



Introduction

1. The Applicant is an Auditor with the Audit Unit of the United Nations Assistance Mission for Iraq (UNAMI) at the P-3 level. He filed the current Application on 4 November 2013 to contest “the memo dated June 16, 2013 reversing the decision made on February 14, 2013 to change [his] duty station to Kuwait from Baghdad, effectively on March 1, 2013” (Contested Decision).

Procedural history

2. The Application was filed on 4 November and served on the Respondent on 5 November 2013.

3. The Respondent filed a Reply on 4 December 2013 in which he asserted that the Application was not receivable *ratione temporis* because the Applicant had failed to request management evaluation within the deadline prescribed under staff rule 11.2(c).

4. Pursuant to Order No. 262 (NBI/2013), the Applicant filed his comments on the Respondent’s Reply on 19 December 2013.

5. On 23 January 2014, the Applicant filed a Motion for the “Production of Documents of the original SRSG’s decision”.

Oral hearing

6. The United Nations Appeals Tribunal (UNAT) has previously ruled that¹:

[T]he UNDT has broad discretion in all matters relating to case handling and that, in order to ensure that the case is fairly and expeditiously adjudicated and that justice is served, the Appeals Tribunal should not intervene hastily in the exercise of the jurisdictional power conferred on the Tribunal of first instance.

7. After a careful review of the record, this Tribunal concluded that the issues for decision were clearly defined in the Parties’ submissions and that the documentary evidence provided adequately addressed the issues raised.

¹ Hersh2012-UNAT-243. See also Bertucci2010-UNAT-062 and Calvani2012-UNAT-257.

8. Consequently, the Tribunal, in accordance with art. 19 of the Tribunal's Rules of Procedure, has determined that an oral hearing is not required in this case and will rely on the Parties' pleadings, written submissions and the documentary evidence.

Facts

9. By a letter dated 29 May 2012, from the Field Personnel Division of the Department of Field Support (FPD/DFS), the Applicant was offered a one year fixed-term appointment as an Auditor at the P-3 level with UNAMI (Offer of Appointment). The Statement of Emoluments (Annex 1) attached to the Offer of

Baghdad to accomplish their work, including the Auditing Unit, to Kuwait. The Applicant was not copied on this communication but his supervisor was copied.

15. On 15 November 2012, the Chief of Administrative Services sent an email to a number of UNAMI officials regarding the relocation of the Auditors to Kuwait. The Applicant was not copied on this communication but his supervisor was copied.

16. On 17 November 2012, the Chief of Administrative Services instructed the Chief of the UNAMI Human Resources Section (Chief/HRS) to request FPD/DFS to redeploy the posts in the Audit Unit and adjust the relocation entitlements accordingly. By a memorandum dated 20 November 2012, the Chief/HRS requested that the Officer-in-Charge (OIC) of the UNAMI Finance Section effect payment of the Applicant's relocation and assignment grants with Kuwait as his duty station.

17. The Applicant relocated from Amman to Kuwait on 6 December 2012.

18. By a memorandum dated 14 February 2013, the OiC of the Office of the Chief of Staff, directed the Acting Chief of Mission Support to change the Applicant's duty station from Baghdad to Kuwait with effect from 1 March 2013 and requested that the necessary Personnel action "to formalize the transfer" of the Applicant be taken. This memorandum was copied to the Chief/HRS.

19. On 17 February 2013, the Chief/HRS informed the UNAMI Human Resources Officer handling the transfer that the Applicant was on "travel status in Kuwait. In fact it is a reassignment with change of DS".

20. On 8 April 2013, HRS issued a Personnel Action form to indicate the Applicant's "within-mission reassignment from Baghdad to Kuwait effective 01/03/2013" in accordance with the memorandum of 14 February 2013.

21.

Operations Manager requested that the Chief Finance Officer make the necessary adjustments on the lump sum portion of the assignment grant previously disbursed on the basis of the 20 November 2012 from the Chief/HRS. Lastly, the Human Resources Operations Manager informed the Chief Finance Officer that “this memo supersedes our memo dated 20 November 2013 [sic]. Kindly effect the payments accordingly”.

22.

duty station from Baghdad to Kuwait, effective 1 March 2013, violated the Applicant's rights.

Is the Applicant's Application of 4 November 2013 receivable?

