

Translated from French

Case No.: UNDT/GVA/2010/109

Introduction

1. The Applicant contests the decision of the United Nations Office at Geneva (“UNOG”) not to pay her upon her retirement a prorated amount for

Assistance in Geneva, and no one had told her that she needed to proceed with filing an application. Thus, her application is not time-barred;

b. The three breaks between the terms should be considered periods of annual leave;

c. Language teachers work 39 weeks in the year and are on leave for the remaining weeks. There are three teaching terms: up until 31 July there are 26 weeks of classes divided into two terms, with the third term beginning in September and running for 13 weeks. Language teachers who, like her, were born before 31 July and hence retired before 1 August did not receive the proportional share of their annual leave payment corresponding to the 26 weeks of teaching already performed. The Applicant was separated from service on 31 July 2009 and was not compensated for the 4.66 weeks of annual leave to which she was entitled;

d. There is an inequality of treatment between the language teachers born before 31 July and those born after. Judgment No. 1212, *Stouffs* (2004), of the former United Nations Administrative Tribunal did not follow the principle of equity and did not take into account the proposals made by the Joint Appeals Board. The administrative rules must be interpreted in good faith.

17. The Respondent's contentions are:

a. The application is not receivable because the Applicant received a decision in writing from the Chief of HRMS on 3 June 2009, rejecting her request. The decision of 1 July 2010 merely confirmed the original decision;

b. The Applicant has not complied with the mandatory two-month time limit laid down in staff rule 111.2(a), which was applicable at the time. In point of fact, she had received the decision rejecting her request by 3 June 2009, and the subsequent decisions were confirmations of that decision and did not restart the reckoning of the time limits for submitting an application;

- c. Contrary to the Applicant's assertions, she has not pursued a formal mediation, even if she has had contacts with the Office of the Ombudsman;
- d. The special conditions of service applicable to language teachers are set out in Appendix F to the 100 series of the Staff Rules. The summer recess and breaks between terms over and above the leave entitlement provided for in the Staff Rules do not constitute annual leave, but are periods of special leave with pay;
- e. The content of appendix F is fully consistent with the Secretary-General's proposals in his report A.C/5.38/41 of 18 November 1983, as approved by General Assembly resolution 38/234, which was the basis for the issuance of administrative instruction ST/AI/316 of 6 March 1984, granting the status of staff member to full-time language teachers;
- f. The conditions of service of language teachers are regulated by the International Civil Service Commission in its report (ICSC/52/R.6/Add.3 of 18 July 2000). The former United Nations Administrative Tribunal affirmed the Administration's position in its judgment No. 1212, *Stouffs* (2004);
- g. The Applicant is not entitled to contest the regulatory measures taken by the Administration;
- h. Pursuant to staff rule 109.10(a), all entitlements cease as of the date of retirement approved by the Secretary-General. There is therefore no reason why the Applicant should be compensated for special leave with pay corresponding to the 26 weeks that she worked in 2009.

Considerations

18. The facts as set out above establish that, beginning on 29 January 2009, the Applicant submitted several requests to the UNOG Administration seeking to receive upon her retirement a prorata payment for accrued annual leave and it was not until 25 August 2010 that she submitted a request for a management

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