

UNDT/2021/158, Korotaeva

UNAT Held or UNDT Pronouncements

Scope of judicial review The Tribunal entertains applications against administrative decisions *de novo* and without regard to the outcome of the MEU review. Accordingly, the Tribunal will not adjudicate the Applicant's arguments in relation to the Internal Oversight Office (IOO's) responses to her request for management evaluation. Whether the contested decision is lawful Whether the Applicant is eligible to receive a termination indemnity In the present case, the Applicant joined WMO on 1 July 1999. Her normal retirement age is thus 62 pursuant to art. 1 of the UNJSPF Regulations. When she separated from the Organization, the Applicant was 63 years old and, consequently, had exceeded the normal retirement age and contributed to the UNJSPF for more than five years. This entitles the Applicant to a retirement benefit under art. 28 of the UNJSPF Regulations. Accordingly, the Tribunal finds that the Applicant is ineligible to the payment of a termination indemnity pursuant to WMO staff rule 193.3 (c). The Applicant's submission that she is entitled to a termination indemnity under WMO staff rule 193.2 To support her submission, the Applicant specifically argues that the only exception that could apply but is in fact not applicable to her case is provided for in WMO staff rule 193.2 (d)(v), according to which the termination indemnity is not paid to a staff member who is retired under the UNJSPF Regulations. In this respect, the Tribunal first notes that the determining elements of a retirement benefit under the UNJSPF Regulations are age and contributory service at the time of separation. The entitlement is not linked to the reasons behind a separation from service (e.g., abolition of a post, resignation, dismissal). In this regard, the Tribunal wishes to highlight that it is irrelevant whether the Applicant intended to work until age 65. Second, the Tribunal takes note of the fact that regardless of the applicability of WMO staff rule 193.2 (d)(v), WMO staff rule 193.3(c) sets forth an independent and unambiguous condition governing staff members' entitlement to benefits, namely, that the termination indemnity will only be paid when the staff member concerned will not receive a retirement benefit under art. 28 of the UNJSPF Regulations. Considering that at the time of her separation from service, the Applicant had exceeded the normal

retirement age, and contributed to the UNJSPF for more than five years, as well as the fact that she had not secured further employment with another entity member of the UNJSPF that could have allowed her to continue her participation into the UNJSPF, she was then entitled to a retirement benefit and her case falls squarely within the scope of WMO staff rule 193.2 (d)(v). Accordingly, the Tribunal finds that there is no merit in the Applicant's submission that she is entitled to a termination indemnity under WMO staff rule 193.2. The Applicant's submission in relation to deferment of the retirement benefit The Applicant further submits that she can defer her entitlement to a retirement benefit, thus avoiding the provision of WMO staff rule 193.3(c). Under art. 32 of the UNJSPF Regulations, while a staff member may elect to defer the exercise of his/her choice of benefit, or between a form of benefit involving payment in a lump sum and another form, for a maximum period of 36 months, such deferment does not affect the entitlement date as of which the Applicant's benefit is to be calculated and paid pursuant to art. 28 of the UNJSPF Regulations. This is confirmed by sec. I.1 of the UNJSPF Administrative Rules, whereby "entitlement to a benefit shall ... vest in a participant ... on the day succeeding the last day of contributory service". It follows that the Applicant's retirement benefit vested on 1 September 2020, the day following her separation from service; deferring the exercise of her retirement benefit does not affect the applicability of art. 28 of the UNJSPF Regulations, and, accordingly, the applicability of WMO staff rule 193.3(c). Therefore, the Tribunal finds that WMO staff rule 193.3(c) remains applicable regardless of whether the Applicant requested payment of her benefit upon her separation from service or decided to defer such payment to a later date. In light of the above, the Tribunal finds that the Applicant is ineligible to the payment of a termination indemnity and, therefore, the contested decision is not unlawful.

Decision Contested or Judgment/Order Appealed

The Applicant, a former staff member with the World Meteorological Organization ("WMO") in Geneva, contests the decision not "to pay [her] termination indemnities upon separation from service at WMO due to abolition of post."

Legal Principle(s)

The Administration's response to a request for management evaluation is not a reviewable decision. A staff member is not eligible for the payment of a termination indemnity if his or her age at the time of separation from service is the normal retirement age or more and the contributory service is five years or longer.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Korotaeva

Entity

WMO

Case Number(s)

UNDT/GVA/2020/52

Tribunal

UNDT

Registry

Geneva

Date of Judgement

22 Dec 2021

Duty Judge

Judge Belle

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Termination indemnities

Applicable Law

Staff Rules

- Rule 9.3
- Rule 9.8

UNJSPF Regulations

WMO Staff Regulations and Rules

- Rule 1123.4
- Rule 141(b)
- Rule 193.2
- Rule 193.2(d)

Related Judgments and Orders

2016-UNAT-697

2018-UNAT-842