



Before: Judge Eleanor Donaldson-Honeywell

Registry: Geneva

Registrar: René M. Vargas M.

EFRATI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Nicola Caon, DAS/ALD/OHR/UN Secretariat

Albert Angeles, DAS/ALD/OHR/UN Secretariat

Introduction

1. The Applicant, a Senior Staff Assistant at the United Nations Office in Vienna (“UNOV”), seeks an Order of the Tribunal for the enforcement of a settlement agreement.
2. For the reasons set forth below, the Tribunal finds that the Applicant’s case is not receivable as an application for enforcement of a settlement agreement.

Facts and relevant background

3. On 9 December 2022, the Applicant received a disciplinary sanction comprising three elements: a written censure, loss of two steps in the grade, and deferment for two years of eligibility for salary increment, in accordance with staff rules 10.2(a)(i), (ii), and (iii). This is the “original contested decision”.
4. On 9 March 2023, the Applicant filed an application with this Tribunal to contest the aforementioned disciplinary sanction, which was registered under Case No. UNDT/GVA/2023/013 (Efrati).
5. After engaging in settlement discussions, the parties signed a settlement and release agreement dated 22 August 2023 (“the Agreement”). In it, they agreed, on the one hand, that the Respondent would rescind the loss of two steps in the grade imposed on the Applicant. The other two elements of the sanction remained unchanged. On the other hand, the Applicant undertook to terminate her proceedings before the UNDT, namely Case No. UNDT/GVA/2023/013 (Efrati). The Agreement entailed a full and final resolution of any and all causes of action against the Organization in connection with the “original contested decision”.
6. As a result of the above,
 - a. The Applicant withdrew her application in the above-mentioned case;
 - b. The Applicant was restored to the G-6 step 11 level, with retroactive effect from 9 December 2022;

c. The decision letter dated 9 December 2022 was amended to remove the portion of the disciplinary measures consisting of loss of two steps in the grade; and

d. The disciplinary measures of written censure and deferment for two years of eligibility for salary increment were maintained.

7. The Agreement included a provision that in the event the Applicant “claims that implementation has not occurred as agreed and provided by the terms of [the] Agreement, [she] may file an application for enforcement of the Agreement pursuant to Article 8 of the Statute of the UNDT”.

8. On 24 August 2023, the Organization re-issued the disciplinary sanction letter of 9 December 2022 (see para. 6.c above).

9. On 19 September 2023, the Applicant was informed that instead of receiving her long service step increment in August 2026, she would receive it in August 2028 due to the two-year deferment of eligibility for salary increment.

10. On 16 November 2023, the Applicant sought management evaluation, identifying the delaying of the grant of long service step increment as the challenged decision.

11. On 17 November 2023, the Applicant filed the instant application for enforcement of the Agreement, which the Tribunal registered under Case No. UNDT/GVA/2023/061 (Efrati). She asks that the Tribunal enforce the implementation of the Agreement by ordering that the revised sanction have no impact on the timing of the Applicant’s grant of the long service step.

12. On 28 December 2023, the Respondent filed his reply. In it, he, *inter alia*, contests the receivability of the application referred to in para. 11 above.

13. By Order No. 18 (GVA/2024), the Tribunal instructed the Applicant to file a rejoinder and encouraged the parties to explore alternative dispute resolution.

14. On 25 March 2024, the Applicant filed her rejoinder.

15. On 1 April 2024, the parties filed a joint submission informing the Tribunal that they were not able to reach an amicable settlement.

16. By Order No. 117 (GVA/2024), the Tribunal denied the Applicant's request for disclosure of evidence, included in her application, and instructed the parties to file their respective closing submission by 9 October 2024.

17. On 30 September 2024, the Applicant filed a motion for extension of time to file her closing submission.

18. By Order No. 126 (GVA/2024), the Tribunal granted the Applicant's motion to for extension of time and extended both parties' deadline to file closing submissions.

19. On 18 October 2024, the Applicant and the Respondent filed their respective closing submission.

Consideration

Whether the application is receivable

20. The Applicant claims that the Administration's indication that she will only be entitled to be considered for her long service step increment in August 2028, instead of August 2026, contravenes the terms of the Agreement. By it, she was to receive a sanction of written censure and deferment for two years of eligibility for salary increment.

21. The Applicant claims that the agreed two-year deferment of eligibility for salary increment should count from the date she received the disciplinary sanction, i.e., 9 December 2022. Instead, the Administration counted it from the date on which the Applicant would be eligible for the long service step increment, i.e., August 2026, and claimed that this was so based on the terms of the Agreement, which rescinded the Applicant's loss of two steps in the grade.

22. The Respondent argues that the application is not receivable on two grounds.

23. Firstly, the settlement agreement has been fully implemented.

24. Secondly, the only relevant administrative decision in this case was the decision to impose on the Applicant the disciplinary sanction of written censure and deferment for eligibility for salary increment. That decision was part of the original 9 December 2022 disciplinary decision, which was contested in Case No. UNDT/GVA/2023/013 and resolved by the Agreement. The alleged decision taken on 19 September 2023 was not a new and separate administrative decision, but rather the implementation of the previous one.

