



Before: Judge Francis Belle

Registry: New York

Registrar: Nerea Suero Fontecha

PEACE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Steven Dietrich, ALD/OHR, UN Secretariat

Introduction

1. On 6 September 2017, the Applicant, a Senior Logistics Officer at the P-5 level, filed an application contesting the decision to not grant him a special post allowance (“SPA”) for performing higher-level D-1 functions for the period from 1 October 2016 until 3 February 2017. The case was registered with the Dispute Tribunal’s Registry in Geneva under Case No. UNDT/GVA/2017/068 and assigned to Judge Rowan Downing.

2. On 9 October 2017, the Respondent filed a reply.

3. By email of 16 November 2018, the Geneva Registry informed the parties that this case was transferred to the New York Registry, pursuant to the Tribunal’s decision to rebalance the Registries’ caseload. On 17 October 2019, the case was assigned to the undersigned Judge.

4. By Order No. 133 (NY/2019) issued on 31 October 2019, the Tribunal informed the parties that upon review of the parties’ submissions, the Tribunal decided that this matter can be adjudicated based on the papers before it.

5. Pursuant to Order No. 133 (NY/2019), on 11 November 2019, the Applicant filed a further submissions and stated that he agreed with the Tribunal’s assessment that a hearing is not required in this case.

Facts

6. The Applicant currently serves as a Senior Logistics Officer at the P-5 level at the Global Service Centre (“GSC”) to the Department of Field Support with the United Nations Logistics Base in Brindisi, Italy. The Applicant held this position at the time of the contested decision.

7. On 1 July 2016, the General Assembly approved the Secretary-General's proposal to move the post of Deputy Director of Mission Support (at the D-1 level) from the Office of the Director to the Logistics Service Section with the new title Chief, Logistics Service, at the GSC to the Department of Field Support in Brindisi, Italy.

8. The incumbent of the D-1 level Deputy Director post was scheduled to retire on 31 October 2016.

9. On 21 October 2016, the GSC issued a temporary job opening for the position of Principal Logistics Officer (Chief Logistics Service) at the D-1 level in order to fill the D-1 level Deputy Director post following the incumbent's retirement. The Applicant applied for the temporary job opening but was not successful.

10. On 3 February 2017, the selected candidate assumed the functions of Chief, Logistics Service (at the D-1 level).

11. On 6 February 2017, the Applicant requested SPA for the period from 1 October 2016 until the arrival of the selected candidate.

12. On 24 February 2017, the Applicant was informed by email that his request for a SPA was denied as the request did not meet the criteria indicated in ST/AI/2003/3 (Special post allowance for field mission staff).

13. On 24 April 2017, the Applicant sought management evaluation of the contested decision. On 29 September 2017, the Applicant received the outcome of his request for management evaluation by which his request was rejected.

Consideration

The applicable legal framework and the issues of the present case

14. The present case concerns a decision on whether the Applicant is entitled to a SPA for performing higher-level functions at the D-1 level while he was a Senior Logistics Officer at the P-5 level at the GSC in the Department of Field Support in Brindisi, Italy.

15. Staff rule 3.10(a) provides that “[s]taff members shall be expected to assume temporarily, as a normal part of their customary work and without extra compensation, the duties and responsibilities of higher level posts”.

16. Staff rule 3.10(b) provides that “[w]ithout prejudice to the principle that promotion under staff rule 4.15 shall be the normal means of recognizing increased responsibilities and demonstrated ability, a staff member holding a fixed-term or continuing appointment who is called upon to assume the full duties and responsibilities of a post at a clearly recognizable higher level than his or her own for a temporary period exceeding three months may, in exceptional cases, be granted a non-pensionable special post allowance from the beginning of the fourth month of service at the higher level”.

17. ST/AI/2003/3 (Special Post Allowance for Field Staff) implements staff rule 3.10 for staff working in field locations. Section 4 of the ST/AI/2003/3 on the eligibility for SPA requires that, prior to receiving SPA, a staff member must discharge the full functions of a post classified and budgeted at higher level than their own level. Section 5 of ST/AI/2003/3 requires that a request for SPA be initiated by the staff member or his supervisor. In considering SPA requests, the local SPA panel shall apply the eligibility criteria set out in sec. 4 of ST/AI/2003/3 above and shall confirm whether:

- a. The duties and responsibilities of the post, as set out in the job classification notification in the case of established missions or in the job description in the case of special missions, are clearly at a level higher than the staff member's own level;
- b. A post budgeted at the higher level is vacant or temporarily vacant and, for vacant posts, that the post has been advertised, unless the Department of Peacekeeping Operations has determined that a vacancy announcement should not be issued due to exceptional circumstances, such as the anticipated closure of the mission in the near future;
- c. The staff member possesses the qualifications, experience and capabilities required to perform all the functions of the post;
- d. There is sufficient justification for the selection of the recommended staff member for the higher-level functions, including evidence that other interested staff members were given an opportunity to express their interest in performing higher-level functions and that due consideration was given to their candidature;
- e. The supervisor has indicated the date of assumption of higher-level duties and whether the staff member has demonstrated since that time the ability to fully meet the performance expectations of all the functions of the post.

18. Section 6 of ST/AI/2003/3 requires that the earliest date from which a SPA may be paid for staff serving in established missions shall normally be the beginning of the fourth month of service at the higher level.

19. In the present case, the Applicant submits that he is entitled to receive a SPA for performing higher-level functions at the D-1 level for the period from 1 July 2016 until 3 February 2017. He contends that, pursuant to the 1 July 2016 decision of the General Assembly to approve the position of Chief, Logistics Service (at the D-1

level) at the GSC, the position of Chief of Logistics Service was deemed to be at the D-1 level effective 1 July 2016. As the Senior Logistics Officer at the P-5 level at the GSC, the Applicant states that he performed D-1 level functions from 1 July 2016 to 3 February 2017. The Applicant contends that the provisions of ST/AI/1999/17 (Special Post Allowance) apply in this case and they indicate that the relevant date is the date of assumption of higher functions and not the date of release of a temporary job opening. The Applicant states that having performed higher level functions for over half a year he has the right to be remunerated accordingly.

20. The Respondent submits that the decision to not grant the Applicant a SPA is lawful. The Respondent contends that the Applicant did not qualify for the SPA as he is not eligible for the allowance under ST/AI/2003/3 (Special Post Allowance for Field Staff). The Respondent states that the Applicant did not begin to perform the D-1 level functions effective 1 July 2016. The Respondent submits that the Applicant only performed the D-1 level functions from 21 October 2016 until 3 February 2017 and therefore he did not meet the eligibility requirements of ST/AI/2003/3.

21. At this juncture, the Tribunal notes that the Applicant, who is represented by Counsel, invokes an incorrect legal framework for the present case. The Applicant contends that the provisions of ST/AI/1999/17 (Special Post Allowance) apply in this case. This submission is misguided as the legal framework applicable to the Applicant's case is contained in ST/AI/2003/3 (Special post allowance for field mission staff), as was informed to the Applicant in the contested decision dated 24 February 2017 and the 29 September 2017 response to his request for management evaluation. The Applicant is a staff member with the United Nations Logistics Base in Brindisi, Italy and therefore a field staff member.

22. Furthermore, in the event the Applicant disagreed with the applicability of ST/AI/2003/3 he failed to provide any submissions on the reasons for why the framework was not applicable to his case.

23. The Tribunal finds that the requirements of ST/AI/2003/3 were not satisfied in the Applicant's case. Section 5.4 stipulates that in considering SPA requests, the local SPA panel shall apply the eligibility criteria set out in sec. 4 and shall confirm, *inter alia*, whether a post budgeted at the higher level is vacant or temporarily vacant and, for vacant posts, that the post has been advertised, unless the Department of Peacekeeping Operations has determined that a vacancy announcement should not be issued due to exceptional circumstance, such as the anticipated closure of the mission in the near future.

24. It follows that a condition for eligibility is that the higher-level post must have been advertised at the time the staff member is performing the higher-level functions, unless there are exceptional circumstances to justify not issuing a vacancy announcement.

25. In the present case, it is undisputed that the post of Chief, Logistics Service (at the D-1 level) at the GSC was advertised on 21 October 2016. There is no indication in the record of the existence of exceptional circumstances to justify not issuing a vacancy announcement earlier than this date, and nor has this issue been pleaded by the Applicant.

26. Under ST/AI/2003/3, 21 October 2016 is therefore the earliest date the Applicant could be deemed to assume higher level functions for the purpose of determining eligibility of a SPA. It is further undisputed that the Applicant ceased performing the higher-level functions on 3 February 2017 when the selected candidate assumed the functions of Chief, Logistics Service (at the D-1 level).

27. It follows that for the purpose of determining eligibility for a SPA, the Applicant performed higher level functions from 21 October 2016 until 3 February 2017. As he performed the higher-level functions for less than four months, the Applicant failed to meet the eligibility criteria under ST/AI/2003/3.

28. The Tribunal finds that the Applicant did not satisfy the criteria for SPA and that the Administration's decision not to pay it was lawful.

Conclusion

29. In light of the foregoing, the application is dismissed.

(Signed)

Judge Francis Belle

Dated this 18th day of December 2019

Entered in the Register on this 18th day of December 2019

(Signed)

For Nerea Suero Fontecha, Registrar, New York