims a staff member raises in an application necessarily encompasses the scope of the parties' contentions (footnote omitted):

... The duties of [the Dispute Tribunal] prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise,

the decision-maker would not be able to follow the correct process to accomplish his or her task. ...

... Thus, the authority to render a judgment gives the [Dispute Tribunal] an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review.

18. It is also settled law that the nature and contents of a management evaluation response is indicative of what matters were considered in answer to a request for management evaluation (*Lemonnier* 2016-UNAT-679, para. 47).

19. In this case, at sec. V of the application form UNDT/F.1E, the Applicant states that the contested decision is that “[t]he Secretary-General decided to uphold the UNVMC contested decision” and identifies the decision-maker as the Under-Secretary-General for Management. In subsequent sections, at secs. VII (summary of the facts of the case or facts relied upon) and VIII (grounds for contesting the administrative decision), the Applicant described how UNVMC decided to grant him USD1,500 for relocation grant under ST/AI/2016/4 in relation to his assignment with UNVMC from July 2017 to July 2018. The Tribunal notes that the Applicant does not discuss or refer to the outcome of his request for management evaluation in these sections and instead only focuses on the decision by UNVMC. Indeed, even in his request for management evaluation on a document titled “ADMINISTRATIVE DECISION TO BE EVALUATED”, the Applicant specifically sets out the UNVMC decision as the contested decision that he is requesting evaluation of. It is clear therefore, that the Applicant, both in his management evaluation request, and the substantive portion of his application, is challenging UNVMC’s decision to grant him only USD1,500 as relocation grant. Furthermore, in its response, MEU answered the Applicant’s request on precisely this issue.

20. The Tribunal notes that this case is distinguishable from *Kalashnik* 2016-UNAT-661 and *Staedler* UNDT/2014/046 in which cases the applicants therein challenged the outcome, or recommendations or conduct of MEU and the Secretary-General’s responses to the request for management evaluation and which were held to

be not subject to review by the Tribunal. Considering that the Applicant is self-represented and that the application as a whole clearly indicates that the Applicant is in fact challenging the underlying administrative decision by UNVMC, and not the conduct or recommendation of the management evaluation itself or the Secretary-General's response, and in line with the prevailing jurisprudence on the defining of an administrative decision, the Tribunal finds that the contested decision is UNVMC's decision in regard to the Applicant's relocation grant entitlement. The Respondent's plea on receivability is therefore specious, and the Applicant's claim is receivable.

Conclusion

21. In view of all of the foregoing, the present application is receivable.

(Signed)

Judge Ebrahim-Carstens

Dated this 17th day of December 2018

Entered in the Register on this 17th day of December 2018

(Signed)

Nerea Suero Fontecha, Registrar, New York