



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

THORVALDSDOTTIR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Alister Cumming, ALS/OHRM, UN Secretariat

Introduction

1. By application filed on 10 November 2014, and, upon the Registry's request, completed on 3 December 2014, the Applicant, a staff member at the International Criminal Tribunal for the former Yugoslavia ("ICTY") contests the decision to refuse her a Special Post Allowance ("SPA") to the P-2 level, while she was temporarily encumbering the position of Contracts Compliance Officer (P-2), at the General Services Section ("GSS"), Registry, ICTY.

Facts

2. The Applicant was appointed as a Procurement Assistant, G-5, ICTY, on 28 August 2009. On 4 February 2013, a temporary vacancy announcement was issued for the post of Contracts Compliance Officer (P-2), GSS, Registry, ICTY, to which the Applicant applied. She was informed of her selection on 7 March 2013, for an initial assignment of three months, which was subsequently extended several times.

3. By email of 18 April 2013, a Human Resources Assistant, Human Resources Section ("HRS"), informed the Applicant that:

[s]ince the temporary assignment [did] not meet either of the exceptional criteria set out in section 10 of [ST/AI/1999/17], [her] possible SPA [could] only be granted to one level higher than [her] current level, namely G-6.

4. On the same day, the Applicant expressed her concern and sought clarification from the Chief, HRS, in this matter.

5. The Applicant had a meeting with the Chief, HRS, on 12 June 2013, during which the latter reiterated that the Applicant would be granted an SPA to the G-6 level.

6. In September 2013, an SPA Panel was convened. The Registrar, ICTY, approved the granting of an SPA to the G-6 level to the Applicant, retroactively for the period 18 March to 30 November 2013, on 27 September 2013. Accordingly, the Applicant received retroactive salary payments with an SPA to the G-6 level. That decision was notified to the Applicant on 14 October 2013.

7. By email of 5 June 2014, the Applicant wrote to the Chief, HRS, requesting a decision on her request for SPA to the P-2 level, which she stated “remain[ed] pending and [she] would like to come to a resolution to this outstanding matter”.

8. The Chief, HRS, by email of 18 June 2014 to the Applicant, stated the following:

At our meeting last summer (12 June 2013) we discussed that as a GS-5 level staff person, you could be SPA-ed to the SG-6 level only. Accordingly, you have been receiving the SPA to the GS-6 level since June 2013.

The matter is not pending as the decision was made in June 2013 and remains in force.

9. The Applicant responded thereto that she “[had] not [been] under the impression that a final decision had been made as [she] perceived this matter still to be pending” and informed that she would now submit the case to the management evaluation unit (“MEU”).

10. The Applicant filed a request for management evaluation on 23 June 2014. By memorandum dated 16 September 2014, the Chief, MEU informed the Applicant that his Office had determined that her request was not receivable, since she had failed to submit her request for management evaluation within the statutory 60-days time-limit.

11. On the same day, the Applicant wrote to the Registrar, ICTY, requesting a new review of her SPA at the P-2 level. In that communication, she referred to having received “the decision of the SPA to the GS-6 level in October 2013”.

12. The application of 10 November 2014, completed on 3 December 2014, was served on the Respondent, who was requested to file his reply by 5 January 2015.

13. On 10 December 2014, the Respondent filed a motion for leave to file a reply limited to receivability, and to have the issue of receivability determined as a preliminary matter.

14. By Order No. 192 (GVA/2014) of 11 December 2014, the Tribunal offered the Applicant the possibility to file a response on the Respondent's motion, which she did on 15 December 2014.

15. Pursuant to Order No. 193 (GVA/2014) of 17 December 2014, the Respondent filed a reply limited to receivability on 31 December 2014.

16. By Order No. 6 (GVA/2015) of 8 January 2015, the Tribunal ordered that the parties file reasoned objections, if any, to a judgment on receivability being issued on the papers. None of the parties filed any objections thereto.

Parties' submissions on receivability

17. The Applicant's principal contentions are:

- a. She received the first written communication from the Chief, HRS, expressing her opinion on the matter of the SPA on 18 June 2014;
- b. Prior to that, the discussion had been an on-going dialogue between her and HR Assistants; the Chief, HRS, at the meeting of 12 June 2013, claimed that she had sent a request for permission to grant the Applicant an SPA to the P-2 level to New York, but no response had been received yet;
- c. Therefore, until the email of 18 June 2014, she could legitimately believe that the matter was still pending investigation and approval from headquarters;
- d. Retroactive corrections of SPA levels were usual practices at the Tribunal and she did expect the same in her case;
- e. Her request for management evaluation was thus filed within the statutory 60 days.

