



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

MASSI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Bettina Gerber, LPAS/UNOG

Adrien Meubus, LPAS/UNOG

Introduction

1. By application filed by postal mail on 17 July 2019, the Applicant, a former staff member of the United Nations Office at Geneva (“UNOG”), challenges the letter of 29 April 2019 of the Administrator, Compensation Claims Service, UNOG, advising him that the payment of his compensation for loss of earning capacity under art. 11.2(d) of Appendix D to the Staff Rules (Rules Governing Compensation in the event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations) would cease on 31 May 2019.

2. The Respondent submitted a reply on 19 August 2019 challenging the receivability of the application and requesting that the matter be disposed of by way of summary judgment.

Facts

3. The facts of the case were set out to a large extent in Judgment *Massi* UNDT/2016/100 and may be summarised as follows for the purpose of the present application.

4. On 28 March 1995, the Applicant, a security officer, was injured by individuals who entered the UNOG grounds during a protest.

5. On 18 May 1995, a claim for compensation under Appendix D was opened and, on 2 August 1995, it was transferred to the Advisory Board on Compensation Claims (“ABCC”).

6. By decision of the Secretary-General of 21 February 1999, the Applicant was awarded compensation under art. 11.3 of Appendix D for permanent loss of function of the whole person of 72%.

7. On 14 April 1999, he was granted a disability benefit under art. 33 of the Regulations of the United Nations Joint Staff Pension Fund (“UNJSPF”).

8. On 30 April 1999, the Applicant was separated from the Organization for health reasons.

9. On 13 January 2000, the Secretary-General decided to award compensation to the Applicant under art. 11.2(d) of Appendix D for loss of earning capacity effective 1 May 1999. The award of compensation was extended on 30 May 2002 and 29 October 2010 until 30 April 2012.

10. In May 2015, miscalculations in the compensation due to the Applicant for loss of earning capacity under art. 11(d) of Appendix until 30 April 2012 were detected by the ABCC, resulting in an amount of USD72,226.46 due to the Applicant. At the time, it was also decided to reassess the Applicant's entitlement to compensation for loss of earning capacity after 30 April 2012.

11. On 10 June 2015, the Applicant submitted a request for management evaluation challenging the amount offered to him as settlement of his claim for compensation under art. 11.2(d) of Appendix D until 30 April 2012, and the decision to reassess his entitlement to compensation after 30 April 2012. On 13 July 2015, he lodged an application before this Tribunal, which was registered under Case No. UNDT/GVA/2015/150.

12. By decision of 29 October 2015 of the Secretary-General, the continuation of the Applicant's compensation for loss of earning capacity under art. 11.2(d) of Appendix D was granted retroactively from 1 May 2012 until his normal retirement age on 31 May 2019, at the age of 62. A copy of this decision was communicated to the Applicant by letter of 23 November 2015.

13. By Judgment *Massi* UNDT/2016/100 of 19 July 2016, the Tribunal found that the Organization failed to timely fulfil its obligations to pay compensation to the Applicant for loss of earning capacity for the periods from 14 May 2005 through 30 April 2012 and from 1 May 2012 through 31 December 2015. The Tribunal consequently awarded compensation to the Applicant for the loss he had incurred as a result of the delayed payments due to him.

14. By letter of 29 April 2019, from the Administrator, Compensation Claims Service, UNOG, the Applicant was informed that his compensation for loss of earning capacity under art. 11.2(d) of Appendix D would cease on 31 May 2019, as per the 29 October 2015 decision (see para. 12 above).

15. By letter of 25 May 2019 to the Secretary-General, the Applicant requested continuation of the payment of his compensation for loss of earning capacity and, alternatively, leave to file an application directly to the Tribunal.

Parties' submissions

16. The Applicant's principal contentions are:

- a. The contested decision violates Appendix D, which does not provide that compensation for loss of earning capacity ceases at the age of 62 but rather requires a new determination of the Applicant's entitlement to compensation upon expiry of payments made pursuant to the 29 October 2015 decision;
- b. The contested decision violates the Dispute Tribunal's Judgment *Massi* UNDT/2016/100, which ruled that "in principle, there should be no interruption of payment as long as the disability condition persists";
- c. The Applicant requests:
 - i. Continuation of his payments for compensation of loss of earning capacity and reimbursement of "what has been wrongfully withheld" or, in the alternative, a lump sum payment, based on an average life expectancy; and
 - ii. Compensation for moral and material damages and costs.

