



**Before:** Judge Francesco Buffa

**Registry:** Geneva

**Registrar:** René M. Vargas M.

BERTHAUD

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Robbie Leighton, OSLA

**Counsel for Respondent:**  
Angela Arroyo, UNDP

## **Introduction**

1. The Applicant, a former staff member of the United Nations Development Programme (“UNDP”), contests the decision to pay her repatriation grant at single rather than dependency rate.

## **Facts and procedural history**

2. On 5 August 2016, the Applicant separated from the service of UNDP upon reaching early retirement age. Since her husband was at the time serving with the World Food Programme (“WFP”), she remained in Rome, where she had been on secondment with the International Fund for Agricultural Development (“IFAD”) from 2011 to 2015.

3. Between December 2015 and November 2016, i.e., prior and after the Applicant’s separation from service, the Applicant had several email exchanges with a colleague in the Global Shared Services Unit (“GSSU”), UNDP, concerning her separation entitlements, namely repatriation grant, relocation lump-sum and travel grant. The exchanges focused in particular on the Applicant’s understanding of being entitled to be paid repatriation grant at the dependency rate, whereas her husband would receive it at the single rate.

4. By email of 10 November 2016, the Applicant’s GSSU colleague *inter alia* clarified to her that she and her husband would be paid a repatriation grant only if both were paid at the single rate.

5. By email of 14 Nov 2016 to her GSSU colleague, the Applicant acknowledged that UNDP’s and the UN Secretariat’s legal texts on repatriation grant were confusing, and she suggested to revisit the matter at the actual time of her relocation.

6. Consequently, in agreement with UNDP, the Applicant deferred until her husband's separation:

- a. The determination of the rate to be applied for the calculation of her repatriation grant and its payment; and
- b. The payment of her relocation lump-sum (paid in lieu of shipment).

7. By email of 17 April 2019 to her GSSU colleague, the Applicant *inter alia* advised UNDP that her husband would retire in July of that year and that WFP would be contacting UNDP regarding her husband's entitlements. The Applicant also requested that UNDP confirm that her repatriation grant would be paid at the dependency rate.

8. On the same day, the Applicant's GSSU colleague emailed her twice recalling his November 2016 clarification (see para. 4 above) and underlining *inter alia* that he needed to discuss the matter with WFP. In particular, referring to the Applicant and her husband, the Applicant's GSSU colleague clearly indicated that "There is only one of you who can get dependency rate for the full period and the other will only get the balance. This is why I need to talk with [WFP] on what is being paid. Your husband then would only be able to get the balance, if you [are] paid at dependency rate".

9. By email of 23 April 2019, a Human Resources Assistant ("HR Assistant") at WFP informed UNDP that the Applicant's husband would be paid repatriation grant at the single rate.

10. By email of 24 April 2019 to WFP and to the Applicant, the Applicant's GSSU colleague *inter alia* confirmed that:

- a. UNDP would pay the Applicant's repatriation grant at the single rate as well as USD5'000 as her relocation lump-sum; and
- b. There was no travel entitlement due by UNDP.

11. On 31 May 2019, the WFP HR Assistant and the Applicant's GSSU colleague exchanged emails on the implications of paying either the Applicant's or her husband's repatriation grant at the dependency rate. A consensus emerged on the fact that i) either of them claiming repatriation grant at the dependency rate would leave the other without such entitlement, and ii) each of them claiming the repatriation grant at the single rate was the most financially advantageous option.

12. By email of 18 June 2019, the Applicant's GSSU colleague provided her with a calculation of the two options available for the payment of her repatriation grant.

13. By email of 23 June 2019 to her GSSU colleague, the Applicant conveyed her disagreement with UNDP's interpretation of the rules related to the payment of repatriation grant.

14. By email of 28 June 2019, a Human Resources Specialist ("HR Specialist") within GSSU informed the Applicant that she had received her case for review. She also *inter alia* advised the Applicant that UNDP had been in touch with WFP "to coordinate the entitlements" and reiterated that the most beneficial option was for the Applicant and her husband to claim repatriation grant at the single rate. Finally, the HR Specialist informed the Applicant that as WFP had confirmed repatriation grant payment at the single rate for the Applicant's husband, UNDP would proceed to pay her repatriation grant also at the single rate.

15. The Applicant replied to the HR Specialist on the same day. Noting that lengthy exchanges on the matter had taken place and that her reading of the rules was different, the Applicant requested to be informed to "whom [she] should write to next in UNDP to claim a review of [her] claim to dependency rate according to the UN rule".

16. The HR Specialist responded to the Applicant by email of 3 July 2019 informing her that:

- a. Pursuant to UNDP rules, UNDP staff members cannot be paid repatriation grant at the dependency rate if their UN spouse receives said grant at the single rate; and

b. As discussions about her case were ongoing with UNDP Policy colleagues, she suggested to proceed with payment of her repatriation grant at the single rate subject to processing adjustments, if any, later on if needed.