Responder's submissions

29. The Respondent submits that the Application is not receivable *ratione temporis* because the Applicant failed to request management evaluation of the contested decision within the 60-day statutory deadline provided under staff rule 11.2(c). To this end, the Respondent submits that:

- a. The Applicant's Letter of Appointment, which was signed and dated 13 November 2012, and the Personnel Action form, approved and finalized on 13 November 2012, clearly conveyed to the Applicant that Kuwait was his duty station. He travelled to Kuwait and took up his duties on 6 December 2012. Thus, at the very latest he was aware of the decision by 6 December 2012.
- b. The Applicant had 60-days to file a request for management evaluation of the contested decision, that is,

He cannot seek to contest a new decision before the Dispute Tribunal that he has not previously subjected to management evaluation.

e. Further, the 16 June 2013 memorandum was not a decision to change the Applicant's duty station. Instead, the memorandum was issued to confirm that the Applicant's duty station was Kuwait, in response to the Applicant's request to be paid DSA for the period he was in Kuwait. The memorandum expressly refers to the 14 November 2012 communication of the decision that the Applicant would be stationed in Kuwait. Reference to, and application of, an earlier decision is not an appealable administrative decision.

Applicant's submissions

30. The Applicant submits that the Respondent's allegation that the contested decision in his Application was not the same decision contested in his request for management evaluation is incorrect. Further, both MEU and the Respondent wrongly interpreted the challenge contained in his management evaluation request as a challenge against the Letter of Appointment of 13 November 2012.

31. The decision to "retroactively change his duty station" that he referred to in his request for management is in relation to the 16 June 2013 memorandum, which retroactively changed the effective date of his duty station to Kuwait from 1 March 2013 as communicated in the 14 February 2013 memorandum. In effect the 16 June 2013 memorandum, which made the effective date 19 November 2012, reversed the decision contained in the 14 February 2013 memorandum.

32. The Applicant submits that he was unaware of the Letter of Appointment

memorandum that purported to change the contractual scheme that was introduced in the 14 February 2013 memorandum.

39. Under these circumstances, it is incumbent on the Tribunal to examine the totality of the circumstances outlined in the Applicant's submissions to ensure that there is no misinterpretation of his pleadings.

40. In his request for management evaluation, the Applicant specifies the decision he is requesting MEU to evaluate as the "[d]ecision to retroactively change his duty station in violation of his contract of employment, and without

41. In his 4 November 2013 Application to the Dispute Tribunal, the Applicant described the contested decision as “[t]he memo dated June 16, 2013 reversed the decision made on February 14, 2013 to change my duty station to Kuwait from B

for his computation of time is correct. The record shows that the Applicant received the contested decision on 19 June 2013 and that he submitted his request for management evaluation on 14 July 2013, which was well within the delay prescribed by staff rule 11.2(c). Accordingly, the Tribunal rejects the Respondent's submission that the Application is not receivable because it is time-barred.

a. When the Applicant joined UNAMI as a resident auditor on 3 November 2012, his duty station was Baghdad, Iraq.

b. While he was attending mandatory training in Amman, Jordan, for Baghdad-based staff, a Movement of Personnel form was prepared and approved on 12 November 2012 for him to take up his job in Baghdad on 15 November.

c. ~~Oride~~48(ta)-3(3J E Tm [(pT7(d)-32()- 612.96i5 Q q BT /F1 1196i5)-32(v4)] TJ E

- i. On 19 June 2013, the Applicant received a memorandum dated 16 June 2013 from the Chief/HRS informing him that the change in his duty station from Baghdad to Kuwait was effective as from 19 November 2012.

Applicant's

62. The Respondent also submits that staff regulation 1.2(c) provides that staff members are subject to the authority of the Secretary-General, and to assignment by him, to any of the activities or offices of the Organization.

63. Lastly, the Respondent avers that the decision to locate the mission Audit team, including the Applicant's position, to Kuwait was made due to limited secure accommodation in Iraq and the need to ensure the safety and security of staff stationed in Baghdad.

Considerations

Was the decision to relocate the Applicant to Kuwait lawful?

64. Staff regulation 1.2(c) provides that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations”.

65. It is for the Administration to determine whether a measure relating to assignment of a staff member is in its interest or not³.

66. In *Hepworth 2015-UNAT-503*, the United Nations Appeals Tribunal (UNAT) held that “[t]raditionally, the reassignment of staff members’ functions comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate”.

67. However, the decision to assign or to reassign a staff member must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures⁴.

68. The exercise of the discretion is reviewable according to the test laid down in *Sanwidi 2010-UNAT-084*:

When judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant

³ *Rees 2012-UNAT 266*.

⁴ *Ibid.*

matter

stations)⁵. Kuwait is classified as a category A duty station and like category H duty stations does not entitle a staff member to any hardship allowance or DSA. The Applicant cannot be entitled to what is not due to him in law.

81. The Tribunal finds that the reversal of the 14 February 2013 decision to change the Applicant's duty station from Baghdad to Kuwait, effective 1 March 2013 did not violate the Applicant's rights.

Judgment

82. The Application is dismissed in its entirety.

(Signed)

Judge Vinod Boolell

Dated this 22nd day of October 2015

Entered in the Register on this 22nd day of October 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi

⁵ Replaced in succession by ST/IC/2014; ST/IC/2014/17 and ST/IC/2015/3.