



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

MUSCI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a retired staff member of the United Nations Logistics Base/United Nations Global Service Centre (“UNLB/UNGSC”), in Brindisi, contests the refusal to apply to her the guidelines on the “Revision to the Trattamento di Fine Rapporto Scheme in the [Department of Field Support (“DFS”)] supported Entities in Italy” and, in particular, the related yearly revaluation.

Facts

2. Further to a comprehensive local salary survey conducted in 2004, DFS undertook to establish a scheme for the payment of TFR for locally recruited staff members serving in entities supported by DFS in Italy. The TFR is an end-of-service allowance mandated under Italian law.

3. Consequently, on 28 August 2013, the Acting Director, Field Personnel Division (“FPD”), DFS, announced the approval of the establishment of the TFR for locally recruited staff members serving in entities supported by DFS in Italy, and promulgated guidelines for its implementation. It was specified that the TFR was “payable upon separation to staff members in the General Service category whose salary is based on one of the two United Nations salary scales established for General Service category in Italy”, that is, Rome or Brindisi. The guidelines set 1 October 2004 as the effective accrual date, based on the date of the 2004 comprehensive local salary survey.

4. The Applicant, who served as a General Service staff in UNLB, in Brindisi, under a fixed-term appointment, retired on 31 August 2013. She received payment of her TFR in November 2013. However, it did not include the yearly revaluation, that is, certain accrued legal interests that were a component of the TFR according to the Italian legislation, but not explicitly mentioned in the aforementioned guidelines. Also, the calculation of the Applicant’s TFR did not account for four months during which she served in the United Nations Support Missions in Libya, nor for her Language Allowance.

5. On 24 July 2015, the Director, FPD/DFS, promulgated “Revised guidelines on the administration of the TFR to staff members in the General Service category serving in DFS-supported entities in Italy” (“Revised Guidelines”), effective 1 March 2014. The Revised Guidelines included, *inter alia*, the revaluation of the TFR and the consideration of the full period on temporary duty assignment as qualifying period for TFR purposes.

6. By email of 9 October 2015, the Applicant requested UNLB/UNGSC to revise the calculation of her TFR and to adjust it in accordance with the revised TFR scheme, to include, notably, the accrued legal interest. She reiterated her request on 23 October 2015. In the absence of any response, she wrote to the Director, UNLB/UNGSC, on 10 November 2015, who advised her that he would look into the matter.

7. Following a reminder by the Applicant to the Director, the Chief of the Human Resources Office, UNLB/UNGSC, replied, on 9 December 2015, that “the TFR entitlement paid out upon [the Applicant’s] separation was administered correctly”, and communicated to her since her separation; hence, at that point the organization considered her case as closed.

8. On the same day, the Applicant replied pointing out that the 2013 guidelines were superseded by the revised ones and, thus, questioning whether the right guidelines had been applied to her.

9. In response, the Chief of the Human Resources Office reiterated, also on 9 December 2015, that the Applicant did not meet the requirements for the entitlement she claimed.

10. By email of 12 April 2016 to the Director, UNLB/UNGSC, the Applicant challenged the failure to include a series of components in the calculation of the TFR that had been paid to her. On the same day, the Director, UNLB/UNGSC, answered that the guidelines on that subject had been correctly followed, and that he would not revise her final TFR payment.

11. The present application was filed on 9 June 2016.

12. By motion of 16 June 2016, the Respondent requested that the case be adjudicated by summary judgment, given that the Applicant failed to submit a management evaluation request prior to seizing the Tribunal.

13. By Order No. 136 (GVA/2017) of 17 June 2016, the Applicant was requested to file comments on whether the requisite management evaluation had been submitted within the mandatory 60-day time limit, which she did on 29 June 2016.

14. The Respondent replied on 13 July 2016.

Parties' submissions

15. The Applicant's principal contentions on receivability are:

a. The Applicant raised issues on her TFR payment when she received it in November 2013, but she understood that the matter of the yearly revaluation was still under dispute between the UNLB Local Staff Union and the Administration. Moreover, she had repeatedly requested UNLB's management review and clarification as to the correct application as soon as she became aware of the revision of the guidelines; and

b. By email of 12 April 2016, the Applicant requested to the Director, UNLB/UNGSC, to reconsider the decision, to which he responded negatively.