17. The Respondent's principal contentions are:

- a. The application is not receivable *ratione materiae* as the Applicant did not request management evaluation of the contested decision; and

b. The application would also be irreceivable *ratione materiae* if the application is considered as a request for execution of Judgment *Massi* UNDT/2016/100 since the Applicant does not seek execution of any pronouncement made in said judgment, which has been fully executed.

Consideration

18. The Tribunal notes that the Applicant framed his application as a request for execution of Judgment *Massi* UNDT/2016/100 issued on 19 July 2016 but identified the contested decision as the decision of 29 April 2019 to discontinue his compensation for loss of earning capacity, issued subsequently. Since the legal basis for the application is not clear, the Tribunal will examine whether it is receivable as an application for execution of Judgment *Massi* UNDT/2016/100 or as an application challenging the letter of 29 April 2019.

19. Pursuant to art. 12.4 of the Dispute Tribunal's Statute, "[o]nce a judgement is executable under article 11, paragraph 3, of the present statute, either party may apply to the Dispute Tribunal for an order for execution of the judgement if the judgement requires execution within a certain period of time and such execution has not been carried out". In the instant case, the Applicant has not identified any operative part of Judgment *Massi* UNDT/2016/100 that would not have been executed. Furthermore, Judgment *Massi* UNDT/2016/100 dealt with the calculation and timing of compensation for loss of earning capacity due to the Applicant from 14 May 2005 until 31 December 2015. No order was made in respect of any payment or entitlement to compensation after 31 December 2015. The present application thus raises a different matter than that addressed in Judgment *Massi* UNDT/2016/100 and is not related to any of the remedies awarded therein.

20. Therefore, the application is not receivable as a request for execution of judgment under art. 12.4 of the Tribunal's Statute.

21. The application is not receivable either as a standalone challenge against the letter of 29 April 2019 since the Applicant did not request management evaluation, as required by art. 8.1(c) of the Tribunal's Statute and art. 5.2 of Appendix D.

22. In this connection, the Tribunal notes that the present application does not fall within the exception of staff rule 11.2(d), which would dispense the Applicant from seeking management evaluation prior to seizing the Tribunal. No decision was made in April 2019 pursuant to the advice of a technical body, namely a medical board or independent medical practitioner duly authorized to review medical decisions or medical recommendations or a Classification Appeals Committee (see ST/AI/2018/7 (Technical Bodies)).

23. The Applicant himself was aware of the requirement to submit a request for management evaluation and indeed sought leave from the Secretary-General to waive this requirement in his letter of 25 May 2019. There is no indication that the Applicant was granted the requested leave, irrespective of any consideration as to whether this would be possible under the applicable rules. The Appeals Tribunal has consistently held that management evaluation is a mandatory requirement for seizing the Dispute Tribunal and the latter has no power to entertain an application that does not meet this requirement (see, e.g., *Rosana* 2012-UNAT-273; *Dzuverovic* 2013-UNAT-338; *Kouadio* 2015-UNAT-558). Failure to fulfil this mandatory requirement renders the application irreceivable *ratione materiae* (*Egglesfield* 2014-UNAT-402).

24. In any event, the Tribunal finds that the letter of 20 April 2019 by the Administrator, Compensation Claims, UNOG, is merely a reiteration of the 29 October 2015 decision, so that the Applicant is duly informed that his payments would cease, and does not constitute a new administrative decision. It was clear from 29 October 2015 that the Applicant's compensation for loss of capacity earning would cease on 31 May 2019 when the Applicant reached the normal retirement age of 62. The Applicant did not raise any challenge against the decision of 29 October 2015 and the Tribunal also specifically acknowledged in Judgment *Massi* UNDT/2016/100 (see paras. 38 and 48) that payment of his

compensation for loss of earning capacity would cease when the Applicant reaches 62.

Conclusion

25. In view of the foregoing, the Tribunal DECIDES that the application is dismissed as not receivable.

(Signed)

Judge Teresa Bravo

Dated this 9th day of September 2019

Entered in the Register on this 9th day of September 2019

(Signed)

René M. Vargas M., Registrar, Geneva