



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Isaac Endeley

DIA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alister Cumming, UNICEF

Introduction

1. By application filed on 6 September 2022, the Applicant, a former staff member, contests the decision to find him ineligible to participate in the Organization's after-service health insurance plan ("ASHI").

2. The Respondent filed a reply on 10 October 2022 requesting the Tribunal to reject the application on the merits, submitting that the contested decision was correctly made since the Applicant did not have sufficient qualifying years of service to be eligible for enrolment in ASHI.

3. This case was assigned to the undersigned Judge on 15 March 2023.

4. Having reviewed the submissions, the Tribunal ordered the parties, via Order No. 031 (NY/2023) dated 18 April 2023, to file their closing submissions by 9 May 2023. The Respondent complied with the order, but the Applicant did not. However, three days after the filing deadline, the Applicant, who is self-represented, sent an email to the Tribunal's Registry explaining that he had "failed to see the email sent on April 18th which contains Order No. 031-NY-2023" and asking to be granted "additional time". On the same day, the Tribunal granted the Applicant an additional ten days, or until 19 May 2023, to file his closing submission.

5. On 19 May 2023, the Applicant sent an email "to request a suspension of the order to file a closing submission so that [he] may submit additional motions". He also filed a motion for production of additional documents on the same date. On the Tribunal's instruction, the Respondent filed the requested additional documents on 1 June 2023. The Tribunal thereafter notified the parties via email on 5 June 2023 that no further submissions would be accepted in this case.

Facts

6. From 22 February 1997 to 20 February 2005, the Applicant was employed by the World Health Organization (“WHO”) on a series of consultancies and short-term appointments. Following a considerable break in service from the Organization, the Applicant was re-employed by the United Nations Children’s Fund (“UNICEF”) on 3 October 2016 on a fixed-term appointment. He continued until 31 October 2020 when he separated from service upon retirement.

7. The Applicant submitted a timely ASHI application through UNICEF, but it was rejected. After receiving the Applicant’s earlier contract details from WHO and verifying the eligibility criteria, UNICEF advised him via email dated 10 December 2020 that “due to the contract types (consultancy and short-term) these appointment periods cannot be taken [into] consideration for ASHI”. In subsequent email exchanges on 20 December 2020, 30 December 2020 and 20 January 2021, UNICEF advised the Applicant that the consultancy periods were excluded from the calculation but that even if his short-term appointments were factored into the equation, he would still not qualify for ASHI because he had not accumulated the required minimum of 10 years of contributory participation in a United Nations health insurance plan.

8. The Applicant then contacted the Organization’s Health and Life Insurance Section (“HLIS”), which administers the ASHI programme, and maintained extensive email exchange with them from February 2021 until April 2022. The email exchanges turned primarily on the interpretation of the Applicant’s recruitment date and WHO’s inability to certify whether, during the period of short-term appointments and consultancies from 1997 to 2005, the Applicant made sufficient qualifying contributions to the health insurance plan to make him eligible for ASHI enrolment in combination with the additional contributions he made during his service with UNICEF.

9. Ultimately, in an email dated 1 April 2022, HLIS informed the Applicant that following receipt of relevant information from WHO as well as a review of the related Personnel Action forms, they had determined that he was not eligible for ASHI since he did not meet the requirement of 10 years of contributory participation in a United Nations health insurance plan. HLIS pointed out that the Applicant's periods of short-term employment and consultancy with WHO could not be counted towards ASHI because he was not on a fixed-term or continuing appointment during that period.

Applicant's submissions

10. The Applicant submits that HLIS has improperly applied the eligibility criteria for enrolment in ASHI thereby excluding him from the benefit. He states that between 28 August 1999 and 20 February 2005, he was employed by WHO on multiple 200-series contracts and contributed to the staff health insurance scheme ("SHI"). He separated from WHO in 2005 but was reappointed in the United Nations common system and resumed his contribution to a United Nations health insurance plan in October 2016 when he was reappointed with UNICEF.

11. He maintains that as he was initially recruited *before* 1 July 2007, he has an "acquired right" to enrol in ASHI with a minimum of five years of health insurance contribution under 100-series and 200-series contracts. He argues that the four years of contributory participation in the UNICEF health insurance plan in combination with the earlier years of enrolment in the WHO health insurance plan make him eligible to enrol in ASHI and, therefore, HLIS's rejection of his application is a violation of the Organization's contractual obligation towards him.

Respondent's submissions

12. According to the Respondent, the Applicant's employment with WHO consisted of a series of consultancies and short-term appointments which only allowed for participation in a limited health insurance plan with limited benefits and

no coverage for spouses and children. Personnel covered by this policy are not eligible to participate in WHO's after-service health insurance plan. The Respondent also submits that during his period of service with WHO, the Applicant's employment was governed entirely by the WHO Staff Regulations and Rules, and that administrative issuances from the United Nations Secretariat did not form any part of the terms and conditions of his appointment.

13. Additionally, the Respondent notes that as there was no "special arrangement" between WHO and the United Nations, the period during which the Applicant was enrolled in the WHO health insurance plan cannot be counted towards the 10-year qualifying period for ASHI.