25. The Tribunal recalls that the current application under judicial review is one for enforcement of a settlement agreement. Article 2(c) of the Tribunal's Statute provides that the Dispute Tribunal shall be competent to hear and pass judgment on an application "to enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute".

26. Article 8.2 of the Tribunal's Statute provides the following (emphasis added):

An application shall not be receivable if the dispute arising from the contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application **to enforce the implementation of an agreement reached through mediation**, which shall be receivable if the agreement has not been implemented and the application is filed within 90 calendar days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

27. As the Applicant seeks enforcement of the Agreement, the Tribunal only has jurisdiction if: the subject matter that the Applicant seeks to have enforced was part of the Agreement, said agreement has not yet been implemented, and the application is filed within the prescribed deadline.

28. In this case, the Agreement was effective on 22 August 2023, with no specific deadline for its implementation. The application was filed on 17 November 2023, thus "after the thirtieth day from the date of the signing of the agreement" referred to in art. 8.2 above.

29. The issues the Tribunal must consider for the purpose of receivability are, therefore, whether the subject matter of this application was one of the terms of the Agreement and whether the Agreement has been implemented or not.

Was deferment of eligibility for increment a term of the settlement agreement?

30. In considering whether the substance of what the Applicant seeks to have enforced was a term of the Agreement, the Tribunal must examine the terms of the original contested decision against the changes made by the Agreement.

31. On a review of both documents, it is clear that the “deferment for two years of eligibility for salary increment” was decided upon in the original contested decision. Indeed, said deferment is a part of the 9 December 2022 disciplinary decision that was not modified in any way by the Agreement. That aspect of the sanction remained all along as it was in the original decision.

32. The Applicant’s current concern, as raised in her application, relates to a change of circumstances that flowed from the Respondent’s agreement to relieve her of the sanction of the loss of two steps in grade. The Applicant benefited from that term of the Agreement in that she was restored to the G-6 step 11 level, with retroactive effect from 9 December 2022. All salary and emoluments lost based on her prior loss of two steps were restored.

33. In this context, the Applicant argues that, because her step level was restored, the timeline for accrual of her entitlement to step increments moved in tandem with the restoration of step level.

34. In the Tribunal’s view, the record does not allow to conclude that the deferment of eligibility for increment was a matter addressed in the Agreement. Accordingly, the Applicant has not met the first hurdle of receivability.

Was implementation of the settlement agreement completed?

35. On the question of implementation, it is not in dispute that an aspect of the original sanction that was modified by new terms in the Agreement was implemented. The aspect so addressed was the Applicant's loss of two steps in the grade. It is the Tribunal's finding that that aspect of the disciplinary sanction was the only aspect addressed in the terms of the Agreement.

36. The sanctions of censure and deferment of eligibility for salary increment were not changed, so there was nothing arising from the Agreement to implement regarding those disciplinary measures. As per clause 3 of the Agreement, the Applicant expressly agreed that "the portion of the disciplinary measures consisting of a written censure and deferment for a period of two years of eligibility for salary increment, shall not be rescinded".

37. The implementation of the one aspect of the sanction that was addressed in the Agreement took place over a period from 24 August 2023 to 28 September 2023, as explained by the Respondent in his reply:

On 24 August 2023, the Respondent issued an amended Sanction Letter, dated 9 December 2022, removing the disciplinary measure of loss of two steps in the grade but maintaining the disciplinary measures of written censure and deferment for two years of eligibility for salary increment ("Amended Sanction Letter") (Annex R/4). The Applicant was sent a copy via email the same day. The original Sanction Letter was removed from the Applicant's Official Status File ("OSF") and the Amended Sanction Letter was placed on the Applicant's OSF;

On 30 August 2023, the Respondent rescinded the loss of two steps in the grade imposed on the Applicant and restored her to the G-6 Step 11 level, with retroactive effect from 9 December 2022 (Annex R/5); and

On 28 September 2023, the Respondent remitted to the Applicant the sum representing the difference between the salary and related emoluments, including the Organization's pension contribution, that she would have received had the loss of two steps not been imposed on her, and the salary and related emoluments that she actually received, for the period from 9 December 2022 until the date of her restoration to the G-6 Step 11 level (Annex R/6).

38. The Agreement was fully implemented by 28 September 2023.

39. Accordingly, the application to enforce the Agreement is also not receivable because the settlement agreement in question has already been implemented by the time the current application was filed.

Conclusion

40. In view of the foregoing, the Tribunal DECIDES that the application is rejected as not receivable.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 5th day of November 2024

Entered in the Register on this 5th day of November 2024

(Signed)

René M. Vargas M., Registrar, Geneva