



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

FONTAINE ORTIZ

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Jérôme Blanchard, UNOG

Introduction

1. The Applicant, a former staff member who served during his last years before retirement as an Inspector with the Joint Inspection Unit (“JIU”), contests the decision (a) not to grant him a last home leave entitlement, (b) not to grant him a repatriation grant entitlement of 20 weeks on account of his eight years of service as a staff member and 24 weeks for his ten years as JIU Inspector, and (c) not to pay him full assignment grant entitlement upon his appointment as an Inspector.

Facts

2. The Applicant served as Executive Secretary, JIU, in Geneva, from 1 November 1994 to 31 October 2002. At the end of 2002, he was appointed as Inspector with the JIU by the General Assembly, effective 1 January 2003 until 31 December 2007. His appointment as an Inspector was subsequently renewed for five further years, until 31 December 2012, the date of his retirement.

3. On 28 August and 17 September 2002, the Applicant wrote to the then Assistant Secretary-General for Human Resources Management (“ASG/OHRM”) with respect to his assignment and repatriation grant entitlements, in view of the forthcoming expiration of his contract as Executive Secretary, JIU, on 31 October 2002. On 29 October 2002, the Applicant received via fax a reply from the then ASG/OHRM dated 25 October 2002. In this reply, which indicated that the Office of Legal Affairs (“OLA”), at Headquarters, had been consulted on the matter, the Applicant was informed that he was not entitled to repatriation grant upon his appointment as a JIU Inspector, nor to full assignment grant payment.

4. Regarding the repatriation grant, the ASG/OHRM reply letter specified that, at the end of his contract, he would relocate for only two months and return to Geneva to take up new functions as an Inspector. Hence, this did not amount to “relocation” within the meaning of Annex IV to the Staff Regulations in force at the time. Nonetheless, his repatriation grant credits would be held in escrow until

the end of his term as an Inspector. He would then be paid the amounts on escrow, added to any further credits accrued during his service as an Inspector, up to the maximum provided for in the Staff Regulations and Rules, in accordance with the applicable rules.

5. Concerning the assignment grant, it was explained that art. 14 of the JIU Statute foresees compensatory and insurance arrangements for its Inspectors equivalent to those of staff members at the D-2 level. Under staff rule 107.20 (e) and sec. 6.1 of ST/AI/2000/17 (“Assignment Grant”), a staff member who returns to a prior duty station was not to be paid the full assignment grant unless he/she had been absent for at least one year. The Applicant was to be paid instead a pro-rata share of the assignment grant corresponding to the period he was away from the said duty station, which in his case was two months.

6. According to the Applicant, he repeatedly requested to be sent OLA advice referred to in the communication of 25 October 2002, but since he never received it, he decided to bring up the matter again at the end of his term as JIU Inspector. The Applicant thus did not contest the 25 October 2002 decision of the ASG/OHRM.

7. On 29 June 2010, following an inquiry by the Applicant on his home leave entitlements, the relevant Human Resources Officer, Human Resources Management Service (“HRMS”), United Nations Office at Geneva (“UNOG”), advised him that his 2011 home leave, which was an advance against the entitlement due in 2012, would be his last home leave. The Applicant did not contest this decision.

8. In April 2012, the Applicant applied for home leave. His request was rejected by HRMS/UNOG, based on advice given by the Office of Human Resources Management (“OHRM”), at Headquarters. By email of 12 June 2012, the Applicant inquired about the rationale of the decision. The Senior Human Resources Officer, HRMS, UNOG, replied by email dated 13 June 2012, providing ample explanations about OHRM interpretation of staff rule 5.2, which sets out the eligibility conditions for home leave. She specified, *inter alia*, that granting advance leave to the Applicant, pursuant to staff rule 5.2(f), did not mean

“to advance the calendar year in which his subsequent home leave entitlements fell due”. The Applicant retorted, on the same day, that the references on which the rejection was grounded were irrelevant to his case, as his terms and conditions of service as a JIU Inspector were governed by the JIU Statute. He accordingly requested that HRMS submission to OHRM be shared with him, since he was under the impression that OHRM had misunderstood the question. By email dated 2 July 2012, the Senior Human Resources Officer, HRMS, UNOG, clarified that the JIU Statute defined eligibility conditions of Inspectors for home leave entitlements by reference to the Staff Rules. Since the Applicant renewed his request, she shared with him the exchanges with OHRM on the matter on 6 July 2012.

