
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/021

Judgment No.: UNDT/2024/024

Date: 25 April 2024

Original: English

Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

MARCHETTI

Introduction

1. On 10 July 2023, the Applicant, an Administrative Assistant based in New York with the Department of Global Communications in the United Nations Secretariat, filed the application in which she contests the [her]

2. On 18 July 2023, the Respondent filed a motion for summary judgment in which he

Facts

7. At the time of the contested decision, the Applicant was a staff member employed at the G-5 level, step 6, with the Secretariat in New York.

8. On 30 June 2017, the Applicant was separated at the G-6 level, step 7, and on 17 August 2018, reappointed at the G-5 level, step 7, with the Africa Section in DGC. On 8 June 2019, the Applicant separated at the G-5 level, step 7.

9. In December 2021, the Applicant was presented with an offer of appointment for her position at the G-5 level, step 6.

10. On 8 December 2021, the Applicant emailed a Human Resources Partner and stated she had _____ step VI

If I recall well, before I joined the Africa Section, the DGC issued an Offer for a _____, copying in a screenshot of the relevant document.

11. On the same date (8 December 2021), the Human Resources Partner emailed _____ I understand we would normally honor previous step only when former staff is reappointed within 1 year of separation and your cob [unknown abbreviation] was 7 June 2019 which is more than 2 years ago. As per [United Nations] guidelines, step 6 is the maximum we can offer now

12. Later the same date (8 December 2021), the Applicant June 2019

including her step-in-grade . The 60-calendar-day period for requesting management evaluation objectively started with her entry on duty and expired on 25 March 2022 , referring to the Appeals Tribunal in *Rosana* 2012-UNAT-273, para. 25; *Jean* 2017-UNAT-743, para. 24; *Handy* 2020-UNAT-1044, para. 26. Even if the 60-calendar-day period for requesting management evaluation were to start on 31 January 2022, when the Applicant signed her [letter of appointment], it would have expired on 31 March 2022 .

c. The Applicant requested management evaluation on 15 March 2023, almost one year later . The Dispute Tribunal cannot waive this requirement under Article 8(3) of its Statute *Lara Sahyoun* 2021-UNAT-1149, para. 30.

d. correspondence with a 698.20 g3a4520ad-20041 207.08W*n92 re260.000

letter to the Respondent would elicit a response which would then be considered a new administrative decision.

f. reading of former Staff Rule 3.17 on retroactivity of payments (current Staff Rule 3.15) has no legal merit . The present case does not concern the non-receipt of an allowance, grant, or other payment , but the Applicant disagreement with the step-in-grade that she accepted in January 2022 . The Appeals Tribunal has never held that former Staff Rule 3.17 extends the period of time for requesting management evaluation of such a decision by one year . The deadline for seeking management evaluation of an entry-level is the same as any other administrative decision *Avramoski* 2020-UNAT-987, para. 46; *Omwanda* 2019-UNAT-906, para. 34.

18. T may be summarized as follows:

a. The Applicant took up her functions on 25 January 2022 and made a request under staff rule 3.17 for payment at the step 7 on 30 December 2022. This was well within the one year deadline for a written claim as set out in staff rule 3.17 (now staff rule 3.15) .

b. The Management Evaluation took the position that staff members are required to contest determination of their step within 60 days from assuming their functions because this is the date upon which they are aware of their step determination .

c. If it

d. The MEU relied on the judgment in *Ho* UNDT/2017/038. This was a summary judgment, and an individual who contested the decision regarding her step calculation four years after she had taken up her functions and after she had resigned. The applicant in *Ho* had never made a written claim under staff rule 3.17 for her step to be recalculated, and the staff rule 3.17 was not at issue the only issue was to calculate when the implied administrative decision

address a claim made under 3.17

e. The *Sethia* UNAT 079

specifically dealt with a challenge to the step allocated to recruitment. The applicant was recruited in March 2000 and sought review of his step level

in December 2000 in conformity with staff rule 3.17

increase in step was refused. The applicant later requested

member

Under staff rule 111.2(a) then in force, the applicant was required to make

his request to the Secretary-General for administrative review within two

months. The Appeals Tribunal upheld the judgment of the Dispute Tribunal

that the applicant's step level upon his

appointment was communicated to him on 9 February 2001 the

g. In

Mizerska-Dyba

position to this Tribunal is that staff can seek alteration of their step by written claim within one year from the date they take up their functions. This is precisely what the Applicant has done. Since the Applicant cannot expect consistent positions be taken by the Administration on receivability the position taken by the decision maker (though not adopted in the management evaluation) will be addressed.

