



Before: Judge Eleanor Donaldson-Honeywell

Registry: Geneva

Registrar: René M. Vargas M.

KIOSES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:

Julia Lee, OSLA

Counsel for Respondent:

Rosangela Adamo, AAS/ALD/OHR, UN Secretariat

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Introduction

1. At the time of the application, the Applicant served on a fixed-term appointment at the United Nations Assistance Mission in Afghanistan (“UNAMA”), as a Procurement Assistant at the FS5 level.
2. On 19 March 2019, he filed an application before the Geneva Registry of the United Nations Dispute Tribunal to challenge the Respondent’s failure to fully and properly process the payment of his special post allowance (“SPA”).
3. On 1 April 2019, the Respondent filed his reply to the application. The Respondent submits that the SPA claimed by the Applicant has been paid in full, and that he is not entitled to compensation for the delay in payment as there is no evidence that it caused him any harm.
4. On 2 February 2021, the Tribunal issued Order No. 17 (GVA/2021) setting this matter down for a case management discussion (“CMD”).
5. The CMD took place, as scheduled, on 11 February 2021 and both parties appeared represented by Counsel.

Consideration

6. The issues in this case were summarised by the Tribunal as follows:
 - a. Whether the Respondent acted properly and without unreasonable delay in processing the payment of the Applicant’s approved request for SPA for work done in 2015, which payments were finalised in March 2019 after the filing of this application;
 - b. Were there any relevant technical problems that caused justifiable delays;
 - c. Whether the January 2017 approval of the Applicant’s request for SPA gave rise to a legitimate expectation of timely payment;

d. Whether staff members are entitled to timely payment of approved entitlements and as such the Applicant was entitled to timely payment of the SPA;

e. If the payment of SPA was unduly delayed was this a decision for which the Applicant should be compensated with interest and/or moral damages for breach of his legitimate expectation of timely payment?

f. Should the Applicant be required to submit proof of harm when claiming interest on unduly delayed payment(s); and

g. Whether this claim has been rendered moot by the Respondent's promise made on 4 December 2018 that unpaid amounts would be settled "once a valid position against which your SPA can be processed is identified" and the payments thereafter made?

7. The Tribunal strongly encouraged the parties to engage in *inter partes* discussions, in good faith, so that this matter can be resolved without recourse to further litigation.

8. Neither party objected to the Tribunal's proposition to adjudicate this matter on the basis of their written submissions.

Conclusion

9. Having heard the parties' submissions, the Tribunal ORDERED THAT:

a. The parties will engage in *inter partes* discussions towards having this matter resolved, and jointly advise the Tribunal on the likelihood of settlement by **Friday, 5 March 2021**;

b. In the event that settlement discussions are unsuccessful the Respondent will file further submissions by **Friday, 12 March 2021**; and

Case No. UNDT/GVA/2019/011

Order No. 39 (GVA/2021)

c. The Applicant will file his closing submission by
Friday, 12 March 2021.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 12th day of February 2021

Entered in the Register on this 12th day of February 2021

(Signed)

René M. Vargas M., Registrar, Geneva