18. The Respondent's principal contentions are:

a. The Applicant was informed by HRS on 16 April 2013 that pursuant to para. 2.3 of ST/AI/1999/7 (Special post allowance), SPA may only be granted to one level higher than the staff member's personal level and that the exceptions provided for in sec. 10 of said administrative instruction did not apply; the same was reiterated subsequently in numerous telephone and email exchanges to the Applicant, and also at the meeting of 12 June 2013 with the Chief, HRS;

b. Upon the review by the Advisory Panel on 25 September 2013, the Registrar accepted the recommendation to grant an SPA to the G-6 level on 27 September 2013, and retroactive payments were made to her to that level;

c. The Head, Staff Administration Unit and the Chief, HRS, signed the personnel action providing for the payment of SPA to the G-6 level on 9 and 14 October 2013, respectively; it was sent to the Applicant via intra office mail on the same day;

d. The Applicant received retroactive payment of SPA and additional remuneration of SPA at the G-6 level, as documented in her pay slips; when the SPA to the G-6 level was extended on 29 November 2013 and 16 April 2014, the Applicant was again sent personnel action forms reflecting the same;

e. The decision to grant her an SPA to the G-6 level, as approved by the Registrar, ICTY, was notified to the Applicant on 14 October 2013; hence, the deadline to request management evaluation expired on 13 December 2013; by filing it on 30 June 2014, the Applicant's request for management evaluation was time-barred;

f. Her argument that her case was being reconsidered is not based on facts; before 4 November 2014, the Applicant never asked for a reconsideration of the decision by ICTY; the test for determining the date of

an administrative decision has to be based on objective elements which both parties can determine with accuracy (*Rosana* 2012-UNAT-273) hence any subjective considerations by the Applicant are irrelevant; the Applicant conceded—in a communication to the Registrar, ICTY, of 4 November 2014—that she received the decision of the SPA to the GS-6 level in October 2013;

g. A staff member who decides to resort to negotiations with the Organization does not absolve him or her from the obligation to respect the statutory time-limits;

h. The email of 18 June 2014 did not constitute a new decision; hence, the time limits did not start to run anew;

i. The Dispute Tribunal cannot waive the deadline for requesting management evaluation and the application should be rejected as time-barred.

Consideration

19. Pursuant to art. 2.1 of its Statute, the Tribunal has jurisdiction to consider applications only against an administrative decision for which an Applicant has, first, requested a management evaluation, and, second, filed an application within the statutory time limits (see *Egglesfield* 2014-UNAT-402; *Ajdini et al.* 2011-UNAT-108).

20. With respect to the time limits to file a request for management evaluation, staff rule 11.2(c) provides:

A request for 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.

21. The Tribunal recalls the established jurisprudence of the Appeals Tribunal, according to which statutory time limits have to be strictly enforced (*Mezoui* 2010-UNAT-043; *Laeijendecker* 2011-UNAT-158; *Romman* 2013-UNAT-308). Further, pursuant to art. 8.3 of its Statute and equally to the established jurisprudence of the Appeals Tribunal, the Dispute Tribunal has no discretion to waive the deadline for management evaluation or administrative review (*Costa* 2010-UNAT-036; *Rahman* 2012-UNAT-260; *Roig* 2013-UNAT-368; *Egglesfield* 2014-UNAT-402).

22. Further, the Appeals Tribunal has consistently held that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to the statutory time limits; rather, the time starts to run from the date the original decision was made (*Sethia* 2010-UNAT-079; *Odio-Benito* 2012-UNAT-196). The Appeals Tribunal also held in *Rosana* 2012-UNAT-273 that “the date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine”.

23. To determine the relevant date from which the 60-day deadline under staff rule 11.2(c) started to run in the case at hand, the Tribunal first has to assess when a final decision was taken to grant the Applicant an SPA at the G-6 rather than at the P-2 level. The Tribunal notes that HRS had told the Applicant as early as in April 2013 that she would be granted an SPA only at the G-6 level. However, the Tribunal notes that according to sec. 5.2. and 5.3 of ST/AI/1999/17 (Special post allowance), it is the head of department who shall make the decision on granting an SPA, upon the advice of a joint departmental panel (SPA Panel).

24. In the present case, the SPA Panel considered the Applicant’s case on 25 September 2013, and made an unanimous recommendation to grant the Applicant an SPA only to the G-6 level from March to 30 November 2013. That decision was approved by the Registrar, ICTY, on 27 September 2013. The Applicant stated in her letter to the Registrar, ICTY, that she had received the decision of the granting of an SPA to the G-6 level “in October 2013”. According

to the Respondent, said decision was notified to the Applicant, more precisely, on 14 October 2013. This was not contested by the Applicant.

25. Even assuming that any prior notification by HRS to the Applicant was not a final decision, there can be no doubt that the decision by the Registrar, ICTY, of 27 September 2013, notified to the Applicant on 14 October 2013, was so. Accordingly, the 60-day deadline started to run as from the date of said notification.

26. Therefore, and in view of the above-referenced jurisprudence, any subsequent communication from the Chief, HRS, was only a confirmative decision which did and could not reset the statutory time limits. It follows that by filing the request for management evaluation only on 23 June 2014, the present application has to be rejected, as irreceivable *ratione materiae* (see *Egglesfield* 2014-UNAT-402).

Conclusion

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

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 18th day of February 2015

Entered in the Register on this 18th day of February 2015

(Signed)

René M. Vargas M., Registrar, Geneva