
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2023/010

Judgment No.: UNDT/2023/139

Date: 15 December 2023

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: New York

Registrar: Isaac Endeley

MOUCHABEK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Cristian Gimenez Corte

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former staff member of the United Nations Economic and Social Commission for Latin America and the Caribbean based in Santiago, Chile. By an application filed on 28 March 2023, she contests the separate [her] on early retirement, despite the withdrawal of her request for early retirement.
2. The Respondent filed his reply on 1 May 2023, arguing that the application should be granted.
3. For the reasons set out below, the Tribunal has decided to dismiss the application.

Factual and procedural history

4. The Applicant commenced her employment with ECLAC on 11 December 1989. At the time of her separation from the Organization, she held a permanent appointment as a Senior Administrative Assistant, at the G-7 level, in the Travel, Traffic and Local Transportation Unit of the Division of Administration.
5. In her application, during the first half of 2022, she stated that she was unable to work from mid-August to end-September 2022. Due to her poor health situation from mid-August to end-September 2022. After the period of sick leave expired and although she had not recovered, she requested early retirement. Because of her ongoing health situation as she did not feel she could continue working.
6. On 1 September 2022, the Applicant met with the Director of the Division of Administration of ECLAC to discuss her health situation and review her request for early retirement.

conversation with the Applicant earlier in the day and noting that the Applicant had set a high standard in the Travel Unit. The Applicant also wrote back thanking the DDA and expressing her gratitude towards her ECLAC colleagues for her 33 years of service. The DDA then instructed the Human Resources Section to initiate the and a recruitment process to fill the position that would soon become vacant .

7. Following that exchange, the Applicant started interacting with the Human Resources Section in preparation for her early retirement on 31 December 2022. From 1 September 2022 until 15 December 2022, among other actions, the Applicant undertook the necessary administrative procedures to be separated from the Organization including completing the forms to secure her pension benefits and to ensure after-service health i coverage. On 2 December 2022, the Applicant attended Administration conducted via Microsoft Teams at which she said farewell to her colleagues and expressed excitement about her upcoming retirement. On 15 December 2022, the Applicant communicated with h871 0 595.3206.27 Tm0 g0 Gof1 0 0 1e

9. On 16 December

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29. Staff rule 9.2(c) provides that the Secretary-General may require the resignation to be submitted in person in order to be acceptable.

30. Staff rule 9.11 relates to the last day of service for pay purposes and subparagraph (iv) states that in the case of retirement, the date shall be the date approved by the Secretary-General for retirement.

31. Staff rule 9.12 is concerned with certification of service and provides that
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34. Therefore, the [redacted] is to interpret the language of the staff regulation or rule based on its plain and ordinary meaning without adding anything to or subtracting anything from it otherwise the Tribunal shall be the author of the regulation or rule.

35. After going through the cited staff regulations and rules and the Human Resources guidelines on resignation and early retirement, the Tribunal agrees with the Respondent that they are only relevant to the issue under consideration insofar as they outline the process by which a staff member may resign and how the Administration is to accept this resignation. They do not address the decision not to accept the withdrawal of resignation. They are concerned with matters relating to acceptance of a resignation or early retirement. The Applicant did not request a management evaluation of any alleged decision not to accept her resignation.

36. The Applicant voluntarily resigned from her position. The legal consequences were that she unilaterally terminated her employment. Under the staff regulations and rules, she was perfectly entitled to do so. Having voluntarily resigned and having had her resignation accepted, the Applicant could not claim that the Respondent had not complied with her terms of appointment or the contract of employment.

37. In the absence of any proof of non-compliance with the terms of her appointment or contract of employment, the matter ought to have been dismissed on the ground [redacted] got oeng

management may under certain circumstances consider accepting the request to withdraw a resignation for the proper administration of the Organization.

39. _____, in that a staff member may challenge a unilateral decision of the Administration involving the exercise of managerial power. For instance, in *Neupane* 2023-UNAT-1378, the Appeals Tribunal held, at para. 26, that (emphasis added):

According to the consistent jurisprudence of this Tribunal,

administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another

40. When exercising managerial discretionary authority, the Administration must act in good faith, fairly, transparently and in a non-discriminatory manner. The decision must not be arbitrary or motivated by factors inconsistent with proper administration. (See generally, *Assad* 2010-