16. The Respondent's principal contentions on receivability are:

a. The application is not receivable *ratione materiae*, since the Applicant did not submit the contested decision for management evaluation, as required;

b. The Applicant did not request management evaluation of the contested decision and can no longer do so as the 60-day time limit for that purpose has elapsed. This is so whether the contested decision is considered to have been taken in November 2013 or in December 2015;

c. The documents submitted by the Applicant at the Tribunal's specific request do not contain a request for management evaluation, but merely an email exchange between the Applicant and the Head of Office where the latter reiterated that the Applicant did not meet the requirements to receive the TFR under the Revised Guidelines.

Consideration

17. Staff rule 11.2 (Management Evaluation) provides that:

(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.

18. In this connection, under art. 8.1(c) of the Tribunal's Statute, for an application to be receivable, the concerned applicant must have "previously submitted the contested administrative decision for management evaluation, where required".

19. There is no doubt that the management evaluation was required in this case, since the contested administrative decision does not fall within any of the exceptions set out in staff rule 11.2(b).

20. The Applicant considers that she fulfilled this requirement through her email of 12 April 2016 to the Director, UNLB/UNGSC. However, this email—which, among other things, was not addressed to the competent body, namely the Management Evaluation Unit—does not constitute a valid management evaluation request.

21. It should be emphasised in this regard that a request for management evaluation has a precise and specific meaning in the framework of the internal justice system. It is the first step in formal contestation of an administrative decision and, as such, no communication conveying discontent to management will amount to a management evaluation request. Management evaluation is a formal process involving a request to the Management Evaluation Unit. It is specifically empowered to look into a contested decision to evaluate and consider whether it has been made pursuant to the administrative issuances of the United Nations. It is a process enabling a correction of administrative errors at an early stage, without the need to make an application to the Tribunal (*Kalashnik* 2016-UNAT-661, para. 27). A person disagreeing with the decision of the management evaluation may then proceed to the Tribunal.

22. It is to be regretted that the UNLB/UNGSC management did not provide the Applicant with clearer indications as to the legal avenues open to her when she manifested her intention to legally challenge the refusal to pay her TFR under the terms of the Revised Guidelines. Notwithstanding this, staff members are expected to be familiar with the Staff Rules and Regulations (*Jennings* 2011-UNAT-184, para. 26; *Diagne et al.* 2010-UNAT-067, para 22) and the fact remains that the Applicant omitted one of the mandatory steps required before coming before the Tribunal. The rules are extremely clear on this point and, accordingly, the jurisprudence has consistently reiterated that an application may only be deemed receivable if the decision at issue has previously been put to management evaluation (*Planas* 2010-UNAT-049, *Ajdini et al.* 2011-UNAT-108, *Christensen* 2013-UNAT-335).

23. In view of the above, the application is irreceivable *ratione materiae*.

24. In any event, even assuming it had been possible to consider the 12 April 2016 email to the Director, UNLB/UNGSC, as a request for management evaluation, it would still have been made well after the statutory deadline, to wit, 60 calendar days of the notification to the decision to the affected staff member. In consequence, the application would also have been equally irreceivable on this account.

25. Arguably, the impugned decision in this case was made in November 2013, that is, when the TFR payment was effected. This appears all the more plausible since there is nothing to suggest that the Applicant made any sort of caveat making her acceptance of the 2013 payment conditional on subsequent agreements on the calculation of this entitlement. If, nevertheless, the Tribunal were to follow the Applicant's claim that the calculation of the TFR was an open issue at the material time and that it was to be subsequently reconsidered on that basis, it is undisputable that a firm decision in this respect was made and notified to the Applicant through the email of the Chief of the Human Resources Office dated 9 December 2015.

26. In sum, 9 December 2015 was the latest date at which it could reasonably be considered that the contested decision was made. Yet, even in her own account, the Applicant did not write to the Director, UNLB/UNGSC, until 12 April 2016, thus, well exceeding the 60-day deadline.

27. Having found the application to be irreceivable, the Tribunal ought not to enter into the merits of the case (*Servas* 2013-UNAT-249, paras. 23 and 24).

Conclusion

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

The application is dismissed as irreceivable.

(Signed)

Judge Rowan Downing

Dated this 22nd day of February 2017

Entered in the Register on this 22nd day of February 2017

(Signed)

René M. Vargas M., Registrar, Geneva