



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/123

Judgment No.: UNDT/2018/064

Date:

Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ANGELOVA et al¹

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Introduction

1. On 16 October 2017, the Geneva Registry of the United Nations Dispute Tribunal (UNDT) received, amongst others, 14 similar applications filed by the Office of Staff Legal Assistance (OSLA) on behalf of staff members employed by UNHCR whose claims are herein referred to as “the application”.

2. The Geneva Registry assigned these cases to Judge Teresa Bravo.

3. The Applicants are requesting the rescission of the Organization’s decision dated 19/20 July 2017 to implement a post adjustment change in the Geneva duty station which results in a pay cut. They also seek compensation for any loss accrued.

4. On 30 November 2017, Judge Bravo issued Order No. 227 (GVA/2017) recusing herself from handling this case.

5. On the same day, Judge Rowan Downing, then Presie8nss1q0f76v4290o4ning, then Presie8nss1q0

methodology based on recommendations of the Advisory Committee on Post Adjustment Questions (ACPAQ).²

7. The results of the surveys were included in the ACPAQ Report presented to the ICSC Secretariat at its 84th meeting in March 2017. The ICSC Secretariat noted at the time that, in the case of Geneva, implementation of the new post adjustment would lead to a reduction of 7.5% in the net remuneration of staff in that duty station as of the survey date (October 2016).³

8. On 11 May 2017, the Applicants received an email broadcast from the Department of Management, United Nations Headquarters, informing them of a post

The post adjustment index variance for Geneva has translated into a decrease in the net remuneration of staff in the professional and higher categories of 7.7%.

The Commission, having heard the concerns expressed by the UN Secretariat and other Geneva-based organizations as well as staff representatives has decided to implement the post adjustment change for Geneva, effective 1 May 2017 (in lieu of 1 April as initially intended) with the transitional measures foreseen under the

14. Following this new ICSC decision, retroactive payments were made to new staff members in Geneva who joined after 1 May 2017, and had not received a PTA.⁹

15. In the period from July to September 2017 the post adjustment multiplier has been further revised, mainly as a result of fluctuation of the US dollar. The decision of ICSC of May 2017 has not been implemented. The later decision has been implemented to the extent that the affected staff received a PTA meant to moderate the impact of the decreased post adjustment. This was reflected by pay check at the end of August 2017.¹⁰

16. On 14 September 2017, OSLA acting on behalf of the Applicants requested a management evaluation of the decision to implement the July 2017 ICSC decision.

17. On 16 October 2017, i.e., before the receipt of management evaluation, OSLA filed the present application contesting the July 2017 decision to “implement a post

24. Criterion for receivability of an application in cases of implementation of ICSC decisions should be whether the Secretary-General has room for discretion in implementing them. The Secretary-General has no discretionary authority in proceeding with implementing the ICSC's decisions on post adjustment. The General Assembly has repeatedly reaffirmed that "resolutions of the General Assembly and the decisions of the International Civil Service Commission are binding on the Secretary-General and on the Organization". In the case of the implementation of the ICSC's decision to revise a post adjustment multiplier, there is no room for interpretation or the exercise of discretion by the Secretary-General. The only action taken to implement such a decision is to make a payment by calculating the post adjustment based on the multiplier set by the ICSC.

The Application is not receivable as the Applicants are not adversely affected by the ICSC decisions on post adjustment multipliers.

25. With the July 2017 ICSC decision, the Applicants have not been adversely affected as the ICSC has approved the payment of a PTA as a gap closure measure to address any reduction in net remuneration as a result of the revised post adjustment multiplier. This allowance will be reviewed in February 2018, which means that it will be in place until then. Moreover, further modifications to the post adjustment in Geneva are expected. According to a notice on iSeek, the reduction in Geneva may be further mitigated by the positive movement of the Geneva post adjustment index (that already increased from about 166 in March to 172.6 in July), as well as by the effects of the expected positive evolution of the United Nations/United States net remuneration margin in 2018. Therefore, given that the effect of this new decision cannot be foreseeable, the application should not be receivable at this stage.

The Applicants should not be allowed to file multiple applications to contest a new post adjustment multiplier for Geneva.

26. The Applicants have submitted that they have deliberately filed multiple applications of the same decision and have taken multiple distinct and contradictory

May 2017, that, on the basis of the definition of administrative decision

individual decision, the designation of technical bodies was being revealed on a case-by-case basis only once litigation has been advanced.¹⁷ The situation has only recently been clarified by the issuance of ST/AI/2018/7 (Technical bodies), which does not include the ICSC. This Tribunal considers that absent a designation by the Secretary-General, the ICSC is not to be deemed a technical body for the purpose of exempting the impugned decision from the management evaluation requirement. The Tribunal notes, however, that the Applicants had no means of knowing it prior to filing their application, *i.e.*, until relevant representation was made on behalf of the Respondent, especially given that in the past representations different positions were expressed as to the status of the ICSC.¹⁸ The Tribunal, therefore, finds no grounds to attribute to the Applicants abuse of process under 10.6 of the UNDT Statute.

39. Considered that the ICSC is not a technical body for the purpose of exempting the impugned decision from the management evaluation requirement, the impugned decision should have been submitted for management evaluation.

40. Another question is whether an application can be accepted for review by the UNDT when filed without awaiting management evaluation or the expiration of the time limit for it, but subsequently such management evaluation has been obtained, as in this case. With this respect, the Tribunal recalls that in *Omwanda*, the UNDT held that:

[a] matter cannot be before the MEU and the Dispute Tribunal simultaneously [...]” and that “[a]llowing applicants to circumvent this process and file applications with the Tribunal before the deadline for a response to a request for management evaluation has passed would contravene the Tribunal’s Statute and Rules of Procedure, undermine the time lines set out in the Staff Rules, and would be contrary to the intentions of the General Assembly.¹⁹

41. In *Omwanda*, as the application had been filed before MEU completed its management evaluation and the time limit for completing such a response did not yet

¹⁷ See UNDT/2018/036 paras. 41-

expire, the application was dismissed as premature.²⁰ In the present case, a differing element is that by the date of this judgment, the Applicants had obtained management evaluation of the impugned decision, as a result of which their claims were not satisfied. The question before the Tribunal is thus whether a management evaluation so obtained validates the filing of the application so that it becomes receivable for adjudication.

42. In this respect, it is recalled

