



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/082

Judgment No.: UNDT/2018/025

Date: 23 February 2018

Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

STEINBACH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicants:

Robbie Leighton, OSLA

Counsel for the Respondent:

Melissa Bullen UN Women,
Myline Spencer, UN Women

Introduction

1. On 3 August 2017, the Geneva Registry of the U20h[(1.)] TJ./MCID 1BDC BT/F1 12 BT/F

7. On 15, 16 and 18 September 2017, the Counsel for the Respondent filed identical Motions requesting the Tribunal:

8.

Organizations and UNOG senior management met with the ICSC Vice-Chairman and the Chief of the Cost-of-Living Division of the ICSC in Geneva to reiterate their concerns. During the meeting, a number of UN system-wide repercussions were identified.

The ICSC has taken due note of the concerns expressed220.96 and 3-219()8

Charter and was established in accordance with General Assembly resolution 3357(XXIX) of 18 December 1974 in which it approved the ICSC Statute.

27. Article 11(c) of the ICSC Statute provides that the Commission shall establish the classification of duty stations for the purpose of applying post adjustments. The ICSC does not advise the Secretary-General on post adjustment; rather, the ICSC takes decisions which have to be implemented by the Secretary-General. Therefore, the implementation of the ICSC decisions on the post adjustment multiplier does not constitute an administrative decision taken pursuant to advice obtained from technical bodies. The Applicants are therefore not exempt from the requirement to first request a management evaluation prior to submitting an application with the UNDT.

28. The application is not receivable under staff rule 11.2(b), and should be filed under staff rule 11.2(a), requiring staff members to, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

The 11 May 2017 ICSC decision, or the implementation thereof, is moot.

29. The management evaluation request dated 10 July 2017 relates to the May 2017 ICSC decision, or its implementation, which was superseded by the July 2017 ICSC decision. The July 2017 decision constitutes a new decision of the ICSC and the May 2017 ICSC decision is void.

30. The July 2017 ICSC decision cannot be considered as a continuation of the May 2017 decision. The May 2017 decision was initially projected to result in a decrease of 7.7% in net remuneration. The payment of a post adjustment based on the revised multiplier was to be paid to new staff joining the Organization on or after 1 May 2017. However, the July 2017 ICSC decision superseded the 4(on)-119(c)4(ass)1 the J,21-109(the

ICSC decision also resulted in retroactive payments to staff members who joined on or after 1 May 2017.

31. On 23 August 2017, the Applicant was informed by MEU that the July 2017 ICSC decision rendered moot the matter raised in their management evaluation request.

The implementation of an ICSC decision on post adjustment multipliers is not an administrative decision subject to review pursuant to the UNDT Statute.

32. The May 2017 ICSC decision and the July 2017 ICSC decision are not administrative decisions pursuant to art. 2 of the UNDT Statute or pursuant to the Staff Regulations and Rules. The setting of the post adjustment multipliers by the ICSC, as reflected in its May 2017 and July 2017 decisions, must be implemented by the Secretary-General, there is no room for interpretation or the exercise of discretion. 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.

33. 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 United Nations Appeals Tribunal (UNAT) confirmed in *Obino*

post adjustment multiplier. This implementation does not involve the exercise of discretion on the part of the Secretary-General and therefore is not reviewable.

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

34. The May 2017 ICSC decision was projected to result in a 7.7% decrease in net remuneration, this in fact did not happen because the decision was superseded by the July 2017 ICSC decision.

35. Even with the July 2017 ICSC decision, the Applicants have not been

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challenged here falls within the ICSC's advisory powers and was not subject to approval by the General Assembly.

42. In *Pedicelli* it was found that notwithstanding a finding that the Secretary-General had no discretion in the implementation of an ICSC decision, the negative impact of that decision still rendered it capable of review. To find otherwise would be to render decisions regarding fundamental contractual rights of staff members immune from any review regardless of the circumstances. This is inconsistent with basic human rights and the Organization's obligation to provide staff members with a

after receiving their pay slips for the relevant period.²⁰ The UNAT held also: "It was not the ICSC or the General Assembly's decision to freeze their salaries, but the execution of that decision that was challenged insofar as it affected the staff members' pay slips."²¹

53. Last, in *Pedicelli*, the administration announced that it would commence conversion from the nine-level salary scale then applied to GS staff in Montreal to the seven-level salary scale promulgated by the ICSC. A number of staff members, including the appellant in that case, received Personnel Action forms confirming their new grade. The UNAT echoed *Obino* regarding the lack of discretion on the part of the Secretary-General in implementing ICSC decisions. It however concluded:

Notwithstanding the foregoing, it is an undisputed principle of

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57. Where the controlling norm is contained in a decision of general order, which

