



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/028
Order No.: 163 (NBI/2022)
Date: 18 November 2022
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NYAKAIRU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for the Applicant:
Jacqueline Lule, OSLA

Counsel for the Respondent:
Saidou N'Dow, UN-Habitat

Introduction

1. The Applicant is a former staff member of the United Nations Human Settlements Programme (“UN-Habitat”). She commenced her retirement effective 31 July 2021.¹

2. By an application filed on 9 March 2022, she challenges a decision she terms as the Administration’s continued delay and failure to pay her special post allowance (“SPA”), or in the alternative an *ex-gratia* payment, for the higher level functions she performed while serving as: (i) Officer-in-Charge (“OiC”), Donor Relations and Income Management at the Division of Operations from 2016 to 2020; (ii) OiC, External Relations and Partnerships Branch from January 2020 to 31 July 2021 (retirement date); and (iii) the Administration’s continued failure to advertise or regularize the two positions, thereby denying her the related benefits of being appointed to either of the positions including calculation of pension benefit entitlement.²

3. The Respondent filed a reply on 19 April 2022, in which it is argued that the application is lacking in merit, and that it should be dismissed in its entirety.

4. On 27 September 2022, the Applicant filed a rejoinder to the Respondent’s reply.

5. In view of the submissions by the parties, the Tribunal has decided to hold a case management discussion (“CMD”). At the CMD, the parties shall present an agreed position, alternatively, separate positions supported by evidence, on the following points:

- a. Whether the Austerity Measures in the 26 July 2018 memorandum from the Executive Director have ever been lifted and if so, when? If the ban has not

¹ Application, section I.

² Application, section V.

formally been lifted, whether there have been senior posts classified, recruited for and/or staff members receiving SPA between 2018 and now.

b. Whether the UN-Habitat structure, as depicted in the 2020 organigramme is still in place.

c. What was the purpose and the ultimate fate of the “indicative classification” of the post of Chief, External Relations and Partnership Branch, drawn up by Mr. Joerg Weich on 1 September 2020 (application, annex 2, p. 4).

d. Whether the position of Chief, External Relations and Partnership Branch has been classified after the Applicant’s retirement, and on what level and grade it is now encumbered.

6. In the event the classification has not happened, the Respondent shall explain whether it is at all contemplated, and if so, when it will take place and at what level and grade.

ORDERS

7. A CMD in this case will take place on **24 November 2022 at 10.30 a.m.** (Nairobi Time, UTC +3) via Microsoft Teams. The CMD will be held *in camera* and will not be open to the public.

8. The parties or their duly designated representatives must attend the CMD. The Registry will provide a link to access the meeting.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 18th day of November 2022

Entered in the Register on this 18th day of November 2022

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi