
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/057

Judgment No.: UNDT/2023/021

Date: 28 March 2023

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

JACKSON

v.

Introduction and procedural history

1. On 1 July 2022, the Applicant, a former P-4 Finance and Budget Officer with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (“MINUSCA”) in Bangui, filed an application at the United Nations Dispute Tribunal contesting the 26 January 2022 decision by the Assistant-Secretary-General Office of Human Resources (“ASG/OHR”). The details of the contested decision are summarized as follows:

[...] retroactive payment of tax liability for (a) State tax amounting to \$70,131 over the period 2015-2020 and (b) underpayment of \$7,868 federal tax due to inaccurate earnings statement provided by the tax office.

2. The Respondent filed a reply to the application on 5 August 2022 denying any breach of discretionary powers and asking the Dispute Tribunal to dismiss the claim. Further, the Respondent argued that part of the claim is moot as the Administration met its obligations toward reimbursement to the Applicant of the 2019-2020 State tax liability.

3. The Tribunal heard the case on 2 March 2023 during which oral evidence was adduced from the Applicant and Mr. Quazi Islam, Chief, Income Tax Unit (“ITU”).

4. The parties filed their closing submissions on 9 March 2023.

Facts

5. The Applicant is a citizen of the United States of America (“USA”) for whom the Organization reimburses taxes. He has been domiciled in the state of North Carolina since 2015. He retired from the Organization on 1 October 2021.¹

¹ Reply, para. 5.

State Tax

6. Previously, while working at UN Headquarters, the Applicant was a resident of the state of New Jersey and paid his taxes

Applicant that they had decided to uphold the contested decision.

Applicant's submissions

16.

f. The payment of retroactive tax is not a novel occurrence. There are cases in the past where staff members were reimbursed by ITU as could be confirmed from the Umoja system software.

17. The Applicant requests reimbursement of the amount paid to NCDOR of USD70,131 for the 2015-2020 and Federal tax underpayment of USD7,868 for the 2017 tax year:

Respondent's submissions

18. The Respondent submits that the application is moot in part.

a. The Applicant contests the decision of the ASG/OHR not to approve an exception to staff rule 3.17(ii) to allow him to claim retroactive reimbursement of his 2017 United States Federal tax liability and his 2015-2020 State tax liability.

b. On 6 July 2020, 12 November 2021, and 25 June 2021, ITU reimbursed the Applicant USD31,272 for his 2019 and 2020 State tax liabilities.

c. On cross examination, the Applicant admitted that he received the 2019 and 2020 State tax reimbursements. Accordingly, there is no justiciable matter before the Dispute Tribunal with respect to the Applicant's claim for reimbursement of his 2019 and 2020 State taxes.

19. On the merits, the Respondent makes the following arguments:

a. The contested decision is lawful. The ASG/OHR, in consultation with ITU, lawfully exercised her discretion to not approve an exception to staff rule 3.17(ii) to allow the Applicant to claim retroactive reimbursement of his 2017 United States federal tax liability of USD6,020 and his 2015

requirements of staff rule 3.7(ii); (b) the Applicant should have been aware of his private legal obligations; and (c) making an exception would be prejudicial to the interests of other staff members or groups of staff members as per staff rule 12.3(b).

c. The Applicant acknowledged during cross examination that he did not make a timely reimbursement claim. Pursuant to staff rule 3.17(ii), ST/AI/1998/1 (Payment of income taxes to United States tax authorities) and the 2016-2018 Information Circulars on payment of income tax, the deadlines for requesting reimbursements were 15 August 2017, 15 August 2018, and 15 August 2019, respectfully. However, the Applicant did not make his claim until 18 May 2021, four, three, two and one years late, respectively.

d. The Applicant did not provide evidence of any extenuating circumstances that prevented him from filing timely returns. On cross examination, the Applicant acknowledged that he made an independent decision to not file state taxes in North Carolina. The Applicant made this decision upon the assumption that he was not required to file North Carolina State returns for the years 2015-2018, based on his belief that North Carolina did not tax income earned outside the state, the same as New Jersey and New York, where he resided previously. The Chief/ITU testified that the Applicant's decision not to file state returns was not based on the advice of ITU. ITU did not advise the Applicant not to file North Carolina state taxes. Pursuant to section 2 of ST/AI/1998/1, the Applicant was personally responsible to ascertain and meet his legal obligations under United States federal, state, and municipal income tax legislation.

