



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MOHAMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR
Nusrat Chagtai, AAS/ALD/OHR

Introduction

1. On 15 April 2018, the Applicant, a P-4 Chief, Conference Management and Translation Unit at the United Nations - African Union-United Nations Hybrid Operation in Darfur (UNAMID) filed an application before the Dispute Tribunal contesting the decision not to grant him Special Post Allowance (SPA). The Applicant describes the contested decision as follows:

The decision is about denying me a fair consideration for a special post allowance in recognition of the added responsibilities I have been performing since the budget cycle of 2013/2014 starting on 1 July 2013, following a restructuring of UNAMID's Mission Support Division which should have triggered administrative actions to re-evaluate my function in a fair manner. I am contesting the administration's decision not to grant me a special post allowance that reflects the true changes in my job.

2. The Respondent filed a reply on 7 June 2018.
3. Having reviewed the parties' pleadings and supporting documentation, the Tribunal has decided that this matter can be adjudicated based on the parties' written submissions.

Facts

4. The Applicant joined the Organization in 2007. He was reassigned to UNAMID on 9 December 2008 as a P-3 Arabic Translator. Effective 1 March 2009, the Applicant was promoted to the P-4 level.¹ During the period 2013-2015 the Applicant's unit received additional responsibilities. As part of 2015/2016 mission-wide reclassification of posts exercise, the Applicant requested a reclassification of his post, in accordance with ST/AI/1998/9. On 11 October 2016, UNAMID's Chief Human Resources Officer (CHRO) informed the Applicant that the Department of Field Support (DFS) had classified the post he encumbers (the Post) at the P-4 level.²

¹ Reply, Annex 1.

² Reply, Annex 2

5. In August 2017, the Field Personnel Division/DFS (FPD/DFS) urged all peacekeeping missions via fax to comply with the SPA guidelines and requested missions to submit all pending cases for a one-time exceptional approval. On 28 September 2017, the Applicant sent an email to the Chief Human Resources Officer/ UNAMID (CHRO/UNAMID) requesting to be considered for an SPA for functions performed since 1 July 2013.³

6. On the same date, the CHRO responded to the Applicant informing him that he was not entitled to SPA.⁴

7. On 26 November 2017, the Applicant requested for management evaluation of the decision to deny his request for SPA.

8. On 16 January 2018, the Management Evaluation Unit (MEU) informed the Applicant that they had recommended that the decision not to grant him an SPA be upheld.

Applicant's case

9. The UNAMID administration has failed to consider his request despite him having stepped forward and met the challenge by taking on more responsibilities in support of the mission's mandate.

10. MEU failed to consider the principle of equal pay for equal work/value and the whole concept of fairness. MEU did not act as an independent body in conducting its evaluation of his case but rather relied on the administration.

11. The matter of reclassification of his post is still pending with the office of ASG/OHRM. His request for SPA and the related request for the reclassification of his post are within the organization's rules and procedures and the administration has an obligation to act fairly in its dealings with him.

12. The Applicant prays the Tribunal to grant him the following remedies:

³ Application, Annex 9.

⁴ Application, Annex 3.

- a. The granting of the SPA that is commensurate with changes in his duties as of 1 July 2013 which is the day his unit became a stand-alone entity.
- b. Significant amount of compensation for the severe moral damages suffered by him because of the deliberate and unnecessary delays made by the administration and MEU in a way that damaged his career advancement and opportunities. Given that the administration has accepted to incur costs to accommodate certain individuals for years on loosely-justified Temporary Job Openings (TJOs), he is entitled to an amount that is at least equivalent to 12 months of net base salary.
- c. Actual accountability measures against the individuals in UNAMID's Human Resources who caused him moral suffering as stated in a fax received from FPD.
- d. The Tribunal should "remind MEU of its role of and responsibility to conduct impartial and objective evaluations of administrative decisions contested by staff members of the UN Secretariat".

