



Before: Judge Goolam Meeran

Registry: Geneva

Registrar: René M. Vargas M.

TARR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Nicole Washienko, OSLA

Counsel for Respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Introduction

1. On 12 February 2015, the Applicant, an Investigator, Investigations Division (“ID”), Office of Internal Oversight Services (“OIOS”), filed an application contesting the following administrative decisions:

a. Refusal to pay daily subsistence allowance (“DSA”) beyond the initial period of 30 days of her assignment from Monrovia, Liberia to Entebbe, Uganda; and

b. Refusal to pay post adjustment and hardship allowance at the rate applicable to her duty station, namely Monrovia, Liberia, as well as the refusal to pay her additional hardship allowance.

2. The Respondent filed his reply on 19 March 2015 denying all of the Applicant’s claims, and asserting that they were not receivable because the Applicant’s request for management evaluation was filed 26 days after the expiry of the time limit under staff rule 11.2(c).

Relevant Facts

3. On 8 August 2014, the Deputy Director/Officer-in-Charge, ID, OIOS Vienna, sent an email to the Applicant and others, in which he referred to an earlier conversation with one of the Applicant’s colleagues. He advised that “the [Under Secretary-General]/OIOS decided to relocate you all to ID/Entebbe to work. The Executive Office will make the necessary arrangements and will be in contact with you on the matter”. The email did not provide any information regarding the terms and conditions of the relocation.

4. On 12 August 2014, an Administrative Assistant, Executive Office, OIOS New York, sent an email to the Applicant and to one of her colleagues stating: “[i]n connection with the recent decision from OIOS Management to laterally reassign you from OIOS [United Nations Mission in Liberia] to OIOS [Regional Service Centre in Entebbe], (duty station Entebbe) for six (6) months, kindly see below information pertaining to your entitlements and benefits.”

5. In particular, the email in question provided the Applicant with the following information:

7. Assignment grant: You will be entitled to an assignment grant (on a pro-rated basis) to compensate for the initial extraordinary costs incurred on moving to a new location, as well as the pre-departure expenses associated with relocation. The grant has two elements, a daily subsistence allowance (DSA) portion and a lump sum portion, both payable on arrival at the duty station.

a) The DSA portion of the assignment grant consists of 30 days DSA in respect of the staff member, at the rate applicable for your location (Entebbe), currently \$176 daily.

b) The lump sum portion is equivalent to one month's net base salary and post adjustment and it will be prorated to six months. Should your assignments in Entebbe be extended you will be paid the remaining lump-sum portion in proportion to the number of months the assignment is extended up until you've reached one year in the duty station.

6. On or about 8 September 2014, the Applicant reported for duty in Entebbe, Uganda.

7. On 12 September 2014, a Personnel Action Form entitled "Record Assignment" and with an effective date of 4 September 2014 was finalized by an Administrative Officer, OIOS. The "Remarks" section of the Personnel Action indicated "[r]ecord assignment for six months eff. 4/9/14 thru (sic) 3/3/15 from OIOS, UNMIL to OIOS, RSCE. Ent to \$1200 RLG & AG (30 days DSA & 1 mo LS pro-rated)."

8. By email of 13 September 2014 from the Executive Office, OIOS New York, the Applicant received a copy of the above-mentioned Personnel Action.

9. On 6 November 2014, the Applicant requested management evaluation of the "[d]enial of DSA beyond the initial 30-day period; denial of entitlements related to official duty station". She did not make specific reference to post adjustment, hardship allowance or additional hardship allowance.

Parties' submissions

10. The Applicant's principal contentions are:

- a. The payment of DSA should not have been restricted to 30 days, and she should have been paid DSA for the whole of the period of her assignment in Entebbe;
- b. The basis of calculation of post adjustment and other entitlements should have been the rate applicable to her duty station, Monrovia, Liberia;
- c. The email of 12 August 2014
 - i. did not constitute notification of the decision because it was sent by an Administrative Assistant; it was only on 13 September 2014, when she received a copy of her Personnel Action form, that she was notified. Her request for management evaluation was, therefore, made timeously on 6 November 2014 and, in the circumstances, her claim is receivable and must be adjudicated on its merits; and
 - ii. was silent regarding her "right" to have her spouse installed in Entebbe at the Organization's expense.

