UNDT/2019/100, Thomas et al

UNAT Held or UNDT Pronouncements

Concerning receivability ratione temporis, which the Tribunal examined on its own motion, the Tribunal found that non-compliance with the deadline for technical reasons and supported by evidence falls outside the scope of art. 8.3 of its Statute, which requires a written request for an extension from an Applicant. As such, the Tribunal was satisfied that in this case, the Applicants filed their applications after the set deadline due to reasons outside of their control, which they timely flagged, and found the applications receivable ratione temporis. Concerning receivability ratione materiae, the Tribunal considered the fact that the Applicants did not request management evaluation on the grounds that the decision had been taken by a technical body. In this connection, the Tribunal noted the Applicants claim that they did not request management evaluation of the contested decision on the grounds that they relied on a previous position by the Administration in Tintukasiri et al. whereby “requests for management evaluation were not receivable ‘since the decision was taken pursuant to the advice from the [Local Salary Survey Committee (“LSCC”)] in conjunction with salary survey specialists, and as such of a technical body under the terms of staff rule 11.2(b)” and that, as per the Applicants’ claim, in that case, the UN MEU made a determination about LSCCs being “technical bodies” on behalf of the Secretary-General. The Tribunal observed that Administrative practices need to be consistent and uniform over a certain period of time so that staff members rely on and build legitimate expectations in relation to them. The Tribunal was of the view that the position adopted by the UN MEU in one or two cases does not constitute a consistent and coherent administrative practice that could lead the Applicants to build a legitimate expectation on which they could have relied upon and that, furthermore, it does not rise to the level of judicial precedent given the UN MEU’s nature as an administrative body within the Organization. Moreover, the Tribunal was of the view that the fact that the Secretary-General has delegated authority to the UN MEU to perform management evaluations on his behalf cannot lead to conclude that he is bound by MEU’s interpretation of such requirement in one or two specific situations. The Tribunal found that defining a

technical body requires a specific delegation of authority to be exercised under the form of an administrative instruction. Finally, the Tribunal found that requesting management evaluation was a mandatory requirement in this case. As the Applicants' failed to do so, their applications were deemed not receivable ratione materiae.

Decision Contested or Judgment/Order Appealed

28 Applicants contested the result of the comprehensive salary scale survey for local staff in India conducted in June 2013.

Legal Principle(s)

An application's receivability is a matter of law that may be assessed even if not raised by the parties and the Dispute Tribunal is competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute when determining the receivability of an application (Gehr 2013-UNAT-313, Christensen 2013- UNAT-335). A request for management evaluation is a legal and jurisdictional requirement of a compulsory nature that cannot be waived, neither by the parties nor by the Tribunal. The purpose of management evaluation is to allow the Organization to correct itself or to provide acceptable remedies to the parties in cases where, upon review, it determines that an administrative decision is unlawful or that the correct procedure was not followed.

Outcome

Dismissed as not receivable

Outcome Extra Text

This Judgment adjudicates the following cases: UNDT/GVA/2014/123/R1 (Thomas); UNDT/GVA/2014/131/R1 (Khetawat); UNDT/GVA/2014/155/R1 (Arora); UNDT/GVA/2014/171/R1 (Seshadri); UNDT/GVA/2014/176/R1 (Poulose); UNDT/GVA/2014/181/R1 (Mohanty); UNDT/GVA/2014/190/R1 (Bazar); UNDT/GVA/2015/006/R1 (Choudhar); UNDT/GVA/2015/007/R1 (Gorge);

UNDT/GVA/2015/008/R1 (Bhagotra); UNDT/GVA/2015/016/R1 (Gupta); UNDT/GVA/2015/017/R1 (Sharma); UNDT/GVA/2015/020/R1 (Das); UNDT/GVA/2015/022/R1 (Wadhwa); UNDT/GVA/2015/026/R1 (Vridhagiri); UNDT/GVA/2015/030/R1 (Subramanian); UNDT/GVA/2015/036/R1 (Mathur); UNDT/GVA/2015/038/R1 (Chawla); UNDT/GVA/2015/041/R1 (Rebello); UNDT/GVA/2015/044/R1 (Das); UNDT/GVA/2015/046/R1 (Nag); UNDT/GVA/2015/051/R1 (Abraham); UNDT/GVA/2015/061/R1 (Kumar); UNDT/GVA/2015/069/R1 (Sinha); UNDT/GVA/2015/071/R1 (Bartar); UNDT/GVA/2015/077/R1 (Behera); UNDT/GVA/2015/089/R1 (Rodrigues); and UNDT/GVA/2015/090/R1 (Ganesh).

Full judgment

Full judgment

Applicants/Appellants

Thomas et al

Entity

UNICEF

Case Number(s)

UNDT/GVA/2014/123/R1
UNDT/GVA/2014/131/R1
UNDT/GVA/2014/155/R1
UNDT/GVA/2014/171/R1
UNDT/GVA/2014/176/R1
UNDT/GVA/2014/181/R1
UNDT/GVA/2014/190/R1
UNDT/GVA/2015/6/R1
UNDT/GVA/2015/7/R1
UNDT/GVA/2015/8/R1
UNDT/GVA/2015/16/R1
UNDT/GVA/2015/17/R1
UNDT/GVA/2015/20/R1
UNDT/GVA/2015/22/R1

UNDT/GVA/2015/26/R1
UNDT/GVA/2015/30/R1
UNDT/GVA/2015/36/R1
UNDT/GVA/2015/38/R1
UNDT/GVA/2015/41/R1
UNDT/GVA/2015/44/R1
UNDT/GVA/2015/46/R1
UNDT/GVA/2015/51/R1
UNDT/GVA/2015/61/R1
UNDT/GVA/2015/69/R1
UNDT/GVA/2015/71/R1
UNDT/GVA/2015/77/R1
UNDT/GVA/2015/89/R1
UNDT/GVA/2015/90/R1

Tribunal

UNDT

Registry

Geneva

Date of Judgement

30 May 2019

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Applicable Law

Administrative Instructions

- ST/AI/2018/7

Secretary-General's bulletins

- ST/SGB/2009/4
- ST/SGB/2010/9

Staff Rules

- Annex I
- Rule 11.2(b)

UNDT Statute

- Article 2
- Article 2.6

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2010-UNAT-058
2015-UNAT-555
2016-UNAT-695
2014-UNAT-479
2013-UNAT-313
UNDT/2014/026
2015-UNAT-526