

UNDT/2022/122, Applicant Applicant

UNAT Held or UNDT Pronouncements

The Tribunal notes that it follows from ST/SGB/2019/2 that the Secretary-General has delegated the relevant authority to the Under-Secretary-General for Management Strategy, Policy and Compliance (“the USG”), who in turn, has sub-delegated it to the ASG in accordance with a table of sub-delegation dated 1 March 2021 that the Respondent has submitted in evidence. In a note on “delegation details” valid from 15 April 2021 is stated that, “This sub-delegation of decision-making authority addresses a technical error in the attachment of the sub-delegation of decision-making authority issued on 1st March 2021. It is also effective 1st March 2021”. The Tribunal finds that this “technical error” is of no importance to the question of the ASG’s proper authority to take the contested decision. Accordingly, the Tribunal concludes that the ASG had proper authority to reject the Applicant’s request for an exception under staff rule 12.3(b) to an additional one-year extension of the deadline set out in staff rule 3.19(i). The Tribunal notes that under staff rule 3.19(i), the “[e]ntitlement to the repatriation grant shall cease if no claim has been submitted within two years after the effective date of separation”. As such, no extension to the two-year deadline is therefore envisaged in staff rule 3.19(i). Under staff rule 12.3(b), the ASG, however, has the general authority to grant an exception to the Staff Rules, including the deadline set out in staff rule 3.19(i), if three particular conditions spelled out therein are satisfied. This possibility only means that the Applicant has a right to have his request for exception considered by the ASG; not that he has a right to have it granted (in line herewith, see the Appeals Tribunal in Hastings 2011-UNAT-109). In the Applicant’s second request for an exception to the two-year deadline of 4 August 2021, his main argument is that a relocation travel would expose his spouse to the risk of contracting COVID-19, which due to her health condition could have significant medical consequences for her. To corroborate this, the Applicant submitted two letters from her medical doctor to the ASG. In order to assess the request, the ASG consulted with DHMOSH—the United Nations Secretariat’s department responsible for medical matters. DHMOSH, however, found no medical risk in the Applicant’s

spouse traveling for his relocation, which was spelled out in an email of 20 December 2021 from the Senior Medical Officer/DHMOSH to Respondent's Counsel. Also, no such risk was mentioned in the 20 August 2021 email communicating the contested decision in which the "HR Policy Team" indicated that the ASG had rejected his request for an exception in light of the documentation he had submitted to DHMOSH. Referring to Sanwidi, as quoted above, the Tribunal finds that the ASG lawfully acted within the scope of her discretion in rejecting the Applicant's second request for an extension on the basis of DHMOSH's assessment that there was no medical risk in the Applicant's spouse traveling for his relocation, which duly took into consideration the documentation submitted by the Applicant to DHMOSH. The Tribunal finds that the Applicant's references to various other sources than DHMOSH regarding the medical risk of COVID-19 is not important insofar as DHMOSH's opinion was properly sought and, if deemed appropriate, followed by the ASG—even if the ultimate decision-making authority rests with the ASG, it is neither the role nor expertise of the ASG to make medical assessments but that of DHMOSH. In addition, the Tribunal notes that the majority opinion in Applicant 2021-UNAT-1133 (overturning Applicant UNDT/2020/116/Corr.1) held that the Dispute Tribunal is not competent to review a medical assessment of DHMOSH (see, in particular, para. 58). In this regard, the Tribunal further observes that the Applicant has not questioned the relevancy and/or adequacy of DHMOSH's assessment in the present case in response to the pertinent medical question, and nothing in the casefile suggests that there would be a reason to do so. This was, on the contrary, what the Dispute Tribunal did in Applicant UNDT/2020/116/Corr.1 and with which the minority opinion agreed in Applicant 2021-UNAT-1133. The Applicant's claim, consequently, cannot find support therein either. The Applicant further contends that the medical risk of his spouse concerning COVID-19 had increased by the time the deadline for his relocation travel expired on 7 January 2022, as compared to when the challenged decision was taken on 20 August 2021. The Tribunal finds that even if the factual circumstances regarding the medical risk of COVID-19 had changed as submitted by the Applicant, he has not established why the ASG should therefore have had a duty to change her 20 August 2021 decision at her own initiative. If so, in the given circumstance, it would only have been reasonable to expect the Applicant to request the ASG to reconsider her previous decision due to a change of factual circumstances. From the casefile, however, does not follow that the Applicant ever requested the ASG for such reconsideration. There is therefore no ground for the Applicant's challenge in this regard. In conclusion, the Tribunal finds that the contested decision was lawful on its merits, and no reason therefore exists for the

Tribunal to further examine whether the conditions of staff rule 12.3(b) were satisfied. Even if doing so, the Tribunal find that the Applicant has not established that an exception should have been granted in the given circumstances—all three conditions need to be satisfied and not only the one regarding the relevant staff member's agreement, which is the only condition to which the Applicant refers in his submissions.

Decision Contested or Judgment/Order Appealed

The decision of the Assistant-Secretary-General for Human Resources not to provide the Applicant with an exception under staff rule 12.3(b) in order to grant him an additional one-year extension for him to submit his claim for repatriation grant in accordance with staff rule 3.19(i)

Legal Principle(s)

The Appeals Tribunal has consistently held that “the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See Fasanella 2017-UNAT-765, para. 20, as affirmed in Cardwell 2018-UNAT-876, para. 23. The Tribunal notes that the Appeals Tribunal has consistently held that the Dispute Tribunal's judicial review is limited and often refers thereon to its seminal judgment in Sanwidi 2010-UNAT-084. Therein, the Appeals Tribunal defined the scope of this review as it is for the Dispute Tribunal to determine “if the administrative decision under challenge is reasonable and fair, legally and procedurally correct, and proportionate”. The Appeals Tribunal further held that the Dispute Tribunal “can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse” (see para. 40). In Sanwidi, the Appeals Tribunal also stressed that “it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him, [nor] is it the role of the Tribunal to substitute its own decision for that of the Secretary-General” (see para. 40, and, similarly, para. 19 of Benchebbak 2014-UNAT-438, which specifically refers to staff rule 12.3(b)). The Appeals Tribunal further clarified that “the Dispute Tribunal is not conducting a “merit-based review,

but a judicial review”, explaining that a “[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker’s decision” (see para. 42).

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Applicant Applicant

Entity

UNJSPF

Case Number(s)

UNDT/NY/2021/065

Tribunal

UNDT

Registry

New York

Date of Judgement

11 Nov 2022

Duty Judge

Judge Adda

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Relocation grant

Benefits and entitlements

Applicable Law

GA Resolutions

Secretary-General's bulletins

- ST/SGB/2019/2

Staff Regulations

- Regulation 1.2(c)

Staff Rules

- Rule 12.3(b)
- Rule 3.6

Related Judgments and Orders

2017-UNAT-765

2018-UNAT-876

2010-UNAT-084

2014-UNAT-438

2011-UNAT-109

2021-UNAT-1133

UNDT/2020/116/Corr.1

UNDT/2016/059

UNDT/2017/043