



Introduction

1. The Applicant is a former staff member of the United Nations Support Mission in Libya (UNSMIL) who was employed on a series of temporary contracts for over one and a half years. In his Application dated 2 January 2014, amended on 31 January 2014, he avers that he was entitled to accrue annual leave at the rate of two and a half days per month rather than at the rate of one and a half days per month allotted to staff members on temporary contracts.
2. The Respondent filed a Reply on 21 February 2014 in which it is asserted that the Applicant accrued one and a half days annual leave per month in accordance with staff rule 5(a) and that the Application is not receivable.
3. On 10 March 2014, by Order No. 042 (NBI/2014), the parties were informed that the Tribunal had decided, in accordance with art. 16.1 of the Tribunal's Rules of Procedure, that an oral hearing was not required in determining this case and that it would rely on the parties' pleadings and written submissions. The Applicant was also directed to file his submissions in response to the issue of receivability by Wednesday, 19 March 2014.
4. The Applicant filed his submissions on receivability on 19 March 2014.
5. On 27 March 2014, the Tribunal ordered the Respondent to file a copy of a settlement agreement entered into with the Applicant concerning his claim that he should have been appointed to a Fixed-Term Appointment (FTA) following the conduct of a selection exercise for a Position. The Respondent filed a copy of the said agreement on 28 March 2014.

Facts

6. UNSMIL was established for an initial period of three months pursuant to Security Council resolution 2009 of 16 September 2011.
7. The Secretary-General's budget report (A/66/354/Add.6) for UNSMIL was issued on 15 November 2011. In paragraph 17 of the report, the Secretary

General proposed staffing requirements included four positions in the Disarmament, Demobilization and Reintegration (DDR) Section to offer technical assistance to Libyan authorities on arms control, weapons management and disarmament-related matters. It would be headed by a Chief DDR Adviser.

8. On 14 February 2012, the Applicant was offered a ~~three~~ temporary appointment (TA) as Senior DDR Adviser at the ~~level~~ expiring on 18 May 2012. This temporary appointment was subsequently extended for ~~three~~ periods on 19 May 2012, 19 August 2012 and on 19 November 2012.

9. On 15 December 2012, a position specific job opening for the D

Sector Officer and the failure to apply to him the same conditions of service as those offered to staff members on FTAs.

Applicant's submissions

15. The Applicant submitted that he was offered and accepted conversion to an FTA but this offer was then renegeged upon.

16. The relevant Administrative Instruction, Staff Regulations and Rules distinguish and discriminate between staff members on FTAs and those on TAs in terms of annual leave. The discrimination in allowances means that the Applicant paid the same staff assessment as other colleagues on FTAs but his net compensation was slightly less than that of a P

reasons and for the purposes of health, rest and recreation. Staff members on TAs get less time off than their colleagues on FTAs despite the ~~essful~~ jobs.

22. In view of the foregoing, the Applicant requests the Tribunal to award him full compensation for 18 days' salary, allowances and Organization's contributions amounting to USD 11,053 plus any applicable interest.

Respondent's submissions

23. The Respondent submitted that the Application is not receivable as the Applicant failed to allege a breach of the Staff Regulations, Staff Rules or his terms of appointment. There is no basis in law to question the validity of staff rule 5.1 (a) under art. 2.1(x) of the Dispute Tribunal's Statute.

24. From 1 July 2009, the General Assembly introduced three types of appointments where it decided that staff serving on TAs should not receive the same entitlements as staff members on FTAs.

25. The Applicant received the ~~ent~~ entitlements to annual leave applicable to staff on TAs in accordance with the mandate of the General Assembly, the Staff Regulations, Staff Rules and ST/AI/2010/4/Rev.1. He signed a letter of appointment in which he accepted the terms and conditions of ~~employ~~ employment

28. The principles enunciated in *Castelli* UNDT/2009/075 upheld in 2010 UNAT-037 are irrelevant to the Applicant's case as is his reliance on

29. The Applicant's reliance on the principle of "equal pay for equal work" has no application to his case as he is comparing his contractual rights with staff members who are under different contracts of employment. Where a staff member is appointed to a TA, he or she does not fall within the same class of staff members as those appointed on FTAs. Equal treatment in these cases demands that in both instances, the contractual provisions of the respective contracts are enforced.

30. The Noblemaire principle is not applicable to the Applicant's claim as it does not cover entitlements such as annual leave.

31. For these reasons, the Respondent requests that the Application be dismissed.

Considerations

Receivability

32. The competence of the Tribunal is determined by the provisions of art. 2.1(a) of the Statute:

The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

33. To determine whether this Application is receivable, the Tribunal must examine the substance of the Applicant's claims to determine if they fall within the competence of the Tribunal.

34. The Applicant does not deny that he received the leave entitlements he

related to field operations and special projects with finite mandates;

Also decides that staff on temporary contracts would be eligible to receive only the following benefits and allowances: post adjustment; rental subsidy; hazard pay; hardship allowance; the daily subsistence allowance portion of the assignment grant; leave (depending on the length of contract); home leave (per classification of duty station); and limited shipment allowance;

38. ST/SGB/2009/7 (Provisional staff rules) established a new regime of appointments and contracts which included temporary appointments. Section 5.1(a) of this Bulletin established that a staff member who holds a temporary appointment shall accrue annual leave while in full pay at the rate of one and a half days per month. Section 5.1(b) established that a staff member holding a continuing or fixed

Chapter III, on salaries and related allowances reflects the harmonization of conditions of service... and in particular the new

allowances and increased leave that accrue from such an appointment. The Tribunal accepts that the extended use of the temporary appointments was the reason for the disparity in leave entitlements between the Applicant and staff