



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

ABDELKADER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVIBILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, ALS/OHRM, UN Secretariat

Rosangela Adamo, ALS/OHRM, UN Secretariat

Introduction

1. On 19 January 2017, the Applicant, a staff member with the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (“MONUSCO”), filed an application with the Tribunal contesting the decision not to pay her a relocation grant as a result of her reassignment from Bunia to Entebbe in June 2013.

Procedure before the Tribunal

2. On 22 February 2017, the Respondent filed his reply challenging the receivability of the application.

3. Following the Judges’ decision to rebalance the Tribunal’s caseload between the three registries, the present case, which was initially assigned to the Nairobi Registry, was transferred to the Geneva Registry in March 2019 and reassigned to the undersigned Judge.

4. By Order No. 51 (GVA/2019) dated 5 July 2019, the Tribunal requested the parties to file further submissions, if any, in respect of their views concerning a judgment being rendered on the papers without an oral hearing. The parties had until 12 July 2019 to comply with the Tribunal’s request.

5. On 11 July 2019, the Respondent informed the Tribunal that he was of the opinion that the matter could be decided on the basis of the parties’ written submissions without an oral hearing. The Applicant did not reply.

6. The Tribunal determines that the matter can be decided on the basis of the documents and hereby delivers its judgment.

Facts

7. On 9 November 2008, the Applicant joined MONUSCO on a fixed-term appointment as a Logistics Assistant, at the FS-4 level, based in Kinshasa. She was later transferred to Lubumbashi and then to Bunia.

8. By memorandum dated 3 June 2013, the Officer-in-Charge, Human Resources Section, MONUSCO informed the Applicant that she was being reassigned from Bunia to Entebbe effective 15 June 2013. The memorandum explained that the Applicant was not entitled to a relocation grant given that she was reassigned within MONUSCO and that she could request the Organisation to ship her personal effects to Entebbe without any charge to her.

9. In August 2013, the Applicant was paid a relocation grant in relation to her eligible dependants since her reassignments was from a non-family duty station to a family duty station within MONUSCO.

10. On March 2014, the Applicant received an email from the Regional Service Center in Entebbe (“RSCE”) confirming that a payment of USD5000 was made for the relocation grant in respect of her dependants.

11. On 17 April 2014, MONUSCO published an Information Circular (IC 2014/13) stating that no relocation grants would be paid in connection with reassignments within the MONUSCO mission area. Said Information Circular clarified that MONUSCO staff members remained entitled to unaccompanied door-to-door shipment of personal effects in connection with reassignments within MONUSCO by the most economical means and that MONUSCO, therefore, would provide such door-to-door shipping service.

12. On 23 April 2014, the Field Staff Union (FSU) sent an email to all international staff members informing them of requests for management evaluation that had been filed regarding the refusal to pay relocation grants. The FSU advised staff members to contact the Office of Staff Legal Assistance (“OSLA”) if they wished to challenge the non-payment of a relocation grant. The email also advised the staff members of the obligatory 60-day filing deadline that applied to management evaluation requests.

13. On 22 May 2014, the Applicant requested legal assistance from OSLA “in order to forward [her] case to the [Management Evaluation Unit (MEU)]”. On 28 May 2014, OSLA informed the Applicant that her claim was out of time. The Applicant then “dropped the case as it would not have been received by MEU”.

14. In June 2016, the Tribunal issued several judgments in relation to claims of MONUSCO staff for payment of lump-sum relocation grants for the shipment of their personal effects after being reassigned within the MONUSCO areas of operation. The Tribunal found in those judgments that it was unlawful for the Administration to substitute ST/AI/2006/5 (Excess baggage, shipments and insurance) with its own Guidelines, so as to deprive the Applicants of their right to opt for the relocation grant (see *Bruno* UNDT/2016/071, *Cable* UNDT/2016/072, *Ronved* UNDT/2016/073, *Owens* UNDT/2016/074, *Mukhopadhyay* UNDT/2016/075, *Estifanos Gaim* UNDT/2016/076, *Quinones* UNDT/2016/077, *Aleman* UNDT/2016/078, *Zakrat* UNDT/2016/079, *Lasalandra* UNDT/2016/080, *Maia* UNDT/2016/081, *Smith* UNDT/2016/082 and *Gorbach* UNDT/2016/083).

15. On or about 29 August 2016, the Applicant requested to be paid relocation grant for her 2013 reassignment from Bunia to Entebbe within MONUSCO.

16. By letter dated 21 November 2016, the Chief RSCE, the office providing finance and human resource management support to MONUSCO, replied to the Applicant. In her letter, the Chief, RSCE, referred to the 3 June 2013 memorandum whereby the Applicant was informed that she would not receive the relocation grant for her reassignment within MONUSCO from Bunia to Entebbe on 31 May 2013.