Respondent's case

13. Under staff rule 3.10(b), staff members holding a fixed-term or continuing appointment shall be granted SPA in exceptional circumstances where they are called upon to assume the full duties and responsibilities of a post at a clearly recognizable higher level than their own for a temporary period exceeding three months. Section 3 of ST/AI/2003/3 (Special post allowance for field mission staff) sets forth the procedure for temporary assignments to vacant posts within a specific mission.

14. Section 4 of the ST/AI/2003/3 further provides that staff members who have been temporarily assigned to the functions of a higher-level post, in accordance with the procedure set out in section 3, shall be eligible to be considered for SPA when:

They have performed, or are expected to perform for a period exceeding three months, the full functions of a post that (i) has been duly classified pursuant to a job classification notification (for established missions), or has been determined by the Department of Peacekeeping Operations to be at a higher level than their own level on the basis of the job description (for special missions) and (ii) is budgeted at a higher level than the staff member's own level[.]

15. The Applicant is not entitled to SPA. Firstly, he has not been temporarily assigned to the functions of a vacant P-5 post in accordance with section 3 of the ST/AI/2003/3. Secondly, he has not been performing the higher-level functions of a vacant P-5 post. The Applicant encumbers a P-4 post. The functions of the Post have been classified at the P-4 level. There is no P-5 post within the Conference Management and Translation Unit. The Applicant is not eligible for SPA under the Staff Rules and the ST/AI/2003/3.

16. The Applicant is not entitled to the requested relief. In addition, the Applicant is not entitled to moral damages. He has not presented any evidence of moral damages as required under art. 10.5(b) of the Dispute Tribunal's Statute nor has he identified any conduct warranting referral to the Secretary-General for accountability.

Considerations

17. The sole legal issue arising for consideration in this case is whether the Applicant is entitled to an SPA.

18. Staff rule 3.10(a) provides that staff members are expected to temporarily assume, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts.

19. Staff rule 3.10(b) provides that a staff member holding a fixed-term or continuing appointment may be granted SPA when required to serve in a post classified more than one level above their own post for a period exceeding three months.

20. ST/AI/2003/3 implements the rules on SPA. Section 4 of the ST/AI/2003/3 on the eligibility for SPA requires that, prior to receiving SPA, a

staff member must discharge the full functions of a post classified and budgeted at higher level than their own level. Section 5 of ST/AI/2003/3 requires that a request for SPA be initiated by the staff member or his supervisor. In considering SPA requests, the local SPA panel shall apply the eligibility criteria set out in section 4 of ST/AI/2003/3 above and shall confirm whether:

- (a) The duties and responsibilities of the post, as set out in the job classification notification in the case of established missions or in the job description in the case of special missions, are clearly at a level higher than the staff member's own level;
- (b) A post budgeted at the higher level is vacant or temporarily vacant and, for vacant posts, that the post has been advertised, unless the Department of Peacekeeping Operations has determined that a vacancy announcement should not be issued due to exceptional circumstances, such as the anticipated closure of the mission in the near future;
- (c) The staff member possesses the qualifications, experience and capabilities required to perform all the functions of the post;
- (d) There is sufficient justification for the selection of the recommended staff member for the higher-level functions, including evidence that other interested staff members were given an opportunity to express their interest in performing higher-level functions and that due consideration was given to their candidature;
- (e) The supervisor has indicated the date of assumption of higher-level duties and whether the staff member has demonstrated since that time the ability to fully meet the performance expectations of all the functions of the post.

21. In the Applicant's case, the requirements of ST/AI/2003/3 were not satisfied since the Applicant was not serving on a higher-level post or regularly performing functions at the P-5 level. The matter of reclassification of the Applicant's post has not come to fruition. The Applicant does not meet the requirements of ST/AI/2003/3 as he is serving on a post that was budgeted and

classified at the P-4 level, and not at the higher P-5 level. Finally, there is no P-5 post within the Conference Management and Translation Unit.

Conclusion

22. The Tribunal finds that the Applicant did not satisfy the criteria for SPA and that the Administration's decision not to pay it was lawful.

23. All claims are dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 24th day of May 2019

Entered in the Register on this 24th day of May 2019

(Signed)

Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi