



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MUTSOLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Fatuma Mninde-Silungwe, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a Security officer at the United Multidimensional Integrated Stabilization Mission in Central African Republic (“MINUSCA”). On 18 February 2022, he filed an application in which he contests the decision to recover the relocation grant (“RLG”) and daily subsistence allowance (“DSA”) portion of the settling-in grant paid to him upon his return to his parent duty station at United Nations Headquarters (“UNHQ”) in New-York from a temporary assignment with MINUSCA. He also contests the Management Evaluation Unit’s (MEU”) response to his request.

2. On 23 March 2022, the Respondent filed his reply contesting the receivability of the application.

Facts

3. On 10 October 2005, the Applicant commenced service with the Organization in New York on a fixed-term appointment (“FTA”) as a locally recruited S-3 Security Officer.¹

4. On 14 October 2018, he was temporarily assigned to MINUSCA as a Security Officer at the FS-4 Level.²

5. On 21 October 2018, the Applicant was paid a settling-in grant and RLG relating to his assignment with MINUSCA.³

6. After completion of his temporary assignment on 1 January 2021, the Applicant returned to UNHQ. He was paid the DSA portion of the settling in-grant and an RLG related to his return.⁴

7. The Applicant resigned from his position at UNHQ on 15 March 2021 and on 22 March 2021, he was reappointed to MINUSCA in an FS-4 Security Officer

¹ Reply, annex R1.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

position.⁵

8. Following his reappointment to MINUSCA, the Applicant was paid the full amount of the settling-in grant on 27 April 2021.⁶

9. On 1 May 2021, the Applicant wrote to the Regional Service Center in Entebbe (“RSCE”) informing them that he had not received any RLG.⁷

10. The RSCE replied on 3 May 2021 that the Applicant was not entitled to RLG upon separation and reappointment within the same duty station in less than 30 days. RSCE subsequently corrected the 30 days to one year. The Applicant was only eligible to receive a prorated amount in settling-in grant and RLG for two out of 12 months since he had been appointed to MINUSCA only after two months of absence.⁸

11. The RSCE informed the Applicant by letter dated 30 June 2021 of the recovery of overpayments linked to his return to UNHQ, citing its basis. It indicated that the equivalent of 10 months of RLG would be recovered, which had not been done upon his resignation from the parent office after only two months of service. Moreover, recoveries would be made on account of the DSA portion of the settling-in grant which had been paid for a full year but would need to be prorated given that he had not completed a year by 15 March 2021.⁹

12. On 8 July 2021, RSCE calculated the total amount to be recovered as USD21,658.33, which included the RLG and the DSA portion of the settling-in grant, in three installments: (July – USD7,220.33; August – USD7,219; and September – USD7,219).

13. The Applicant pointed out to RSCE that pursuant to ST/AI/2016/5 (Settling-in grant), the DSA portion of the settling-in grant is not subject to recovery, and he

⁵ *Ibid.*

⁶ Reply, annex R2.

⁷ Application, annex entitled “Communication”, p. 1 of pdf binder.

⁸ *Ibid.*, pages 1 and 4 of pdf binder.

⁹ *Ibid.*, p. 5 of pdf binder.

proposed that his unpaid RLG for MINUSCA be factored into the recovery.¹⁰ RSCE informed the Applicant on 9 July 2021 that the issue had been escalated to the Service Line Manager and the team leader for further review and guidance.¹¹ On 9 July 2021 the Applicant requested information on whether the recovery had been suspended, as otherwise he would file a request for management evaluation.¹² On 12 July 2021, Mr. Anis Siddique, Human Resources Officer, RSCE, informed the Applicant via email that the recovery could not be suspended but after a conversation with the Applicant, he confirmed, on 13 July, that he had communicated with Payroll regarding suspension of the recovery until the issues in the case had been resolved.¹³

14. UNHQ advised on 15 July 2021 that the DSA was not to be recovered.¹⁴

15. On 9 August 2021, Mr. Siddique informed the Applicant that the matter was being referred to the Department of Operational Support (“DOS”) at UNHQ for guidance.¹⁵

