



Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NGOGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:

Angela Kobel
Sharon Kemitare

Counsel for the Respondent:

Nicole Wynn, ALS/OHRM
Paulos Weldesellasie, ALS/OHRM

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. The Applicant is a former P-5 Senior Political Officer with the United Nations Mission in South Sudan (UNMISS).

2. On 6 April 2017, he filed an application with the United Nations Dispute Tribunal (UNDT) contesting a decision dated 25 January 2017. Counsel characterizes the contested decision as follows:

a) The decision emanated from the claimed overpayment of subsequent recovery of the monies by deducting funds from our

b)

children.

c) Our client requested that he claim dependency benefits retroactively for his adopted children, which he had not done during his stay with the UN. Our client had a right to receive those benefits on behalf of his children. In view of the fact that he could not claim on behalf of his spouse, he requested that he claim on behalf of his children retroactively to offset the claimed overpayment.

3.

Facts

6. The Applicant was initially appointed in August 2006 as a P-5 Senior Political Advisor with the United Nations Mission in Sudan (UNMIS). In July 2011, he was reassigned to UNMISS in Juba, South Sudan at the same level, where he served until his retirement on 30 April 2014 (Annex 1 to the reply).

7. Throughout his employment with the Organization, the Applicant was
(Annex 3 to the reply).

8. -3 Humanitarian Affairs Officer in a different duty station (Annex 4 to the reply).

9. By memorandum dated 3 December 2014, UNMISS notified the Applicant that he had been overpaid by USD109,034.04 because he continued to be remunerated at the dependency rate even though his wife had become a staff member in March 2010.

10. On 23 December 2014, the Chief, Payroll Operations informed the Applicant that after offsetting the overpayment against his separation entitlements, he owed the Organization USD81,953.76.

11. On 30 January, 13 February and 23 March 2015, the Applicant requested management evaluation of the decision to retroactively change his dependency status as of March 2010. In a response dated 14 April 2015, the Management Evaluation Unit (MEU) concluded that the decision to recover overpayments made in connection made in accordance with the relevant rules and guidelines and was therefore lawful.

12. In October 2015, the Applicant applied for retroactive dependency benefits for his adopted children.

13. The Chief Human Resources Officer, UNMISS, responded to the Applicant on 1 November 2015 informing him that UNMISS was unable to exceptionally consider his request.

14. On 28 January 2016, the Applicant requested mediation assistance from the Ombudsman.

15. On 11 May 2016, the Applicant requested management evaluation of the UNMISS decision to deny his request for retroactive dependent child benefits. His request was found not receivable.

Respondent's submissions on receivability

16. The Respondent makes the following submissions in his motion for a

Considerations

19. The sole legal issue arising for consideration at this stage is whether the application is receivable.

The applicable law

20. Staff rule 11.2(a) provides that a staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

21. In accordance with staff rule 11.2(c), a request for a management evaluation shall not be receivable unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

22. Staff rule 11.4(a) stipulates that a staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the UNDT within 90 calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under staff rule 11.2 (d), whichever is earlier.

23. Staff rule 11.4(c), which is similar to art. 8.1(iv) of the UNDT Statute, stipulates that:

(c) Where mediation has been pursued by either party within the deadline for filing an application with the United Nations Dispute Tribunal specified in staff rule 11.4 (a) or (b) and the mediation is deemed to have failed in accordance with the rules of procedure of the Mediation Division of the Office of the Ombudsman, the staff member may file an application with the Dispute Tribunal within 90 calendar days of the end of the mediation

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28. Mediation efforts may automatically extend the deadline for filing of an application but not for seeking management evaluation. The latter, pursuant to staff rule 11.2(c) may only be extended by the decision of the Secretary-General and -General. The Applicant had not requested the management evaluation of the decision refusing his request for retroactive dependency benefits within the statutory deadline. There is no evidence that he asked for extension of the management evaluation deadline nor that the Secretary-General extended such deadline or specified any conditions for extending it. Whilst, in certain circumstances, it would not be unreasonable to infer that the

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extension of the management evaluation deadline for the period of the negotiations¹, in the present case, however, such inference would be belied by the fact that MEU on 12 May 2016 refused the management evaluation request as belated, without any reaction from the Applicant.

Judgment

29. The application is rejected as it is not receivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 14th day of July 2017

¹ *Wu* 2013-UNAT-306, para. 25.

Entered in the Register on this 14th day of July 2017

(Signed)

Eric Muli, Legal Officer, for,
Abena Kwakye-Berko, Registrar, Nairobi