



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

HO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

SUMMARY JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

HRLU/UNOG

Introduction

1. By application filed on 1 May 2017, the Applicant, a former Programme Management Officer (P-3), Sustainable Development Mechanisms Programme, United Nations Framework Convention on Climate Change (“UNFCCC”), contests an “error in salary step determination”.

Facts

2. By letter dated 24 September 2012, the Applicant was informed by the Chief, Human Resources Unit, UNFCCC, that she was “offered a fixed-term appointment for a period of one and a half years ... at step 1 of the P3 level”. She subsequently entered the Organization as a Programme Management Officer, UNFCCC, on 8 November 2012, under a fixed-term appointment at the P-3, step 1 level. In January 2015, the Applicant resigned effective 15 February 2015.

3. On 30 January 2017, the Applicant wrote to several persons at UNFCCC, requesting information on how her entry step (step 1) had been determined. UNFCCC provided her supporting documentation in this respect on 31 January 2017.

4. By email dated 4 February 2017 to the Management Evaluation Unit, the Applicant requested management evaluation of the “incorrect determination of [her] initial salary step in November 2012”.

5. By letter dated 8 February 2017, the Management Evaluation Unit rejected the Applicant’s request as irreceivable.

6. On 7 March 2017, the Tribunal issued judgment *Ho* UNDT/2017/013, with respect to her application against the amount of the repatriation grant paid to her. In para. 65 of that judgment, the Tribunal stressed that:

Finally, the Tribunal notes that the matter of the step granted to the Applicant upon her recruitment is not properly before the Tribunal and that, therefore, it is not competent to examine it.

Parties' submissions

7. The Applicant's principal contentions are:

a. The date of the administrative decision should be the date of Judgment *Faust* UNDT/2016/213, namely 6 December 2016, because in his arguments in that case the Respondent recognized her qualifications and related work experience, which had been "grossly under-evaluated" at the time of her initial recruitment;

b. She was not advised at the time of her initial recruitment that she could request a review of the step determination, via Human Resources or the Management Evaluation Unit; also, "UNFCCC internal grievance mechanism (i.e. management evaluation, UNDT) [were] not established as at 2012 or 2013";

c. UNFCCC acted negligently and in bad faith in dealing with matters pertaining to her employment, as reflected in paras. 63 and 64 of Judgment *Ho* UNDT/2017/013;

d. She seeks the following remedies:

i. Full disclosure of and explanation about which of her relevant work experience was discounted or excluded from the calculation of salary steps;

ii. An explanation of why her relevant Certified Public Accountant's qualification was not recognised in 2012 for additional salary step (while it should be), although it was used, in 2015, to defend another UNDT case;

iii. Compensate her financial loss during her two years and three months of employment as a result of the error in determining her salary by five steps; and

iv. Moral damages and non-pecuniary damages.

Consideration

8. Since the receivability of an application is a question of law, the Tribunal considers that it is appropriate to make use of art. 9 of its Rules of Procedure, and to decide on the application by way of summary judgment, without transmitting it to the Respondent (cf. *Gehr* 2013-UNAT-313; *Christensen* 2013-UNAT-335).

9. Pursuant to art. 2.1 of its Statute, the Tribunal has jurisdiction to consider applications only against administrative decisions for which, where required, an Applicant has first filed a timely request for management evaluation with the Management Evaluation Unit and, subsequently, also filed a timely application with the Tribunal (see *Egglesfield* 2014-UNAT-402; *Ajdini et al.* 2011-UNAT-108).

10. 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.

11. The Appeals Tribunal has consistently held that the Tribunals must strictly adhere to and enforce statutory filing deadlines (*Mezoui* 2010-UNAT-043; *Laeijendecker* 2011-UNAT-158; *Romman* 2013-UNAT-308; *Eng* 2015-UNAT-520). It further ruled that pursuant to art. 8.3 of its Statute, 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).

12. The Appeals Tribunal has also held that “unawareness” or “ignorance of the law is not an excuse” for a staff member to fail to comply with statutory time limits (see *Diagne* 2010-UNAT-067; *Sheepers* 2012-UNAT-211; *Cremades* 2012-UNAT-271; *Nianda-Lusakueno* 2014-UNAT-472). It is a staff member’s responsibility to ensure that he or she is aware of the applicable procedure in the context of the internal system of administration of justice (*Amany* 2015-UNAT-521).

13. Finally, pursuant to settled jurisprudence, 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, which start to run from the date of the original decision (*Sethia* 2010-UNAT-079; *Odito-Benito* 2012-UNAT-196; *Cremades* 2012-UNAT-271).

14. Upon taking up her functions as a Programme Management Officer at UNFCCC on 8 November 2012, the Applicant knew about her step in grade, as per her offer of appointment of 24 September 2012. Since the Applicant filed her request for management evaluation against the determination of her step upon recruitment with UNFCCC four years after assuming functions at the P-3, step 1 level—namely well after the statutory 60-day deadline—her application is irreceivable, *ratione materiae*.

Conclusion

15. In view of the foregoing, the Tribunal DECIDES to dismiss the application.

(Signed)

Judge Teresa Bravo

Dated this 31st day of May 2017

Entered in the Register on this 31st day of May 2017

(Signed)

René M. Vargas M., Registrar, Geneva