11. The Respondent's principal contentions are:

- a. The claim has no merit and, in any event, it is not receivable because the Applicant failed to submit a request for management evaluation within the requisite period of 60 days as required under staff rule 11.2(c);
- b. The email of 12 August 2014 constituted proper notification of the decision, and the copy of the Personnel Action form, which she received on 13 September 2014, was a mere confirmation that her assignment had been processed and recorded in the official records as previously advised;
- c. The copy of the Personnel Action form did not have the effect of resetting the clock;

d. The Applicant was aware, from the email of 12 August 2014, that she would receive entitlements as they relate to Entebbe. She agreed to the assignment on those terms. Staff, including the Applicant, were assigned from Monrovia to Entebbe for reasons of safety and security because of the outbreak of the Ebola virus; and

e. The Applicant did not request management evaluation concerning her claim about the installation of her dependent spouse in Entebbe. In any case, this claim is time-barred and not receivable.

Consideration

12. Before entering into the merits of this case, the Tribunal must first deal with the issue of receivability because it relates directly to its jurisdiction. In this connection, the issues that the Tribunal has to consider are:

a. Did the Applicant submit her request for management evaluation within 60 days of receipt of notification of the contested decision or the date on which she first came to know of it? An examination of this question will require factual findings based on documentary evidence of notification; and

b. If yes, did she file her claim with the Tribunal within 90 days of receipt of the management evaluation?

13. The Tribunal recalls staff rule 11.2 and, particularly, its paragraph (c):

(a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

...

(c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is *sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested*. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General. (emphasis added)

14. Furthermore, art. 8.1.(c) of the Tribunal's Statute provides that "[a]n application shall be receivable if [a]n applicant has previously submitted the contested administrative decision for management evaluation, where required".

15. The consistent jurisprudence of the Appeals Tribunal is that there must be a timely request for management evaluation prior to submitting an application to the Tribunal. (see, e.g., *Rosana* 2012-UNAT-273; *Dzuverovic* 2013-UNAT-338), and more recently reiterated in *Kouadio* 2015-UNAT-558, where the Appeals Tribunal recalled that it is "settled law that requesting management evaluation is a mandatory first step in the appeals process".

16. It is also settled law that the time limit of 60 days for requesting management evaluation begins to run from the date of notification of the decision being challenged. The Tribunal does not have power to waive the deadlines for the filing of requests for management evaluation or to make any exception to it (*Costa* 2010-UNAT-036; *Sethia* 2010-UNAT-079, *Samardzic* 2010-UNAT-072; *Trajanovska* 2010-UNAT-074, *Ajdini et al.* 2011-UNAT-108; *Barned* 2011-UNAT-169; *Muratore* 2012-UNAT-191; *Christensen* 2013-UNAT-335).

17. The entitlements and benefits that are relevant to this case were clearly set out in Exhibit A3 to the application, namely the 12 August 2014 email to the Applicant and another colleague (see para. 5 above). The Tribunal finds that in writing to the Applicant and others on that date, the Administrative Assistant, Executive Office, OIOS New York, was not acting on a frolic of her own but was communicating a decision made at a senior level in the hierarchy. It constituted valid notification, and the Applicant had 60 days from 12 August 2014 to challenge the terms under which she was being assigned. She failed to do so.

18. The Personnel Action finalized on 12 September 2014, and communicated to the Applicant on 13 September 2014, merely reiterated the administrative decision conveyed to her on 12 August 2014. The longstanding jurisprudence of the Appeals Tribunal is that the reiteration of an original administrative decision does not reset the clock with respect to the statutory time limits, which start to run from the date of the original decision (*Sethia* 2010-UNAT-079; *Odio-Benito* 2012-UNAT-196; *Cremades* 2012-UNAT-271).

19. It follows that the Applicant's claim is not receivable, and that the Tribunal does not have jurisdiction to consider the respective contentions of the parties on the merits of the case.

Judgment

20. It is the Judgment of the Tribunal that the claim is not receivable. The application is rejected.

(Signed)

Judge Goolam Meeran

Dated this 4th day of May 2016

Entered in the Register on this 4th day of May 2016

(Signed)

René M. Vargas M., Registrar, Geneva