



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/077

Judgment No.: UNDT/2014/100

Date: 17 July 2014

Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Abena Kwakye Berko

KEEGAN

v.

SECRETARY GENERAL  
OF THE UNITED NATIONS

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JUDGMENT ON RECEIVABILITY

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Counsel for Applicant:  
Daniel Trup, OSLA

Counsel for Respondent:  
Steven Dietrich, ALS/OHRM  
Alister Cumming, ALS/OHRM

## The Application and Procedural History

1. The Applicant is contesting changes to

Tribunal also directed the Parties to file joint submissions on facts and issues and their views on the three separately filed applications being consolidated.

6. The Applicant filed his submissions on receivability on 6 December 2013.
7. On 10 January 2014, the Parties filed jointly filed submissions as directed in Order No. 261 (NBI/2013).
8. The Parties now consent to the

Rules were promulgated, effective 1 July 2020 Under the provisional Staff Rules,  
former Staff Rule 103.21 was abolished and replaced by Staff Rule 103.36

17. On 31 December 2010, the Secretary-General informed all staff in a broadcast message that the General Assembly had approved, inter alia, the International Service Commission's recommendations on a harmonized approach to the compensation, allowances and benefits of staff across United Nations common system assigned to non-family duty stations effective 1 July 2011. This included the designation of duty stations as family or non-family duty stations based on security criteria, payment of additional hardship allowance for staff serving in family locations, and paid travel for rest and recuperation purposes.

18. Given the apparent changes in the conditions of service for newly appointed FSOs on long-term TDY assignments, requests for agreed termination of appointments were made an option for existing FSOs. The Applicant did not avail himself of this option neither did he sign for or agree to any changes in conditions. This is contested by the Respondent. The Respondent submits, and the Applicant does not accept, that at the same time, all FSOs were allowed to remain on 'travel status' with payment of MSA from 1 July until 30 September 2011, pursuant to staff rule 4.8(b). This gave all FSOs time to consider whether to request an agreed termination or continue to serve the Organization under the new conditions of service.

19. The Respondent submits, and the Applicant does not accept, the transitional arrangements

of the General Assembly which resulted in amendments to the Staff Rules, particularly staff rules 4.8(b) and 13.7.

21. On 27 May 2011, in order to implement the newly revised Staff Regulations and Rules, the Department of Field Support (DFS) issued "Guidelines for Implementation of General Assembly Resolution 65/248 on Harmonization of Conditions of Service for International Recruited Staff in Peacekeeping Operations and Special Political Missions" (Guidelines). The Guidelines mandated the termination of the FSO terms and conditions vis-à-vis their link with the family duty station where they had been previously assigned and ended their MSA.

22. On 31 May 2011, the Applicant received an e-mail from the Chief Civilian Personnel Officer (CCPO) of MONUSCO, informing him that his MSA payment was to be discontinued, following the implementation of the Guidelines.

23. On 28 July 2011, the Applicant filed a request for management evaluation asserting that the Guidelines violated his acquired rights insofar as they changed conditions of service for FSOs in relation to their mission assignments, his travel status, and MSA payment while he received post adjustment, salary and related allowances applicable to his parent duty station. On 9 September 2011, the Management Evaluation Unit informed the Applicant that his request for management evaluation was not receivable.

24. On 28 November 2011, the Applicant filed a second request for management evaluation, challenging the implementation of his reassignment on 12 October 2011.

judgment on an application filed by an individual to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment.

26. This provision must be read together with article 8.2(e) of the Tribunal's Rules of Procedure, which requires an applicant to state "when and where the contested decision, if any, was taken (with the contested decision attached)"

27. The Respondent's principal contention is that the Applicant's challenge to the changes in his conditions of service is not receivable before the Tribunal. The implementation of an administrative policy mandated by the General Assembly does not constitute a reviewable administrative decision under article 2.1(a) of the Statute of the Dispute Tribunal.

28. The Applicant contends that the payment of MSA formed part of the terms and conditions of his contract. The abolition of the payment of MSA was at the discretion of the Secretary General; payment of it was not proscribed by, or as a consequence of, General Assembly resolution 65/248.

29. The Applicant further asserts that General Assembly resolution 65/248 does not in any way override his legitimate expectation that payment of MSA would be honoured. It was the decision by the Secretary General, and not the General Assembly, to abolish payment of the MSA with immediate effect and that this constitutes an administrative decision within the meaning of article 21 of the UNDT Statute.

30. The question for this Tribunal then is whether this discretionary

[W]hat 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.

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.

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.

32. What the Applicant is seeking to challenge is the Secrengethough the WWhhoug

35. The new conditions of service that disallows the application of the temporary assignment to a non-family duty station as of 1 October 2011, is not an emanation of the Secretary General's discretion.

36. This General Assembly decision was binding on the Secretary General, and its implementation affected staff across the Organization.

37. These changes included the introduction of permanent appointments for eligible staff members, which the Applicant was offered and signed on 23 June 2011.

38. The Tribunal finds that the Applicant is seeking to challenge a change to his terms and conditions of service, which the Secretary General implemented pursuant to the General Assembly's directions.

39. The Tribunal has examined the papers in this matter from as many angles as has been raised by the Parties, and finds that this matter is materially outside its jurisdiction.

40. The Tribunal therefore cannot continue to adjudicate this matter and dismisses the Application in its entirety.



Judge Vinod Boolell

Dated this 17<sup>th</sup> day of July 2014

Entered in the Register on this 17<sup>th</sup> day of July 2014



Abena Kwakye Berko, Registrar, Nairobi