9. The Applicant did not contest the decision relating to his home leave as communicated to him on 13 June 2012 by the Senior Human Resources Officer, HRMS, UNOG.

10. Later in 2012, the Applicant raised with HRMS, UNOG, the issue of his repatriation and assignment grant upon expiration of his appointment as a staff member in 2002. In response, on 8 October 2012, the Senior Human Resources Officer, HRMS, UNOG, re-stated the Organization’s position in this respect, attaching the memorandum of ASG/OHRM dated 25 October 2002. She informed the Applicant that payment of 12 weeks of relocation grant would be released. On 10 October 2012, she rectified that he would be paid 28 instead of 12 weeks of relocation grant.

11. By letter dated 5 November 2012, the Applicant requested the ASG/OHRM to reconsider OHRM position on his repatriation and assignment grant entitlements and his home leave. In a letter dated 16 November 2012, which the Applicant received on 20 November 2012, the ASG/OHRM confirmed and provided additional clarification in support of the earlier decision of 25 October 2002. She also confirmed that the Applicant was not entitled to an additional home leave.

12. On 11 February 2013, the Applicant submitted to the Management Evaluation Unit (“MEU”) a request for management evaluation of the decision

dated 16 November 2012 of the ASG/OHRM. He received a reply on 8 March 2013, by which MEU upheld the contested decision.

13. Following the submission of the application before this Tribunal, dated 8 June 2013, the Respondent filed his reply on 12 July 2013.

14. By Order No. 5 (GVA/2014), issued on 14 January 2014, the Tribunal indicated its view that the present case could be decided on the papers, and gave the parties the opportunity to submit observations thereon by 20 January 2014. None of the parties submitted observations.

Parties' submissions

15. The Applicant's principal contentions are:

- a. He has a right to a fifth home leave entitlement as, under the JIU Statute, Inspectors are entitled to home leave once every two years of service. Therefore, in ten years of service he should have had five home leaves;
- b. Regarding relocation grant, he is owed 20 weeks which were held in escrow on account of his eight years of service as a staff member, plus 24 weeks for ten years of services as a JIU Inspector. Moreover, the Organisation owes him 5/6 of the amount of the assignment grant further to his appointment as JIU Inspector;
- c. In accordance with the JIU Statute, Inspectors are not staff members of the United Nations. Their entitlements are not governed by the Staff Regulations and Rules, but by ST/SGB/2002/9 ("Regulations governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission") and the JIU Statute.

16. The Respondent's contentions regarding receivability *ratione temporis* are:

- a. The Applicant's claims regarding his home leave, assignment grant and repatriation grant entitlements are time-barred;

b. A staff member has a duty to pursue his/her interests through proper channels in a timely manner. A request for management evaluation should be filed within 60 days of receiving the contested decision and the Applicant did not respect such deadline;

c. Subsequent decisions by management rejecting a new request on the same matter are confirmations of the earlier decisions, which do not extend the time limit for the filing of an appeal.

Consideration

17. It is well-established jurisprudence that for an application to be receivable, the applicant has to adhere to the various time limits provided for in the Staff Rules and the Dispute Tribunal's Statute (*Mezoui* 2010-UNAT-043; *Ibrahim* 2010-UNAT-069; *Harding*, UNAT Order No. 44 (2011); *Meron* UNAT Order No. 42 (2011); *Islam* UNAT Order No. 7 (2010)). The Appeals Tribunal has repeatedly affirmed this finding and ruled that the statutory time limits shall be strictly enforced (see *e.g.*, *Romman* 2013-UNAT-308; *Mezoui* 2010-UNAT-043).

18. With respect to the time limits to request management evaluation, staff rule 11.2 provides:

Management evaluation

(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.

19. In the case at hand, the Applicant did not submit his request for management evaluation before 11 February 2013. The Tribunal finds that, under all possible perspectives, the Applicant missed the applicable statutory deadlines.