e. The Applicant bears sole responsibility for the late submission of his 2017 Federal tax claim. On cross examination, the Applicant acknowledged that, on 2 February 2018, seven days after the error was identified, ITU sent a corrected statement of taxable earnings to his correct email address. The 2 February 2018 corrected statement of taxable earnings advised the Applicant to

consistent with their enabling statutes.¹² Further, the Tribunal is obliged to objectively assess the basis, purpose and effects of any relevant administrative decision.¹³

Legal framework on reimbursement of taxes (State and Federal)

22. It is important that the Tribunal reiterate that the legal framework governing tax reimbursement is provided in staff regulation 3.3(f). The relevant parts provide that:

(f) Where a staff member is subject both to staff assessment under this

which assessments on staff members' salaries and emoluments were to be credited in lieu of a national income tax. The amounts credited to the Fund are entered in the accounts for each Member State's assessment. Conversely, when a staff member paid from the budget of the Organization is subject to both a staff assessment and national income tax on salaries and emoluments earned at the United Nations, that staff member is reimbursed for the national tax paid and payable on salaries and emoluments in order to relieve the effect of double taxation. The refund is deducted from the account of the State that has levied the tax.

33. The objective of General Assembly resolutions, cited in Judgment

12. Pending the necessary action being taken by Members to exempt from national taxation salaries and allowances paid out of the budget of the Organization, the Secretary-General is authorized to reimburse staff members who are required to pay taxation on salaries and wages received from the Organization ...

26. The Tribunal then reasoned, that in order to rule on the legality of the Administration's decision to deny the staff member tax reimbursement, it would consider whether the principle of equal treatment of staff members as intended by the General Assembly had been respected.¹⁸ This is also the position of UNAT in *Reilly* which held that;

In interpreting a legislative provision such as a resolution of the General Assembly, the principle should be that the words of a legislative provision are to be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the legislation, object of the legislation, and the intention of the legislature.¹⁹

27. Although *Johnson* did not deal with a retroactive tax reimbursement, the principles that the Tribunal enunciated have general application and they apply to the case at bar. The Tribunal is guided by the principle that its task in resolving this matter is to determine whether in the exercise of his discretionary power not to grant an exception for retroactive tax reimbursement which is an area of the law governed by staff regulation 3.3(f) emanating from the General Assembly's resolution, the Administration advanced the legislative intent of ensuring equality of staff members in take-home salaries and allowances. If the answer is in the negative, the denial to exercise the discretion in favour of the Applicant is unlawful.

28. It should be noted that the Tribunal is cognizant of the most recent decision from this Tribunal on an issue related to tax reimbursement. The *LL* judgment is not based on staff regulation 3.3(f) and is therefore distinguishable from the present application²⁰.

29. The Administration declined the Applicant's request for a retroactive

¹⁸ Para. 25.

¹⁹ 2019-UNAT-975, para. 33.

²⁰ *LL* UNDT/2023/015.

reimbursement of tax payments because: (a) the Applicant did not meet the requirements under staff rule 3.17(ii); (b) the Applicant should have been aware of his legal obligations; and (c) making an exception [to pay him] would be prejudicial to the interests of other staff members or groups of staff members as per staff rule 12.3(b).²¹

30. The Tribunal has reviewed staff rule 3.17(ii) and agrees with the Applicant that it does not apply to tax reimbursement and therefore the Administration considered an irrelevant factor. Staff rule 3.17(ii) provides that:

because that case dealt with a retroactive payment of special post allowance which is expressly covered under allowances and other payments in the staff rule 3.17(ii).²³

34. A further distinction is that the source of the tax reimbursement is the Tax Equalization Fund²⁴ provided in staff regulation 3.3(f) while as the source of allowances and payments under staff rule 3.17(ii) is elsewhere, hence, the two provisions cannot apply *mutatis mutandis* to all staff members.

