

UNDT/2021/162, Oming

UNAT Held or UNDT Pronouncements

Receivability In the present case, the Applicants contest the Administration's decision dated 14 August 2021 to consider Mr. Oming, whom the Administration identified as the spouse of the deceased staff member, as the recipient of a death benefit pursuant to staff rule 9.11(a)(vii). In this respect, the Tribunal recalls that the extension of its jurisdiction to deceased staff members is intended to permit resolution of disputes concerning contractual rights acquired during previous employment by staff members whose contracts have expired (see Arango 2021-UNAT-1120, para. 28). The Administration's decision to consider Mr. Oming as the recipient of a death benefit pursuant to staff rule 9.11(a)(vii) indeed produces directly legal consequences on the deceased staff member's contractual rights acquired during her previous employment. Therefore, the Tribunal finds that there is no merit in the Respondent's submission that the contested decision does not have any direct impact or direct legal consequences on the deceased staff member. Further, staff rule 9.11(a)(vii) falls within the scope of "terms of appointment" under art. 2.1(a) of the Tribunal's Statute. Therefore, the contested decision constitutes an administrative decision within the meaning of art. 2.1(a), and, accordingly, the application is receivable *ratione material*. The Applicants, who are the children and heirs of a deceased staff member, are making claims in her name under art. 3.1 (c) of the Tribunal's Statute. Therefore, the application is receivable *ratione personae*. In light of the foregoing, the Tribunal finds that both the application and the Interim Motion are receivable. Whether the contested decision is lawful First, the Administration based its decision on a review of the deceased staff member's official records, including her Personnel Action, which lists her marital status as "legally separated", not divorced. Second, the Tribunal is not persuaded by the Applicants' argument that the marriage certificate is forged. The deceased staff member had confirmed the authenticity of the marriage certificate and submitted it to the Organization herself. Moreover, further to the Administration's request, the official entity responsible for registration of marriages – the Uganda Registration Services Bureau – provided the Administration with a letter verifying the authenticity of the marriage certificate. Therefore, the Administration's decision to consider Mr. Oming as the recipient of a death benefit pursuant to staff rule 9.11(a)(vii) is not unlawful. Motion for interim measures Having determined that the contested decision is not unlawful, the Tribunal finds that the condition to order a temporary relief in this matter is not met. Since the above-mentioned requirements are cumulative and one of those – *prima facie* unlawfulness – is not met, the Tribunal does not consider it necessary to examine other conditions. Consequently, the Tribunal finds that the Interim Motion cannot succeed.

Decision Contested or Judgment/Order Appealed

The adult children of a deceased staff member of the United Nations Assistance Mission in Afghanistan ("UNAMA" and "the Applicants", respectively) contested the Administration's decision to name Mr. Oming, whom the Administration identified as the deceased staff member's spouse, as the recipient of a death benefit pursuant to staff rule 9.11(a)(vii).

Legal Principle(s)

A party may move for summary judgment when there is no dispute as to the material facts of the case and a party is entitled to judgment as a matter of law. The key characteristic of an administrative decision subject to judicial review is that the decision must produce direct legal consequences affecting a staff member's terms and conditions of appointment; the administrative decision must have a direct impact on the terms of appointment or contract of employment of the individual staff member (see, e.g., Lee 2014-UNAT-481, para. 49). For the Tribunal to order interim measures, cumulative conditions must be met: 1) The motion for interim measures

must have been filed in connection with a pending application on the merits before the Tribunal and at any time during the proceedings; 2) The order for interim measures requires an administrative decision directly impacting the actual or former applicant's terms of employment; 3) The required temporary relief must not concern appointment, promotion or termination; 4) The contested administrative decision appears prima facie to be unlawful; 5) There is particular urgency in requesting the interim measures; and 6) The implementation of the contested administrative decision would cause irreparable damage.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Oming

Entity

UNAMA

Case Number(s)

UNDT/GVA/2021/062

Tribunal

UNDT

Registry

Geneva

Date of Judgement

23 Dec 2021

Duty Judge

Judge Bravo

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Death benefit

Applicable Law

Staff Rules

- Rule 9.11

UNDT RoP

- Article 14.1
- Article 9

UNDT Statute

- Article 10.2
- Article 3.1(c)

UNAT Statute

- Article 2.1(a)

Related Judgments and Orders

2014-UNAT-481
2021-UNAT-1120