Considerations

14. The principal issue before the Tribunal is the determination of the Applicant's date of recruitment in the United Nations system as this is a basis for ascertaining his eligibility for enrolment in ASHI. On the one hand, the Applicant states that since he was first recruited to the United Nations system prior to 1 July 2007, he is only required to have participated in a contributory health insurance plan for a minimum of five years, continuous or otherwise, and that his participation in the WHO plan should be taken into consideration. On the other hand, the Respondent argues that the Applicant's prior service with WHO does not count because the Applicant's first appointment under the United Nations Staff Regulations and Rules occurred after 1 July 2007 and he has not participated in the UNICEF health insurance plan for the requisite minimum of ten years.

15. ASHI is governed by ST/AI/2007/3, the administrative instruction on After-service health insurance, and the eligibility criteria for enrolment in the programme are set out in sec. 2.1 of the provision, which reads, in relevant part:

Eligibility for after-service health insurance coverage

2.1 Individuals in the following categories are eligible to enrol in the after-service health insurance programme:

(a) A 100 series or 200 series staff member who was **recruited on or after 1 July 2007**, who while a contributing participant in a United Nations contributory health insurance plan as defined in section 1.2 above, was separated from service, other than by summary dismissal:

(i) At any age with a disability benefit under the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF) or with compensation for disability under appendix D to the Staff Rules; or

(ii) At 55 years of age or later, provided that he or she had been a participant in a contributory health insurance plan of the United Nations for a **minimum of ten years** and is eligible and elects to receive a retirement, early retirement or deferred retirement benefit under the Regulations of UNJSPF;

(b) A 100 series or 200 series staff member who was **recruited before 1 July 2007**, who while a contributing participant in a United Nations contributory health insurance plan as defined in section 1.2 above, was separated from service, other than by summary dismissal:

(i) At any age with a disability benefit under the Regulations of UNJSPF or with compensation for disability under appendix D to the Staff Rules; or

(ii) At 55 years of age or later, provided that he or she had been a participant in a contributory health insurance plan of the United Nations for a **minimum of five years** and is eligible and elects to receive a retirement, early retirement or deferred retirement benefit under the Regulations of UNJSPF;

...

16. Thus, under sec. 2.1 of ST/AI/2007/3, if it is determined that the Applicant was recruited before 1 July 2007, he would only need to have been a participant in a

contributory health insurance plan of the United Nations common system for a minimum of five years in order to qualify for ASHI, whereas if he is deemed to have been recruited on or after this date, the requisite period of time to qualify for ASHI would be a minimum of 10 years.

17. In this regard, the United Nations Staff Regulations and Rules provide guidance by clearly stating that when a former staff member is re-employed by the Organization, the terms of the new appointment shall be fully applicable “without regard to any period of former service” (unless the staff member is reinstated). Moreover, the service shall not be considered as continuous between the prior and new appointments. Specifically, staff rule 4.18 provides as follows:

Re-employment

(a) A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless the staff member is reinstated under staff rule 4.17.

(b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.

(c) When a staff member receives a new appointment in the United Nations common system of salaries and allowances less than 12 months after separation, the amount of any payment on account of termination indemnity, repatriation grant or commutation of accrued annual leave shall be adjusted so that the number of months, weeks or days of salary to be paid at the time of the separation after the new appointment, when added to the number of months, weeks or days paid for prior periods of service, does not exceed the total of months, weeks or days that would have been paid had the service been continuous.

18. The Appeals Tribunal has upheld the position that “a staff member who is re-employed is treated as having a new appointment without regard to any period of former service. Periods of former service will be relevant only in cases enumerated in Staff Rule [4.18(c)] – termination indemnity, repatriation grant or commutation of

accrued annual leave [...] ASHI is not one of the exclusions specified in Staff Rule [4.18(c)]” (see *Couquet* 2015-UNAT-574, para. 35).

19. In the case at hand, it is undisputed that following an 11-year separation from the United Nations common system, the Applicant was re-employed in October 2016 and given a new appointment. He was not reinstated. Accordingly, the terms of the new appointment are fully applicable “without regard to any period of former service”. Further, since the Applicant’s re-employment and new appointment occurred *after* 1 July 2007, his eligibility to participate in ASHI is contingent on his fulfilling the criteria laid out in sec. 2.1(a)(ii) of ST/AI/2007/3. Specifically, he is required to have been a participant in a contributory health insurance plan of the United Nations for a *minimum of ten years*.

20. The record shows that following his re-employment, the Applicant was not a participant in such a contributory health insurance plan for a minimum of ten years prior to his retirement on 31 October 2020. He was only a participant during his period of service with UNICEF, which amounted to a total of 4 years and 29 days. As a result, the Tribunal finds that the Applicant does not satisfy the criteria for enrolment and, therefore, is not eligible to participate in ASHI.

Conclusion

21. In view of the foregoing, the Tribunal DECIDES to reject the application.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 12th day of June 2023

Entered in the Register on this 12th day of June 2023

(Signed)

Isaac Endeley, Registrar, New York