UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/001
Judgment No.: UNDT/2023/064
Date: 23 June 2023
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

RODRIGUEZ SANTORUM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Adrien Meubus, LPAS/UNOG

Introduction

1. On 4 January 2023, the Applicant, who submits he is a staff member of the International Organization for Migration ("IOM"), filed an application contesting the rejections of his requests for after-service health insurance ("ASHI") by (a) IOM and (b) the Health and Life Insurance Section ("HLIS") in the United Nations Secretariat.

2. On 16 January 2023, the Respondent filed the reply in which he claims that the application is not receivable and requests that the application be disposed of by way of summary judgement.

Consideration

Receivability

3. The Appeals Tribunal in *Fasanella* 2017-UNAT-765 held that "the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review". As such, "the Dispute Tribunal may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed". See para. 20.

4. The Tribunal notes that in Judgment No. UNDT/2023/062 in Case No. UNDT/NY/2022/047, which concerns exactly the same contested decisions as the ones of the present case, the application was found not receivable because: (a) the Tribunal has no jurisdiction to undertake a judicial review of any decision of IOM that forms part of the application; and (b) the Applicant did not file a request for management evaluation against the HLIS decision before submitting the application to the Dispute Tribunal.

5. The part of the present case concerning IOM is therefore not receivable under the legal doctrine of *lis pendens*, which means that the same issue cannot be adjudicated

in two different cases (see, for instance, the Appeals Tribunal in *Haroun* 2017-UNAT-720).

6. With regard to the HLIS decision, the Applicant refers to his request for management evaluation of 4 November 2022. As the application in the present case is filed *after* this date, this part of the application is therefore, from this perspective, now receivable under staff rule 11.2.

7. The Respondent, however, contends that this issue is not receivable, because:

> a. The Applicant "has not identified any administrative decision capable of being reviewed, that is, a final, precise decision taken by a competent authority having direct adverse impact on contractual rights as a staff member or former staff member within the meaning of art. 2.1(a) of the [Dispute Tribunal's] Statute";
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> b. The "key characteristic of an administrative decision subject to judicial review is that the decision must 'produce […] direct legal consequences' affecting a staff member's terms and conditions of appointment; the administrative decision must 'have a direct impact' on the terms of appointment or contract of employment of the individual staff member", referring to *Hassanin* 2017-UNAT-759;
>
> c. None of the above conditions are met in the present case. The impugned "communication from [HLIS] of 8 September 2022 informing the Applicant that he is not entitled to ASHI is not an administrative decision" as it does "not bear any direct (or indirect) legal consequences on any terms and conditions resulting from the Applicant's former contract and there is no current contract in place given that the Applicant separated from the United Nations in 2012 and is not a staff member";
>
> d. Insofar as the Applicant's claim "may be understood to be a claim for ASHI from the Organization upon his retirement on the basis of his previous

relationship with the Organization, such a right is manifestly non-existent under the applicable policy, which provides in relevant part that '[ASHI] is available only as a continuation, without interruption between active service and retirement status, of previous active-service coverage in a contributory health insurance plan of the United Nations"';

e. In addition, the Applicant's "claim manifestly concerns eligibility to an alleged right that could only materialize, if such right existed, at the time of his retirement, which he alleges will occur only in 2025".

8. The Tribunal notes that by email of 8 September 2022, HLIS explicitly rejected a request for ASHI of 23 February 2022 from the Applicant:

> Dear [Applicant's first name],
>
> Thank you again for your patience while waiting for our response.
>
> We have reviewed your ASHI eligibility, and indeed the minimum requirements for ASHI have not been met upon your separation from IOM in April 2015:
>
> [United Nations Office of the Humanitarian Coordinator for Iraq]: 16 January 2003 to 31 December 2004, Fixed term appointment covered under UN Worldwide (UNWW): January 2003
>
> [United Nations Mission in Kosovo]: 01 July 2003 to 31 December 2004, Fixed term appointment covered under Medical Insurance Scheme: 01 July 2004 to 31 December 2004
>
> [United Nations Office on Drugs and Crime/United Nations Office at Vienna: 25 September 2010- 31 December 2012, Fixed term appointment covered under UNWW: 01 November 2010 to 31 December 2012
>
> IOM: 09 March 2013 to 04 April 2015, Fixed term appointment covered under IOM/Allianz: 09 March 2013 to 30 April 2015
>
> Based on the appointment or reappointment date, a minimum of 10 years of participation in the [United Nations] health plan under qualifying contracts (100-series, 200-series, [fixed-term appointment], continuing or permanent) is required.
>
> The period of insurance participation under qualifying contracts: 4 years 11 months

> We regret to inform you that based on the details provided to us as reflected in certified memos, and in conjunction with the current ST/AI and ST/IC in force, you are not eligible for ASHI.
>
> If you believe you have participated in the UNHQ administered insurance programs under the qualifying contracts with another UN agency, you must provide us with the necessary proof and we shall further review your case to determine eligibility.

9. The Appeals Tribunal has, in many instances, pronounced itself on the definition of an appealable administrative decision under art. 2.1(a) of the Dispute Tribunal's Statute. In essence, the legal significance of these pronouncements is the same, and a more comprehensive outline than the quotation by the Respondent was more recently stated in para. 19 of *Loubani* 2021-UNAT-1086, with direct reference also to *Hassanin*:

> It is acceptable by all administrative law systems that an "administrative decision" is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules and regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

10. With reference to *Loubani*, the Tribunal finds that the decision stated in the HLIS email of 8 September 2022 indeed was "a unilateral decision taken by the administration in a precise individual case", since HLIS addressed the email specifically to the Applicant and it was in response to his request of 23 February 2022 for ASHI. In addition, the decision had a "direct legal consequence" for the Applicant as HLIS directly and unequivocally rejected his request. All additional circumstances stated by the Respondent do not concern the Tribunal's jurisdiction but the merits of the Applicant's application, and are therefore not relevant to the determination of the application's receivability.

11. Consequently, the Tribunal finds that the application is receivable with regard to the Applicant's challenge against the Health and Life Insurance Section's rejection of his request for ASHI of 8 September 2022.

Summary judgment

12. The Respondent requests that the application be "disposed of by way of summary judgement in accordance with article 9 of the Rules of Procedure of the UNDT". The Respondent argues that "[t]here is no reasonable dispute in respect of the facts that are material to the receivability of the Application" and that "the application may be dismissed on grounds of receivability as a matter of law".

13. The Tribunal notes that under art. 9 of the Dispute Tribunal's Rules of Procedure (summary judgement), "[a] party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law".

14. As demonstrated below, there is indeed uncertainty and possibly also disagreement regarding various material facts of the case. Accordingly, the case may not be adjudicated on the basis of a summary judgment.

Conclusion

15. It is DECIDED that:

a. The Respondent's request for a summary judgment is rejected;

b. The appeal against the decision of IOM is not receivable;

c. The appeal against the decision of HLIS is receivable.

(Signed)

Judge Joelle Adda

Dated this 23rd day of June 2023

Entered in the Register on this 23rd day of June 2023

(Signed)

Isaac Endeley, Registrar, New York