17. By email of 4 July 2019, the Applicant acknowledged the HR Specialist's reply and confirmed that she would await the outcome of consultations between UNDP and WFP.

18. By email of 15 August 2019, the HR Specialist assured the Applicant that the policy question she had raised was still under consideration and that she hoped to have "final clarification" by the following week.

19. By email of 22 August 2019, the HR Specialist confirmed to the Applicant that payment of her repatriation grant was at the single rate, as she did not have a child recognized as a dependant at the time of her separation from service or of her actual repatriation. The HR Specialist concluded that there would be no adjustment made to the repatriation grant amount already paid to the Applicant.

20. By email of 23 August 2019 to the HR Specialist, the Applicant expressed her disagreement with the decision and requested confirmation of whether it was final so that she could appeal it in due course.

21. By email of 28 August 2019, the HR Specialist reiterated to the Applicant that UNDP was not able to pay her repatriation grant at the dependency rate.

22. On 18 October 2019, the Applicant filed a request for management evaluation contesting the decision not to pay her repatriation grant at the dependency rate.

23. By letter dated 2 December 2019, the Assistant Administrator and Director, Bureau for Management Services, UNDP, informed the Applicant that there was no basis for amending the contested decision.

24. On 28 February 2020, the Applicant filed an application before this Tribunal contesting the decision referred to in para. 1 above.

25. On 2 March 2020, the Respondent filed his reply arguing, on the one hand, that the application is not receivable because the Applicant failed to file a request for management evaluation within the statutory 60-day deadline and, on the other hand, that the contested decision was lawful.

26. On 26 January 2021, the case was assigned to the undersigned Judge.

27. By Order No. 48 (GVA/2021), the Tribunal informed the parties that the matter would be determined on the papers before it, and ordered them to file closing submissions, which they did on 1 March 2021.

### **Consideration**

#### *Receivability*

28. On the one hand, the Respondent argues that the deadline to request management evaluation of the decision to pay the Applicant's repatriation grant at the single rate started to run on 24 April 2019. Observing that the Applicant requested management evaluation on 18 October 2019, the Respondent concludes that the 60-day statutory deadline was not respected. On the other hand, the Applicant claims that it was only on 22 August 2019 that she received a final decision open to management evaluation.

29. The issue the Tribunal must determine is whether the decision taken in August 2019 constitutes a *reiteration* of the previous one, leading to the same result, or a *reconsideration* on the basis of different facts and/or premises.

30. The issue is relevant given that, as per the Appeals Tribunal's jurisprudence, the period to request management evaluation is reset by a new administrative decision only in the latter case of reconsideration (see *Fiala* 2015-UNAT-516; *Sethia* 2010 UNAT-079; *Odio-Benito* 2012-UNAT-196; *Staedtler* 2015-UNAT-546, *Kazazi* 2015-UNAT-557).

31. The documentary evidence before the Tribunal clearly shows that lengthy multi-party exchanges took place in connection with the determination of the rate at which the Applicant's repatriation grant was to be paid; moreover, this issue was not definitively assessed as it was influenced by the payment of the repatriation grant to the Applicant's husband, which was still in progress at the time. The record also shows that there was a "policy question" under review and that paying the Applicant the repatriation grant at the single rate was a temporary measure to move forward with her claim.

32. More relevantly, the rationale behind the decision to pay the entitlement at the single rate changed between April and August 2019. Indeed, the Applicant was first advised in April that payment at the single rate was due to her husband being a UN staff member also entitled to repatriation grant, whereas at the end, in August, the single rate was justified because her "children were not [her] recognized dependants at the time of her separation nor at the time of [her] separation" (cf. HR Specialist's 22 August 2019 email referred to in para. 19 above).

33. UNDP's actions and statements with respect to the Applicant's claim for dependency rate unequivocally support that a final decision was only arrived at in August 2019, following a reconsideration of the Applicant's claim and of its policy implications.

34. Consequently, the Tribunal finds that, at the earliest, the deadline to request management evaluation started to run on 22 August 2019 and expired on 21 October 2019. It follows that the Applicant's 18 October 2019 request for management evaluation was timely and the Tribunal finds that her application is receivable.

#### *Merits*

35. The Applicant argues that pursuant to sec. 5.3 of Administrative Instruction ST/AI/2000/5 (Repatriation grant) of the United Nations Secretariat, she is entitled to the repatriation grant at the dependency rate and her husband is entitled to it at the single rate.

36. The Respondent advances that the applicable legal instrument is UNDP's Policy on Repatriation Grant ("the UNDP Policy"), which superseded ST/AI/2000/5 in July 2016 upon its issuance and, more specifically, para. 17.d) of the UNDP Policy that regulates payment of the repatriation grant when both spouses are UN staff members.

