

UNDT/2020/156, Tarabay

UNAT Held or UNDT Pronouncements

The authority to grant an SPA, which, at Annex IV to ST/SGB/2019/2, is delegated to Heads of entity (D-1 and below) and which the Officer in Charge exercised in handling the SPA request is different from the authority to grant an ex gratia payment. The Applicant did not provide any evidence to prove that the authority to award an ex gratia payment was at any point delegated from the USG/DMSPC. In the absence of evidence of express transmission of authority, the Tribunal was not satisfied with the Applicant's assertion that the Acting Director of the Administrative Services Division had delegated authority to grant the Applicant an ex gratia payment. The Acting Director of the Administrative Services Division correctly advised the Applicant to address her request for an ex gratia payment to the USG/DMSPC who had authority to take the decision. The Acting Director's memorandum was therefore not a refusal to take a decision as alluded to. Rather, it was advice directing the Applicant to forward her request to the appropriate and competent authority for a decision. The Tribunal agreed with the Respondent that the Acting Director did not purport to exercise any function or power in his correspondence of 26 June 2019 responding to the request for an ex gratia payment in lieu of SPA. He did not have the legal mandate to make the decision regarding the Applicant's request. The nature of his communication, advice to the Applicant's Counsel that the authority to grant an ex gratia payment was delegated to the USG/DMSPC, could not be said to constitute an administrative decision nor did it produce any direct negative legal consequences on the Applicant's contract. The Applicant's request for management evaluation could not be construed as a request for an ex gratia payment because the role of the MEU in the formal justice system is to review contested administrative decisions so that remedial action may be taken in cases where management has made an error of judgment in arriving at a decision and thereby avoid judicial review of the decision.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the ESCWA Administration's refusal to grant her an ex gratia payment in lieu of Special Post Allowance ("SPA") "in spite of her performing recognised additional responsibilities as UMOJA HR Partner for a period of more than two years".

Legal Principle(s)

ST/SGB/2019/2 (Delegation of authority in the administration of the Staff Regulations and Rules and the Financial Regulations and Rules) establishes the regulatory framework for delegation of authority to heads of entity to implement specified aspects of the Staff Regulations and Rules and the Financial Regulations and Rules. Any mechanism used for the purpose of delegation of authority must contain a clear transmission of authority to the grantee concerning the matter being delegated. The burden is on the staff member to show that authority concerning the matter in dispute was transmitted. Article 2.1(a) of the UNDT Statute confers jurisdiction upon the UNDT to hear and pass judgment on an application to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged noncompliance. The burden is on the Applicant to establish that there is an administrative decision that is in non-compliance with the terms of his or her appointment or contract of employment. An appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member's terms and conditions of appointment". When considering a reviewable decision, the Tribunal is called upon to consider, apart from the legal consequences, also the nature of the decision and the legal framework under which the decision was made. To qualify as an appealable administrative decision, the staff member must show that the impugned decision was taken by a competent and appropriate authority, as designated by relevant regulations, rules and administrative issuances.

Outcome

Dismissed as not receivable

Outcome Extra Text

The Tribunal found that a decision of the MEU is not an administrative decision subject to challenge. The ApplicantNULLs request for management evaluation could not be construed as a request for an ex gratia payment. The application was not receivable *ratione materiae* and it was accordingly dismissed.

Full judgment

[Full judgment](#)

Applicants/Appellants

Tarabay

Entity

ESCWA

Case Number(s)

UNDT/NBI/2020/002

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

27 Aug 2020

Duty Judge

Judge Sikwese

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Jurisdiction / receivability (UNDT or first instance)

Subject matter (ratione materiae)

Remedies

Applicable Law

Secretary-General's bulletins

- ST/SGB/2019/2

UNDT Statute

UNAT Statute

- Article 2.1(a)