



Introduction

1. The Applicant joined the United Nations High Commissioner for Refugees (UNHCR) in January 1995 on a short term appointment as Secretary (GL4) in Nairobi, Kenya. In March 1996, her appointment was converted to a fixed-term appointment and she was appointed Social Services Clerk. In January 2000, the Applicant was appointed Senior Community Services Clerk and her appointment was converted to an Indefinite Appointment. She was promoted to the GL5 level in July 2000. In April 2001 she was promoted to the GL6 level and appointed as Community Services Assistant, a position that she encumbered until she separated from service on 5 May 2009.

Background

2. Some of the facts preceding the present Application are contained in former UN Administrative Tribunal Judgment No. 1420 dated 30 January 2009. In the said Judgment, the former UN Administrative Tribunal ordered the following in the Applicant's favour:

a. The UNHCR to bring to an end the Applicant's indefinite appointment with the appropriate termination indemnities, in accordance with the undertaking of the Secretary-General, or, if the Secretary-General decided in the interest of the Organization not to fulfil that obligation, fixed the compensation owed to the Applicant at the amount of one year's net base salary at the rate in effect on the date of the judgment, with interest payable at eight per cent per annum as from 90 days from the date of distribution of the Judgment until payment was effected.

b. In compensation for the moral damage suffered by the Applicant

interest payable at eight per cent per annum as from 90 days from the date of distribution of the Judgment until payment was effected.

3. The Respondent was notified of this Judgment on 20 February 2009. By email dated 19 April 2009, the Applicant was informed that, pursuant to staff regulation 9.3(a), the UNHCR Director of the Division of Human Resources Management (“Director/DHRM”) had decided to terminate her appointment with UNHCR in the interest of good administration and to pay her termination indemnities totalling 11.5 months of gross salary, at the rate in effect on the date of the UN Administrative Judgment, that is, 30 January 2009. In addi

measures outlined by the Director/DHRM on 1 May 2009.

6. On 21 May 2009, a UNHCR Human Resources Officer (“UNHCR/HRO”) drew the Applicant’s attention to the full wording of UN Administrative Tribunal Judgment No. 1420 and explained her entitlements vis-à-vis Staff Regulation 9.3 and Annex III to the Staff Regulations. The Applicant was also informed that her cheque for six months net base salary representing her compensation for moral damages had been issued and was awaiting her collection in Nairobi.

7. On 29 September 2009, the Applicant requested the UNHCR’s Ombudsman’s intervention in her case to request the UNHCR Administration to pay for medical bills incurred whilst she was still their employee, to effect payment as per the former UN Administrative Tribunal Judgment and to request that she be paid in US Dollars. On 17 November 2009, a UNHCR Human Resources Officer informed the Applicant and UNHCR’s Ombudsman as follows:

a. In accordance with the Staff Regulations and Staff Rules, the Applicant was entitled to 11.5 months of gross salary which corresponded to her total tenure with the Organisation of 14 years. In addition, the Director/DHRM had authorized an additional three months salary in lieu of notice. UNHCR had however not yet paid this amount because in the Applicant’s email of 5 May 2009, she had refused to accept those terms. That money was still pending with the UNHCR office.

b. As per the letter dated 21 May 2009, the Applicant’s cheque for compensation for moral damages equivalent to six months net base salary had been issued and was awaiting her collection.

c. As a result of the Applicant’s failure to collect the said cheque it had gone stale. The UNHCR Finance section had voided the cheque as a result for re-issuance of the same payment at a later date.

d. UNHCR needed to know when the Applicant would be able to collect

the cheque or whether she preferred for the funds to be paid into a bank account of her choice.

e. The Applicant had been placed on a combination of sick leave on half pay with annual leave for a period of nine months three weeks and six days from 16 October 2002 to 11 August 2003. As of 12 August 2003 she was placed on Special Leave Without Pay (SLWOP) since she had exhausted all her entitlements for sick leave on full and half pay.

f. On 6 October 2003, the Applicant was informed that she had been placed on SLWOP by the Human Resources Officer at that time and that she would have been entitled to retain the medical insurance during the period of special leave without pay, that is, from 12 August 2003 to 4 May 2009 provided that she had paid hers and the Organization's contributions for that period.