k. takes the position that acceptance of the offer of appointment forecloses any later challenge. did not foreclose her raising the issue of step calculation at a later stage. It is settled law that entering into a contract which is not in conformity with the Staff Rules does not bar a staff member from seeking to vary its terms and seek judicial review should such a request be refused.

l. The Administration also suggests a 60-day deadline ran from communications with the Applicant that occurred before she had accepted the offer of appointment. Staff regulation 4.1 indicates that a person only becomes a [United Nations] staff member, therefore having standing to contest an administrative decision, upon receiving a letter of appointment. The Appeals Tribunal in *Gabaldon* 2011-UNAT-120 found standing in the formal justice system accrues when a staff member has accepted a letter of appointment and fulfilled all the conditions therein. It follows that at the time of the communications relied on by the Applicant had no standing to contest an administrative decision. Only administrative decisions taken in relation to a staff [member s] contract of employment can be contested by way of management evaluation request. It follows that no deadline can run from a communication when the Applicant had no contract of employment and was not a staff member.

m. The Appeals Tri *Avramoski* 2020-UNAT-987 and *Omwanda* 2019-UNAT-906 addressed the

[entry of duty EOD date entered for the relevant staff members following a break in service . Both staff members in those cases sought to contest the calculation of a termination indemnity but were found to in effect be actually litigating a much earlier decision to impose a break in service entering a new EOD date . Both staff members in these cases sought to litigate the issue years later . Neither of the cases address a claim for a benefit or entitlement to which staff rule 3.17 (currently 3.15) applies , and they were reviewed in relation to an entirely different legal framework simply not applicable to the current issue .

n. The Respondent seeks to suggest that staff rule 3.17 (currently 3.15) does not apply to step upon recruitment . This position is asserted without any jurisprudential support . On all occasions that [the Appeals Tribunal has] considered the calculation of step upon recruitment they have found that staff rule 3.17 (currently 3.15) applied . The Respondent suggests that all entitlements are set at the moment of recruitment and must be contested immediately . The Tribunals have long held that the Administration may correct its own mistakes in terms of contracts entered into t follows that a staff member may apply staff rule 3.17 (currently 3.15) to try to resolve such errors in their favor indeed, the very purpose of the staff rule . The limitation in time being in order to ensure certainty for the accounts of the Organisation .

o. motion for summary Judgment makes no explanation for why [the Office of Human Resources] interpreted the staff rule on retroactive payments as specifically applying to calculation of step upon recruitment yet here they seek to argue that it does not and instead a 60 day time limit runs from when a staff member enters on duty .

on which the staff member would have been entitled to the initial payment, except in the case of the cancellation or modification of the staff rule governing eligibility, in which case the written claim must be made within three months following the date of such cancellation or modification.

timely manner?

22. It is not disputed that the request for management evaluation was filed after expiry of the period provided for under staff rule 11.2(c).

23. the former staff rule 3.17(b) (now staff rule 3.15) was/is relevant for purposes of computation of the time within which she should have sought management evaluation is flawed. The former staff rule 3.17(b) (now staff rule 3.15) relates to retroactivity of payments, and not to the issue of increase of step which is what her application is about. The jurisprudence which was cited by the Applicant, namely *Sethia* and *Mizerska-Dyba*, does not support the assertion that staff rule 3.15 (former staff rule 3.17(b)) is relevant for purposes of computation of time.

24. Based on the forgoing, the Tribunal finds that the request for management evaluation was not filed in a timely manner.

Conclusion

25. The application is not receivable because the Applicant did not request management evaluation within the 60-day statutory period of Staff Rule 11.2(c). It stands dismissed.

Summary judgment

26.
summary judgment has been rendered moot.

18 July 2023 request for

(Signed)

Judge Margaret Tibulya

Dated this 25th day of April 2024

Entered in the Register on this 25th day of April 2024

(Signed)

Isaac Endeley, Registrar, New York