16. On 31 August 2021, USD10,833.33 was recovered from the Applicant’s August salary.¹⁶

17. Between 21 September 2021 and 22 October 2021, there were communications between the Applicant and RSCE regarding the guidance received from DOS, where RSCE maintained that an outstanding balance of USD11,859.00 was still to be recovered.¹⁷

18. On 3 November 2021, the Applicant filed a request for management evaluation contesting the decision to recover USD10,833.33 from his salary in violation of ST/AI/2016/5. He indicates the date of the impugned decision as August 2021. The

¹⁰ *Ibid.*, pages 7 – 12 of pdf binder.

¹¹ *Ibid.*, p. 14 of pdf binder.

¹² *Ibid.*, p. 13 of the pdf binder

¹³ *Ibid.*, pages 15 and 20 of pdf binder.

¹⁴ *Ibid.*, p. 16 of pdf binder.

¹⁵ Application, p. 5.

¹⁶ Application, p. 5; reply, para. 10.

¹⁷ Application, annex entitled “Communication”, p. 21

date of 31 August 2021 is also indicated by the Applicant as the notification of the impugned decision in the present application.¹⁸

Considerations

19. In accordance with staff rules 11.2(a) and 11.2(c), for an application to be receivable, the applicant must first submit a request for management evaluation within the applicable time limit, which is “60 calendar days from the date on which the staff member received notification of the administrative decision to be contested”.

20. Article 8.1(c) of the UNDT Statute provides that an application shall be receivable if an applicant has previously submitted the requested administrative decision for management evaluation where required. Article 8.3 of the UNDT Statute provides that the UNDT may not waive the management evaluation deadline.

21. The application in the present case refers to two decisions: one communicated through emails dated 30 June and 8 - 9 July 2021, which contain all the essential elements of the purported recovery, and another one communicated through the August payslip, to proceed with a recovery of USD10,833.33 from the Applicant’s salary, which slightly differs from the announced recovery schedule, however, implies clearly that the Applicant’s request to suspend the recovery was unsuccessful. Whereas the RSCE may not have been quite transparent as to the guidance received from the Headquarters and the calculation of the recovery, there have been no facts put before the Tribunal indicating any new decision in the disputed matter after the 31 August 2021 payslip.

22. Only the latter decision was subject to a management evaluation request. Moreover, notwithstanding whether to treat the Applicant’s grievance as directed broadly against the recovery decision in general, or narrowly as directed against the non-suspension, the request for management evaluation was belated: pursuant to staff rule 11.2(c), the Applicant should have requested management evaluation of the 31 August 2021 decision by 30 October 2021, or even earlier, if the intent was to argue

¹⁸ Application, part 5 point 5.

against the recovery decision communicated between 30 June and 9 July. The Applicant was contemplating resorting to management evaluation already in July 2021, he, however, requested management evaluation only on 3 November 2021, which was after both deadlines.

23. Where the request for management evaluation is time-barred, the application before the UNDT is not receivable because the UNDT Statute forbids the waiving of time limits for management evaluation.¹⁹ The Appeals Tribunal also affirms that an untimely request for management evaluation bars applications before the Tribunal even if management evaluation was actually received.²⁰ As concerns the content of a management evaluation, it is established jurisprudence that, notwithstanding that the latter may vary the impugned decision²¹, is not appealable on its own terms.²²

Conclusion.

24. The application is rejected as not receivable.

(Signed)
Judge Agnieszka Klonowiecka-Milart

Dated this 3rd day of October 2022

Entered in the Register on this 3rd day of October 2022

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi

¹⁹ *Rosana* 2012-UNAT-273.

²⁰ *Awan* 2015-UNAT-588 para 13-14.

²¹ Staff rule 11.4 (a) A staff member may file an application against a contested administrative decision, *whether or not it has been amended by any management evaluation*, with the United Nations Dispute Tribunal... (etc)

²² *Hammond* 2021-UNAT-1143, para. 36; *Kalashnik* 2016-UNAT-661, para. 29; *see also Chawla* UNDT/2021/121, para. 4.