

File No.: UNDT/NBI/201

Introduction

1. The Applicant is a former staff member of the United Nations Development Programme (UNDP). She separated from the Organization on 31 December 2000.

2. In her Application dated 8 September 2014, she is challenging the “refusal to allow [her] to pay retroactive Van Breda health insurance premiums (despite timely application to ASHI and processing thereof)”.

3. The Respondent filed a Reply and a Motion on 13 October 2014 in which it is submitted, *inter alia*, that the Application is manifestly inadmissible and should be struck out.

4. The Respondent asserts that the Application should be dismissed as irreceivable because the Applicant has not identified an administrative decision amenable to challenge. The Respondent further submits that even if it is found

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to appeal a purported administrative decision by reiterating an earlier request for the purposes of appeal.

d. The administrative decision that the Applicant contests is the purported decision not to allow her to retroactively enroll in ASHI. The Respondent submits that the Applicant sought an agreed separation and executed a Certificate of No Contest (CNC). The agreed separation she sought included a period of Special Leave With Partial Pay followed by a period of SLWOP. During her period of SLWOP, the Applicant decided to discontinue her contributions to a United Nations health insurance scheme prior to separating at the age of 52.

e. The Applicant's decision to discontinue her United Nations health insurance and to separate at age 52 rendered her ineligible for ASHI.6 Tm [(in)9(s)5(u)-11(r)-8(a)-30

2014, she has sought formal review approximately 13 years after the alleged decision she seeks to challenge took place.

14. For the foregoing reasons, the Respondent requests that the Application be dismissed in its entirety.

Considerations

15. Article 2(1) (a) of the UNDT Statute reads:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual [...].

(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 [...].

16. It is now well settled what the classic definition of an administrative decision is as determined in the case of *Andronov*.¹

There is no dispute as to what an “administrative decision” is. It is acceptable by all administrative law systems, that an “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences.

Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences. They are not necessarily written, as otherwise the legal protection of the employees would risk being weakened in instances where the Administration takes decisions without resorting to written formalities.

¹ Judgment No. 1157, 20 November 2003, at para. V.

20. At the time of her separation the Applicant had agreed to discontinue her coverage with her United Nations contributory health insurance plan, Van Breda, upon its expiry on 6 September 2000. There is nothing on record to indicate that the Applicant informed UNDP of her decision in respect to ASHI or whether she intended to continue with her coverage with Van Breda.

21. A decision by a staff member to join the United Nations medical plan is not an obligation but an option offered by the United Nations as an individual may well opt for some other health coverage plan though joining the plan of the United Nations offers certain advantages. Joining or remaining in a health coverage plan is not part of the terms or conditions of the contract or terms of employment of a staff member. When the Administration informed the Applicant that she could not enroll retroactively in ASHI, that was an administrative decision but it did not have any legal consequences that impacted on her contract or terms of employment. There is nothing in art. 2 of the Statute of the Dispute Tribunal that suggests that the Article should also cover any impact that a decision may have on a retiree's health coverage.

22. The Tribunal holds, therefore, that the decision was not an administrative decision within the meaning of art. 2 of the UNDT Statute.

Statute, the Dispute Tribunal may waive deadlines upon a written request from a party. This provision would not avail an application filed more than three years from the impugned decision. After three years the guillotine fatally applies to an application and the Tribunal has no power or jurisdiction to consider a request for waiver or to grant one.

25. In *Bangoura*⁷ and *Reid*⁸ the Appeals Tribunal held that the Dispute Tribunal cannot waive the time limit to file an appeal, more than three years after the applicant's receipt of the contested administrative decision. In *Reid* the