37. The Tribunal recalls that the Applicant is a former UNDP staff member. As such, her repatriation grant is governed only by the UNDP Policy in combination with the Staff Regulations and Rules of the United Nations, in particular their Annex IV (Repatriation grant).

38. Payment of the repatriation grant when both spouses are UN staff members is specifically provided for in para. 17.d) of the UNDP Policy, which reads:

*Both spouses are UN staff members*

If both spouses are staff members and both are entitled to the repatriation grant, on separation, the grant is normally paid to each according to his/her length of qualifying service at the [single rate]. If there are dependent children, the first parent to be separated may claim payment of the grant at the [dependency rate]. In this case, the second parent to be separated may claim the repatriation grant either at the [single rate] for the period of service subsequent to the separation of the spouse or, if he/she is eligible, at the [dependency rate] for the whole period of qualifying service, less the amount of the repatriation grant paid to the first parent.

39. Firstly, contrary to what the Applicant argues, the application of the above provision is not limited to UNDP staff members as it seeks to reconcile payments made to staff members within the United Nations system, irrespectively of the fact that the spouse is a UNDP staff member too or not, avoiding in any case to duplicate the payment of the same entitlement. Actually, both UNDP and WFP are part of the UN Common System, the benefits and entitlements of which are established by the International Civil Service Commission, and the UNDP Policy with respect to preventing duplicate payment of the repatriation grant applies to staff members with spouses in other UN Common system organizations, not just to spouses in UNDP alone.

40. It may well be that, in sec. 5.3 of ST/AI/2000/5, the UN Secretariat has a less restrictive approach to the payment of repatriation grant when both spouses are UN staff members. The Applicant's argument that the UNDP Policy is unlawful because it differs from the rules at the UN Secretariat fails, as the Applicant was a UNDP staff member and UNDP policies apply to her. On the other hand, both the Secretary-General and the UNDP Administrator have discretion to establish repatriation grant terms and conditions for their respective entity, and it is not for the Tribunal to question any particular course of action opted for by a decision-maker in this respect.

41. Secondly, pursuant to para. 17.d) of the UNDP Policy cited above, WFP's payment of the repatriation grant at the single rate to the Applicant's husband required UNDP to also pay the Applicant at the single rate.

42. Indeed, if in general the said rule provides for a choice to the staff member to separate and a reckoning for the second (within the same UNDP), this beneficiaries' order does not preclude UNDP to consider the entitlement already received by the spouse (by his/her different employer, of course following its applicable rules) if separated before the staff member concerned. As already mentioned, the rule seeks to avoid double payments to staff members within the UN Common System.

43. Consequently, in applying its policy to the Applicant, UNDP could only pay her repatriation grant at the dependency rate if her husband was paid the single rate for only the period of qualifying service after the date of her separation (which would have only been three years and therefore not qualified him for payment of any grant) or if her husband was paid the single rate for his entire qualifying period of service, minus the amount of grant paid to the Applicant.

44. As a result, WFP's decision to pay the Applicant's husband repatriation grant at the single rate for his entire period of qualifying service precluded UNDP from paying the Applicant at the dependency rate under the UNDP Policy, which imposes that if one spouse is paid the single rate for his/her entire period of qualifying service, then the other spouse can also only be paid the single rate for his/her entire period of qualifying service.

45. Finally, the objection by the Applicant about the alleged unfairness of a rule that fails to provide a greater entitlement when there are dependent children than when there are not cannot be relevant before this Tribunal, who has the task to apply the rules and not to question their fairness (if not inconsistent with higher rules or principles).

46. Neither can the Applicant question the consistency of the UNDP Policy with staff rule 3.19(g). Concerning the amount and computation of the repatriation grant, the latter provides that:

When both spouses are staff members and each is entitled to payment of a repatriation grant on separation from service, the amount of the grant paid to each shall be calculated in accordance with terms and conditions established by the Secretary-General.

47. The above staff rule sets the authority for the establishment of specific terms to calculate the repatriation grant when both spouses are staff members. It does not stipulate those terms. Up to July 2016, UNDP applied ST/AI/2000/5, an UN Secretariat's issuance, for the calculation of the grant. Pursuant to the UNDP Administrator's authority, the UNDP Policy was issued in July 2016. The latter is to be read as *lex specialis* with respect to staff rule 3.19(g) and provides the specificity said staff rule mandates.

48. Consequently, the decision to pay the Applicant's repatriation grant at the single rate was in accordance with the UNDP Policy as well as Annex IV to the Staff Regulations and Rules of the United Nations and was lawful.

### **Conclusion**

49. In view of the foregoing, the Tribunal REJECTS the application in its entirety.

*(Signed)*

Judge Francesco Buffa

Dated this 4<sup>th</sup> day of June 2021

Entered in the Register on this 4<sup>th</sup> day of June 2021

*(Signed)*

René M. Vargas M., Registrar, Geneva