Case No.: UNDT/GVA/2017/109

Judgment No.: UNDT/2019/090
Date: 22 May 2019

Parties'

without rescinding it. As such, the Tribunal confirms its usual jurisprudence according to which, while it can incidentally examine the legality of decisions with regulatory power, it does not have the authority to rescind such decisions.

- d. The Applicant states that he is not challenging the 2011 or 2012 decision to generally implement the secondary salary scale, but rather the specific implementation by the Secretary-General of the unequal salary scale to him, the existence of which he did not know until he received his first salary.
- 7. The Respondent's principal contentions are:
 - ##E application is not receivable on the basis that the alleged contested decision is not a decision within the meaning of art. 2 of the Tribunal's Statute. The Applicant is receiving the salary to which he agreed on 24 May

Case No. UNDT/GVA/2017/109

Judgment No. UNDT/2019/090

asserts or establishes that the salary in the statement deviates from the salary jointly agreed by the parties during the offer and acceptance of the Applicant's appointment; and

d. The different salary scales had been published and were available to be viewed on the internet.

Consideration

- 8. The Applicant believes that he has received unequal treatment, been discriminated against and has suffered financial injury as a consequence of receiving a lesser salary than his GS-4 colleagues who were recruited prior to 1 March 2012.
- 9. There are two salary scales which have been applied. The salary scale effective from 1 January 2015 is applicable to all staff recruited to the General Serv8619041010311(edica98004790(0696)706229(6006)976(2017))77(s(u9)979(2004) (8:3700838(sap)) (v)7560900969200127.d (suse) T50

existing staff as at 1 March 2012 have certain acquired rights in respect of their salary as a result of their already being in service prior to the salary scale reduction.

- 11. The Tribunal notes that the Applicant is asserting rights which he does not have. Insofar as he asserts that there is a decision which negatively affects his terms of appointment, this cannot be sustained. His terms of appointment were set by specific agreement and were not impacted in any manner by any decision which was implemented in January 2015 or were disclosed to him when he received his first payslip. He agreed to certain terms and conditions in the offer of appointment he signed on 24 May 2017 and in the letter of appointment he signed on 24 August 2017. The salary scale applied to his appointment was that published and applicable. He appears to be asserting that he has in some manner the same acquired rights as those who had been working for the Organization before 1 March 2012 and who, as a consequence, were not subject to a 27.2 per cent salary reduction.
- 12. An acquired right, is an acquired contractual right. It is predicated upon the existence of a contractual relationship at the time that the acquired right is in some manner impacted by a unilateral decision of the Organization. In this matter, the Applicant had no such contractual relationship at the relevant time and there has been no change in his salary, or contractual terms from those offered and agreed by him with the Respondent. Any rights

14. The Tribunal notes that the Appeals Tribunal in its Judgment *Al Surkhi et al.* 2013-UNAT-304 clearly adopted the definition of an "administrative decision" as developed by the former UN Administrative Tribunal in Judgment No. 1157, *Andronov* (2003), namely that:

[i]t is acceptable by all administrative law systems, that an "administrative decision" is a unilateral decision taken by the administration in a precise individual case assoutes)Tj 12o2t0 -

Conclusion

18. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed as irreceivable.

(Signed)

Judge Rowan Downing Dated this 22nd day of May 2019

Entered in the Register on this 22nd day of May 2019 (Signed)

René M. Vargas M., Registrar, Geneva