17. On 17 January 2017, the Applicant requested management evaluation of the 21 November 2016 response from the Chief, RSCE.

18. On 19 January 2017, the Applicant filed the present application.

19. By letter dated 2 February 2017, the Officer-in-Charge of the Management Evaluation Unit (“MEU”) informed the Applicant that her request was not receivable, because it was time-barred.

Parties’ submissions

20. The Applicant’s principal contentions are:

- a. She has the right to be paid a relocation grant for her transfer from Bunia to Entebbe in 2013;

b. While she received the payment of the relocation grant for her dependants, she was not paid her own relocation grant; and

c. The Tribunal has ruled in several judgments that “it was not lawful for the Administration to substitute ST/AI/2006/5 with its own Guidelines, so as to deprive the Applicant of his right to opt for the relocation grant”. Based on this jurisprudence, she should be paid a relocation grant.

21. The Respondent’s principal contentions are:

a. The application is not receivable *ratione materiae* because at the time that the Applicant filed her application, she had not yet received the outcome of her request for management evaluation and the 45-day evaluation period had not yet expired;

b. The application is not receivable *ratione temporis* because the Applicant did not request management evaluation within 60 days of the 3 June 2013 decision;

c. The 21 November 2016 memorandum of the Chief, RSCE did not reset the time limits for requesting management evaluation. Indeed, this memorandum does not contain a new decision but it only reiterates the initial decision of 3 June 2013; and

d. The Applicant filed her application more than three years after she was notified of the contested decision. Her claim is, therefore, time-barred.

Consideration

Receivability

22. The Tribunal has carefully reviewed the evidence on file and has identified receivability as the preliminary legal issue.

23. It has been consistently reiterated by the Appeals Tribunal and by this Tribunal that management evaluation is a compulsory requirement to have access to the internal justice system. The only exceptions held in the internal legal

framework are disciplinary cases and decisions taken pursuant to the advice of a technical body (see *Servas* 2013-UNAT-349).

24. In the present case, the contested decision is the refusal of the Administration to pay the Applicant a relocation grant following her transfer from Budia to Entebbe.

25. A request for management evaluation of this decision was a mandatory step in the appeal process.

26. The Tribunal recalls staff rule 11.2, and in particular, para. (c) which provides as follows:

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a 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.

27. The consistent jurisprudence of the Appeals Tribunal is that there must be a timely request for management evaluation prior to submitting an application to the Tribunal (see *Dzuverovic* 2013-UNAT-338 and *Kouadio* 2015-UNAT-558).

28. It is also settled law that the time limit of 60 days for requesting management evaluation begins to run from the date of notification of the decision being challenged. The Tribunal does not have power to waive the deadlines for the filing of requests for management evaluation or to make any exception to it (see *Costa* 2010-UNAT-036 and *Christensen* 2013-UNAT-335).

29. The Tribunal notes that the Applicant was initially informed of the contested decision by memorandum dated 3 June 2013 and that she admitted in her application that she did not request management evaluation of such decision.

30. The 21 November 2016 response from the Chief, RSCE to the Applicant's request to be paid a relocation grant in relation to her transfer in 2013 is not a new administrative decision that "resets the clock" for the purpose of requesting management evaluation.

31. In fact, after having carefully reviewed the 21 November 2016 memorandum, the Tribunal is of the view that this document does not constitute a new decision since it does not add any new argument, nor does it include or consider any new facts. It is a mere reiteration of the initial decision dated 3 June 2013.

32. The jurisprudence of this Tribunal and the Appeals Tribunal has constantly held that a reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines. For instance, the Appeals Tribunal held in *Rosana* 2012-UNAT-273 (see also *Rabee* 2013-UNAT-296 and *Terragnolo* 2015-UNAT-566) that:

24. An appellant may not unilaterally determine the date of the administrative decision by sending an email to the Administration expressing an ultimatum to adopt a decision. If that were the case, no management review would ever be time-barred because the staff member could always prevent that possibility by simply sending an email to the Administration (...).

33. As a consequence, the reasons to dismiss this application are twofold: first, the Applicant did not request management evaluation within the 60 days of the 3 June 2013 decision, and second, she filed her application more than three years after she was notified of the contested decision, in breach of art. 8.4 of the Tribunal's Statute.

Conclusion

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

The present application is dismissed as not receivable.

Case No. UNDT/GVA/2019/015

Judgment No. UNDT/2019/127

(Signed)

Judge Teresa Bravo

Dated this 15th day of July 2019

Entered in the Register on this 15th day of July 2019

(Signed)

René M. Vargas M., Registrar, Geneva