20. The Applicant was first informed of the decision not to pay him repatriation grant, while holding his credits in escrow until his final separation, and to pay him assignment grant for only two months, on 25 October 2002. At the time, the Applicant had the opportunity to contest the said decision under the former internal justice system. The first step for doing so, as per former staff rule 111.2 then in force, was to request the review of the administrative decision by the Secretary-General within two months of its notification. However, the Applicant did not formally challenge this decision at the time it was made. In fact, he expressly states in his application that he made a conscious choice to raise the issue only at the end of his service as JIU Inspector, that is, years after becoming aware of the relevant decision. Later, on 8 and 10 October 2012, HRMS/UNOG merely re-stated the same decision. Yet, even then, the Applicant failed to request management evaluation under staff rule 11.2 (c) then in force.

21. As to the decision to reject his request for a last home leave, the Applicant was informed thereof as early as 29 June 2010. Again, he did not present a timely management evaluation request. After he raised anew the same query, the Administration reiterated its position on 13 June 2012, through a detailed email sent by the Senior Human Resources Officer, HRMS, UNOG. Although he expressed disagreement in his next correspondence, the Applicant once more failed to submit a request for management evaluation. He instead wrote to the ASG/OHRM asking her to reconsider the earlier decisions, relating to his repatriation and assignment grant.

22. The Applicant only requested management evaluation of the contested decision after he received, on 20 November 2012, the letter dated 16 November 2012 from the ASG/OHRM, conveying again the determination on both the relocation and assignment grant and home leave entitlements.

23. As shown above, the Organization had made, and duly notified to the Applicant, the contested decisions well before that letter, namely, on

25 October 2002 concerning the relocation and assignment grant and on 29 June 2010 concerning the fifth home leave. It is worth stressing that these decisions were identical in scope and content to the following communications. Therefore, such subsequent communications can only be considered as mere confirmations of the previously made decisions.

24. As this Tribunal found in *Cremades* UNDT/2011/180, confirmed in appeal (*Cremades* 2012-UNAT-271), subsequent confirmatory decisions do not have the effect of suspending, or re-starting the time limits for initiating formal recourse proceedings. Therefore, the time limits for formal recourse—whether under the former or under the new internal justice system—started running as from 25 October 2002 and 29 June 2010 respectively. However, as described above, the Applicant failed to request administrative review/management evaluation within the requisite time limits at all stages.

25. Even assuming, for the sake of argument, that the applicable deadlines were calculated as from any of the various subsequent confirmatory decisions, the Applicant's request for management evaluation was made beyond the prescribed timeframes in any event. This applies even to the last communication i.e., the letter of the ASG/OHRM dated 16 November 2012, which is the one the Applicant referred to as the contested decision in his request to MEU and in his application. Indeed, the Applicant submitted his request to MEU on 11 February 2013, thus missing the 60-day time limit by more than 20 days.

26. It results from all the foregoing that the present application is not receivable, since the request for management evaluation was time-barred. In this respect, and although the Applicant does not request to waive the time-limit with respect to management evaluation, it is worth recalling that according to art. 8.3 of the Tribunal's Statute "[t]he Dispute Tribunal shall not suspend or waive the deadlines for management evaluation". The Appeals Tribunal has consistently held that:

[T]he UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review. Time limits prescribed for administrative review (and management evaluation under the new system), which could be waived under the previous

system, cannot be waived under Article 8(3) of the Statute of the Dispute Tribunal (UNDT Statute), due to a specific prohibition in this respect contained in Article 8(3). (*Ajdini et al.* 2011-UNAT-108; see also *Costa* 2010-UNAT-036, *Barned* 2011-UNAT-169, *Muratore* 2012-UNAT-191)

27. Consequently, the Tribunal cannot but conclude that the application is not receivable *ratione temporis*. Since the application is not receivable, the Tribunal is not in a position to assess the merits (see *Servas* 2013-UNAT-349).

Conclusion

28. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

(Signed)

Judge Thomas Laker

Dated this 29th day of January 2014

Entered in the Register on this 29th day of January 2014

(Signed)

René M. Vargas M., Registrar, Geneva