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Introduction

1. The Applicant is an Administrative Assistant at the United Nations Disengagement Observer Force (UNDOF) based at Camp Ziouani, Amret Al-Faouar, Syrian Arab Republic. She serves at the FS-4 level on a fixed-term appointment.

2. On 5 February 2015, she filed an Application for Suspension of Action, pending management evaluation, seeking the suspension of the decision of the International Civil Service Commission (ICSC) not to approve a four-week rest and recuperation (R&R) cycle for staff members serving west of the “Alpha Line” in the “Area of Limitation” of UNDOF (“the impugned decision”).

3. The Respondent filed a Reply to the Application on 6 February 2015 in which it was asserted that the Application was not receivable. On 9 February 2015, the Respondent filed a Corrigendum to his Reply.

4. The Applicant is one of several international staff members of UNDOF who have challenged the impugned decision. The Tribunal held a hearing on 9 February 2014 in the case of *Bernateau*, Case No. 053 (NBI/2015).

7. No approval for a four-week R&R cycle was authorized for Camp Ziouani in UNDOF or locations west of the so-called Alpha Line in Syria.

8. On 9 January 2015, the Chief, Policy and Conditions of Service section of the Office of Human Resources Management (OHRM) disseminated to headquarters offices and Chiefs of Administration in the field, the list of duty stations which the ICSC had approved for an R&R entitlement effective 1 January 2015. An updated list was issued on 14 January 2015. By facsimile dated 16 January 2015, the Director, Field Personnel Division of the Department of Field Services (FPD/DFS) further disseminated the list to all field missions. The most recent list was issued by OHRM on 30 January 2015

9. The Applicant received notification of the R&R designation on 21 January 2015.

10. On 29 January 2015, she requested for a management evaluation of the decisions abolishing R&R entitlements and the “refusal of Danger Pay on A-side”.

Respondent’s submissions

11. The Respondent submits that the Application is not receivable for the following reasons:

a. The Applicant does not challenge an administrative decision within the meaning of art. 2.1(a) of the Dispute Tribunal’s Statute.

b. The Dispute Tri12(T)11.22(is)5(p)-3281 0 0 1cha [(11.22(is)5(p1(t5(okQ q BT d)-32((1

from any entity in the UN common system. Its decisions promulgated under signature of the Chairman “shall be applied by each organization with effect from a date to be determined by the Commission”.

d. Contrary to the Applicant’s contention, OHRM did not take the contested decision. The decision whether to approve a duty station for a four-week R&R cycle is solely within the purview of the ICSC. The Administration is obliged to implement that decision without the exercise of any discretion.

e. The Dispute Tribunal in the case of Obino UNDT-2013-008 found that decisions of the ICSC are not to be imputed to the Secretary-General and, therefore, the Tribunal lacks jurisdiction to review such decisions. Upholding the Dispute Tribunal judgment, the United Nations Appeals Tribunal (the Appeals Tribunal), in Obino 2014-UNAT-405, also recognized that the ICSC takes decisions with respect to hardship entitlements such as a four-week R&R cycle and that the Dispute Tribunal is not competent to review such decisions.

Considerations

12. The Respondent submits that the Applicant is not challenging an administrative decision within the meaning of art. 2.1(a) of the Tribunal’s Statute and as such, the Application is not receivable.

13. The Respondent further submits that the Dispute Tribunal lacks jurisdiction to review decisions taken by the ICSC regarding hardship entitlements.

14. Article 2.1(a) of the Statute of the Tribunal (UNDT Statute) provides that the Tribunal shall be competent to hear and pass judgment on an application filed by an individual against the Secretary-General of the United Nations:

To appeal an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment”

Entered in the Register on this 10th day of February 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi