UNDT/2009/077, Hocking, Jarvis, McIntyre

UNAT Held or UNDT Pronouncements

The reservations which each of the Applicants formulated upon accepting the lump sum are not binding on the Administration since, at the time the agreement was signed, the Administration and the staff member were not in a contractual situation in which each could negotiate rights. Instead, they were in a situation governed by rules in which the Administration could only apply the rules and the staff member could only accept or reject the lump-sum payment proposed. The applicants contend that only by accepting the lump-sum payment with reservations could they challenge the basis on which the Administration calculated that payment. This contention is ill-founded. The standard memorandum by which the Administration notified each applicant of the lump-sum payment he or she would receive upon exercise of that option constituted an administrative decision; in other words, it was a unilateral act by the Administration of a conclusive and individual nature. As such, it was appealable as soon as its adverse effect was felt if the lump-sum payment was rejected because of the incorrect basis of calculation. Contrary to what the Applicants contend therefore, only a refusal to accept the lump-sum payment entitled them to contest the amount.

Decision Contested or Judgment/Order Appealed

The Applicants contest the amount of the lump sums paid to them to cover the cost of their home leave travel. They seek payment of the difference between what they actually received and what they consider they should have received according to the rules.

Legal Principle(s)

The Staff Rules provide, principally, that the Administration shall pay the home leave travel expenses of a staff member and, subsidiarily, that a staff member shall be able to opt to receive a lump-sum payment prior to travel in order to defray the expenses to be incurred. The intent of the author of the administrative instruction is clear and can only be interpreted as barring any challenge of the lump-sum payment once it has been accepted.

Outcome

Dismissed as not receivable

Full judgment

Full judgment

Applicants/Appellants

Hocking, Jarvis, McIntyre

Entity

ICTY

Case Number(s)

UNDT/GVA/2009/045
UNDT/GVA/2009/046

Tribunal

UNDT

Registry

Geneva

Date of Judgement

19 Nov 2009

Duty Judge

Judge Cousin

Language of Judgment

English
French

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements
Annual leave
Jurisdiction / receivability (UNDT or first instance)

Applicable Law

Administrative Instructions
Former Staff Rules

- Chapter VII
- Rule 105.3