8. By email dated 2 December 2009, the Applicant's legal representative at the time, Ms. Errol Shaw, responded to the UNHCR Human Resources Officer as follows:

a. The Applicant's cheque for compensation for moral damages equivalent to six months net base salary should be forwarded to her in US Dollars, not in Kenyan Shillings due to her inability to return to Kenya given her medical condition.

b. The former UN Administrative Tr

9. On 22 February 2010, the Applicant sent an email to UNHCR in which she gave her contact address details for the purposes of transmitting her cheque and reiterated that the medical bills pending for settlement were incurred whilst she still held a valid employment contract with UNHCR. The Human Resources Officer (HRO) responded on 22 February 2010 as follows:

a. UNHCR would proceed to pay the Applicant 12 months of termination indemnities (while agreeing that the correct calculations would be 11.5 months, the half month requested by the Applicant was paid considering the delay of the payment).

b. Six months of net base salary would be paid for moral compensation;

c. Three months of net salary would be paid in lieu of notice. The amounts would be paid in US dollars as per calculations based on data as at May 2009.

d. On the issue of the after-service health coverage, UNHCR awaited advice from competent services at Headquarters and would revert.

10. In a subsequent email on 23 February 2010, Ms. Stella Adu of UNHCR informed the Applicant that the cheque issued by the UNHCR office was a local cheque and that it was advisable that she open a United States Dollar account in the US so that UNHCR could make a bank transfer. On the same day, the Applicant stated that she did not hold a US Dollar bank account and should therefore be paid by cheque and transferred to her by UPS.

11. On 10 March 2010, the Applicant sent an email to another UNHCR/HRO in which she stated that she was still waiting for her cheque. On 5 April 2010, the Applicant requested the intervention of the UNHCR's Ombudsman's office for a second time.

12. On 23 June 2010, the Applicant addressed a letter to the Director/DHRM in which she sought the payment of interest occasioned by UNHCR's delay in complying with UN Administrative Tribunal Judgment No. 1420. The Officer-in-Charge, DHRM responded to the Applicant's letter on 21 July 2010 rejecting her request and stating that the UNHCR had effected the payment into the Applicant's son's bank account in Kenya Shillings on 22 April 2010 and that the matter should therefore be closed.

13. The payments were made as follows: (i) On 22 April 2010 payment of KES 2,915,024; (ii) On 10 June 2010 payment of KES 425,867 to which the Applicant acknowledged receipt of the latter on 26 June 2010.

14. In her Application dated 12 August 2010 (received by the Tribunal on 18 August 2010), the Applicant seeks the implementation of former UN Administrative Tribunal Judgment Number 1420.

15. On 15 September 2010, the Respondent filed a Reply in which it was submitted, *inter alia*, that the Application was time-barred due to the fact that payment was effected on 22 April 2010 and that the Applicant's claim should be subjected to management evaluation in accordance with Staff Rule 11.2.

16. On 25 October 2010, the Tribunal issued *Nzau*, Order No. 210 (NBI/2010), requiring the Applicant to file written submissions on the questions of waiver of time limits and on the requirement for management evaluation by 26 November 2010. The Applicant filed the said submissions on 1 November 2010.

Applicant's submissions on receivability

17. The Applicant's submissions may be summarized as follows:

- a. The Applicant requests for a waiver of the time limits in the interest of justice because of the bad faith shown by the Respondent.

b. There is need for an independent arbitrator because a management evaluation is bound to arrive at the same verdict, thereby, delaying justice.

c. If the UNHCR Administration had demonstrated good faith, they would have suggested that the Applicant request a management evaluation before the case was filed with the Tribunal. The Applicant submits that the Respondent had never offered any clarification or explanation on the issue of management evaluation.

Considerations

Requirement for management evaluation

18. In accordance with ST/SGB/2009/11 (Transitional Measures Related to the Introduction of the New System of Administration of Justice), the former UN Administrative Tribunal transferred its pending cases to the United Nations Dispute Tribunal (“the Tribunal”) on 1 January 2010.

19. The Applicant seeks the implementation of former UN Administrative Tribunal Judgment Number 1420 issued on 30 January 2009. Article 2.7(b) of the Statute of the Dispute Tribunal provides that as a transitional measure, the Dispute Tribunal has competence to hear and pass judgment on a case transferred to it from the former UN Administrative Tribunal.

20. Article 11(3) of the Statute of the Dispute Tribunal provides that:

The Judgments of the Dispute Tribunal shall be binding upon the parties, but are subject to appeal in accordance with the statute of the United Nations Appeals Tribunal. In the absence of such appeal, they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal.

21. Article 32 (2) of the Dispute Tribunal’s Rules of Procedure provides that:

Once a Judgment is executable under article 11.3 of the Statute, either party may apply to the Dispute Tribunal for an order for execution of the

Judgment if the Judgment requires execution within a certain period of time and such execution has not been carried out.

22. Counsel for the Respondent contends that the present Application is time barred due to the fact that payment was effected on 22 Ap

other. The Applicant in the same vein could not dictate that she be paid in US Dollars.

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