35. Furthermore, the Tribunal agrees with the Applicant that unlike allowances and payments in staff rule 3.17(ii) which are made to and “received” by a staff member as a benefit, the tax reimbursement is paid to a third party, the State or Federal Government of the USA. It is not a benefit that a staff member receives as an entitlement.²⁵ On the contrary it is a burden on the staff member because it comes from staff assessment.²⁶ The Respondent did not offer a contrary proposition.

36. The Respondent’s argument that the scope of staff rule 3.17(ii) includes a payment to a staff member in reimbursement for national income taxation in respect of their United Nations salaries and emoluments is without legal basis.

37. The argument by the Respondent that Secretary-General prescribed ST/AI/1998/1 for the implementation of staff regulation 3.3 and staff rule 3.17(ii) and that section 3 of ST/AI/1998/1 provides that the tax reimbursement procedures shall be announced on a yearly basis by the Controller in an information circular is redundant because this Tribunal has already decided on the effect of these particular information circulars.²⁷ Further, in terms of the norms governing the Organization, information circulars are at the bottom of the legal framework, they may not be used to circumvent the will of the legislation.²⁸

38. The Administrative instruction ST/AI/1998/1 refers to the information circular

²³ Page 53 Trial bundle, para. 3.

²⁴ Page 119, Trial bundle, para. 9.

²⁵ Hearing transcript, page 19.

²⁶ Hearing transcript, page 20 and Trial bundle page, 119, para. 9.

²⁷ *Johnson* UNDT/2011/144 affirmed by UNAT.

²⁸ *Villamorán* UNDT/2011/126 (affirmed by *Villamorán* 2011-UNAT-160).

because making an exception [to pay the Applicant] would be prejudicial to the interests of other staff members or groups of staff members as per staff rule 12.3(b). The Respondent has not provided any evidence of prejudice to any specific staff member or group of staff members. It is mere speculation. On the contrary

whether the decision is absurd or perverse. In the case at bar, the decision is irrational with absurd consequences. In addressing the rationality test, UNAT held that;

Issues of rationality and proportionality fall under the broad rubric of reasonableness as a ground of review, albeit introducing a more dialectical assessment than a standard of substantive reasonableness. Rationality as a review ground requires only that a decision be rationally connected to the purpose for which it was taken and be supported by the evidence. The decision must also further the purpose for which the legislative power was given to the administrator. Though variable, substantive reasonableness is typically a higher standard calling for a more intensive scrutiny of the administrative action, touching in some instances on the merits of the decision. A rational basis test is deferential because it calls for rationality and justification rather than the

tax reimbursements.³⁴ No reimbursement is ordered for 2019 and 2020 taxes.

(b) Federal tax 2017

49. The Applicant claimed underpayment of Federal tax of USD7,868 “due to inaccurate earnings statement provided by ITU”. In response, the Respondent proved during the hearing that the Applicant acknowledged in 2018 an error was identified and ITU sent a corrected statement of taxable earnings to his correct email address. The 2 February 2018 corrected statement of taxable earnings advised the Applicant to ignore the erroneous 26 January 2018 statement.³⁵ He has not shown why he did not utilize the revised version of statement of earnings for tax reimbursement as timely provided by ITU in 2018. This was a self-induced liability which the Applicant must bear as he had the responsibility to ensure that his tax claims were accurate. The excuse that the email from ITU with revised statement of earnings must “have gone through the cracks” is untenable.³⁶ This claim is dismissed.

Interest and penalties 2015- 2018

50. The Applicant contributed to the delay in filing and claiming tax reimbursement. He should bear the interest and penalties arising from the delayed payment up to 26 January 2022 when the Administration denied his application for retroactive reimbursement.

51. Any penalty and interest that accrued on the unpaid tax for 2015-2018 from 27 January 2022 shall be borne by the Respondent. The cause of the delay is attributed to

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tax.

b. The Respondent shall also reimburse to the Applicant any penalty and interest accrued on unpaid tax for 2015-2018, from 27 January 2022.