
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/083

Judgment No.: UNDT/2014/101

Date: 17 July 2014

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

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The Application and Procedural History

1. The Applicant is contesting changes to his conditions of service as a result of General Assembly Resolution 65/248 (United Nations common system: report of the International Civil Service Commission) “harmonization of conditions of Service for Internationally Recruited Staff in Peacekeeping Operations and Special Political Missions”, of 24 December 2010, which he maintains resulted in the arbitrary discontinuance of his temporary assignment to a family duty station as of 1 October 2011 and thus breaching his acquired rights.
2. The Respondent filed his Reply to the Application on 16 January 2012. The Respondent’s principal contention is that the Application is not receivable as the “implementation of an administrative policy mandated by the General Assembly does not constitute a reviewable administrative decision under art. 2.1(a) of the Statute of the Dispute Tribunal” As an ancillary point, the Respondent submits that the Applicant “has no acquired right to unchanged conditions of service”
3. On 22 February 2012, the Tribunal issued Order No. 31 (NBI/2012) directing the Parties to advise on: a) the completeness of the case record, as filed by the Parties respectively; b) the need for further disclosure pursuant to art

Tribunal also directed the Parties to file joint submissions on facts and issues and their views on the three separately filed applications being consolidated.

6. The Applicant filed his submissions on receivability on 6 December 2013.

7. On 10 January 2014, the Parties filed jointly filed submissions as directed in Order No. 261 (NBI/2013).

8. The Parties now consent to the matter being adjudicated on the basis of their written submissions.

FACTS AND SUBMISSIONS

9. The Applicant is a Field Service Officer (FSO) currently deployed to the United Nations Hybrid Operations in Darfur (UNAMID). Since 13 July 1998, he has served on long term temporary duty assignments (TDY) to various missions from his parent duty station the United Nations Truce Supervision Organisation (UNTSO) as an FSO. Since the commencement of his employment, the Applicant remained on 'travel status' and in receipt of Mission Subsistence Allowance (MSA).

10. On 13 September 2011, the Applicant was offered permanent appointment pursuant to the United Nations Staff Rules and Regulations. The Applicant accepted the Offer on 12 October 2011.

11. The Respondent submits that the offer of a permanent appointment stated that a permanent appointment is subject to the provisions of the Staff Regulations and Staff Rules and their amendments.

12. Following the adoption of General Assembly resolution 63/250 on human resources management of 24 December 2008, provisional Staff Regulations and Rules were promulgated, effective 1 July 2009. Under the provisional Staff Rules, former staff rule 103.21 was abolished and replaced with staff rule 4.8(b) which provides that "[a] change of official duty station shall take place when a staff member

is assigned from a duty station to a United Nations field mission for a period exceeding three months”.

13. The provisional Staff Regulations and Rules also included transitional measures relevant to the continuation of FSO TDY assignments beyond 1 July 2009. As an exception to staff rule 4.8, staff rule 13.7(c) provided that staff members serving as FSOs on or after 30 June 2009 will be subject to the original conditions of service.

14. Following the adoption of General Assembly resolution 65/248 on 24 December 2010, the Secretary-General revised staff rule 13.7¹. The provision limited the time period during which FSOs can serve on TDY under the original conditions of service until 30 June 2011.

15. The Respondent submits, and the Applicant does not accept, that under this Staff Rule, FSOs assigned to a family duty assignment, as revised

Service Commission's recommendations on a harmonized approach to the compensation, allowances and benefits of staff across the United Nations common system assigned to non-family duty stations effective 1 July 2011. This included the designation of duty stations as family or non-family duty stations based on security criteria, payment of additional hardship allowance for staff serving in non-family locations, and paid travel for rest and recuperation purposes.

18. Given the apparent changes in the conditions of service for reappointed FSOs on long-term TDY assignments, requests for agreed termination of appointments were made an option for existing FSOs. The Applicant did not avail himself of this option neither did he sign for or agree to any changes in his conditions. This is contested by the Respondent. The Respondent submits, and the Applicant does not accept, that at the same time, all FSOs were allowed to remain on 'travel status' with payment of MSA from 1 July until 30 September 2011, pursuant to staff rule 4.8(b). This gave all FSOs time to consider whether to request an agreed termination or continue to serve the Organization under the new conditions of service.

19. The Respondent submits, and the Applicant does not accept, that the transitional

21. On 27 May 2011, in order to implement the newly revised Staff Regulations and Rules, the Department of Field Support (DFS) issued "Guidelines for Implementation of General Assembly Resolution 65/248 on Harmonization of Conditions of Service for Internationally Recruited Staff in Peacekeeping Operations

26. The Respondent's principal contention is that the Applicant's challenge to the changes in his conditions of service is not receivable before the Tribunal. The implementation of an administrative policy mandated by the General Assembly does not constitute a reviewable administrative decision under article 2.1(a) of the Statute of the Dispute Tribunal.

27. The Applicant contends that the payment of MSA formed part of the terms and conditions of his contract. The abolition of the payment of MSA was at the discretion of the Secretary General; payment of it was not proscribed by, or as a consequence of, General Assembly resolution 65/248.

28. The Applicant further asserts that General Assembly resolution 65/248 does not in any way override his legitimate expectation that payment of MSA would be honoured. It was the decision by the Secretary General, and not the General Assembly, to abolish payment of the MSA with immediate effect and that this constitutes an administrative decision within the meaning of article 2.1 of the UNDT Statute.

29. The question for this Tribunal then is whether this discretionarily

administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment.

What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.

31. What the Applicant is seeking to challenge is the Secretary-General's implementation of General Assembly resolution 65/248, which led to the discontinuation of payment MSA.

32. Decisions regarding the conditions of service and entitlements for all staff serving in the United Nations common system are within the exclusive domain of the General Assembly.

33. In this case, the General Assembly made a decision to harmonise the terms and conditions of service of staff members across the United Nations system. Resolution 65/248 approved

the recommendations of the Commission on the harmonization of the conditions of service of staff of the organizations of the United Nations common system serving in family duty stations, as contained in its annual rep-22(a)-1(a)3(nn()-90(i)37(t)-22(s)g 0.9981 0 0 1 142.56 305.5

36. These changes included the introduction of permanent appointments for eligible staff members, which the Applicant was offered and signed up to on 12 October 2011.

37. The Tribunal finds that the Applicant is seeking to challenge a change to his terms and conditions of service, which the Secretary General implemented pursuant to the General Assembly's directions.

38. The Tribunal has examined the papers in this matter from as many angles as has been raised by the Parties, and finds that this matter is materially outside its jurisdiction.

39. The Tribunal therefore cannot continue to adjudicate this matter