



JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. David Andati-Amwayi (Andati-Amwayi), a staff member of the United Nations Human Settlements Programme (UN-HABITAT) in the position of Clerk at the GS-2 level, was refused medical services at a Nairobi hospital while awaiting a contract extension. This refusal was based on administrative instructions from the Organization to hospitals in Kenya not to provide medical services on credit to any staff member who produced an expired Medical Insurance Plan (MIP) card or United Nations Grounds Pass. His application was rejected by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on the ground that there was no administrative decision taken by the Administration within the meaning of Arti

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Considerations

15. We do not find any merit in the argument that Judge Boolell improperly failed to recuse himself and a legal officer from the case due to a conflict of interest. Andati-Amwayi ought to have first raised this objection at the Dispute Tribunal hearing for the consideration by the Judge. His mere allegations that the Judge and a staff member of UN-HABITAT are of the same nationality, and that a legal officer of the UNDT Registry should not be involved in the case, are insufficient evidence of bias or real likelihood of bias by the Judge in the case.

16. The issue for determination is whether the UNDT correctly held that Andati-Amwayi was not contesting an administrative decision within the meaning of the jurisdictional provisions of the UNDT Statute. Article 2(1)(a) of the UNDT statute provides as follows:

1. The Dispute Tribunal shall be competent to hear and pass judgement 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.

17. What is an appealable or contestable administrative decision, taking into account the variety and different contexts of administrative decisions? In terms of appointments, promotions, and disciplinary measures, it is straightforward to determine what constitutes a contestable administrative decision as these decisions have a direct impact on the terms of appointment or contract of employment of the individual staff member.

18. In other instances, administrative decisions might be of general application seeking to promote the efficient implementation of 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.

19. 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.

20. Andati-Amwayi's application to the Dispute Tribunal challenged UNON's instructions to hospitals in Kenya not to provide medical services to any staff member who produced an expired MIP card or Grounds Pass.

21. These instructions were based on an information circular, dated 22 April 2002, informing staff members that the UNON had agreed with hospitals that, in an effort to improve the control of and to protect MIP benefits, MIP-covered individuals seeking treatment without making an up-front payment for services were required to produce a valid United Nations identity card in addition to a letter from the Joint Medical Service (JMS), as from 1 June 2002.

22. On 6 January 2004, the UNON's Division of Administrative Services informed staff members that MIP cards were being issued and that these cards would become the approved form of identification for staff members to access credit facilities for medical care from hospitals in Kenya.

23. We take note that the requirement for UNON staff members to possess MIP cards or a Grounds Pass in order to access medical services on credit was for the overall effective administration of the Organization's staff medical insurance plan. The requirement was of general application to all staff and cannot be deemed to affect the terms of appointment or contract of employment of any one staff member.

24. In the instant case, due to a delay in the extension of his contract, Andati-Amwayi's MIP card and Grounds Pass expired and he was thereby deprived of the ability to be provided medical services on credit at the Mater Hospital in Nairobi. In his appeal, Andati-Amwayi has not provided any cogent arguments to persuade this Tribunal that the administrative instructions infringed the terms of his appointment or his contract of employment.

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