



UNITED NATIONS DISPUTE T

for the position of Senior Legal Officer (P-5/1) at the United Nations Environment Programme (UNEP) in Nairobi.²

8. Effective 17 July 2011, the Applicant separated from UNMIS and was re-employed by UNEP on 18 July 2011 at the P-5/V level.³

9. On 28 August 2011, the Human Resources Section of the United Nations Office in Nairobi (UNON) informed the Applicant that she was required to resign from UNMIS in order to formalize her recruitment as an external recruit to be remunerated at the P-5/V level.⁴

10. On 1 September 2011, the Applicant submitted her resignation letter to UNMIS to take retroactive effect on 17 July 2011.⁵ Prior to it, the Applicant discussed the mode of transfer from UNMIS to UNEP with UNON Administration. The communication reads in relevant part:

Pursuant to your request, I am submitting herewith my resignation from UNMIS so that my recruitment to UNEP can be considered a reappointment. I understand that, upon receipt of a copy of this memo, UNMIS Human Resources Section will reflect my separation in IMIS and any other human resources systems and records, by shortening my fixed-term appointment with UNMIS and separating me upon appointment expiration, with an indication under remarks that I resigned to take up a new appointment with UNEP. I further understand that, my resignation will not affect any of my benefits

20 June 2016, the Applicant was reassigned to UNMIL and on 18 October 2016, promoted to Chief of Staff at the D-1 level.⁶

12. Towards the end of 2016, the Applicant noticed that her EOD/UNCS had been changed from 15 October 1996 to 30 July 2008. Believing the change to be a computer error occasioned by the introduction of the new UMOJA system, she contacted UNMIL Human Resources personnel to rectify it.⁷

13. On 17 May 2017, the Department of Field Support (DFS) informed the Applicant that her EOD date would be changed to reflect her separation from UNMIS on 17 July 2011 and re-employment with UNEP on 18 July 2011. DFS further informed her that any resulting overpayments on account of mobility allowance in the estimated sum of USD 26,103.90, would be recovered.⁸ The decision to recover has not yet been implemented.⁹

14. On 30 May 2017, the Applicant requested management evaluation of the change to her EOD date and of the decision to recover overpayments of mobility allowance.¹⁰

15. On 21 July 2017, the Under-Secretary-General for Management (USG/DM) informed the Applicant that her management evaluation request regarding the change in her EOD date is not receivable and that the decision to recover overpayments of mobility allowance is upheld.¹¹

Applicant's submissions

Prima facie unlawfulness

⁶ Annexes 4 to 6 of the reply on the merits.

⁷ Paragraph 4 of the motion for interim measures.

Irreparable harm

22.

27. Following the discovery of this administrative error, the Administration advised the Applicant that she had been overpaid in the sum of USD 26,103.90. The Administration has a duty to recover any overpayments made under section 2.3 of ST/AI/2009/1 (Recovery of overpayments made to staff members).

28. The Respondent submits that recovery will be limited to two years and carried out in installments.

Urgency

29. Any urgency is self-created. The Applicant was notified of the decision to recover on 17 May 2017. She did not come to the UNDT at the first available opportunity. Instead, she waited for approximately six months to file this motion.

Irreparable harm

30. The recovery of the overpayments will not cause irreparable harm. It will be limited to the overpayments made during the two-year period prior to 17 May 2017. It will also be effected in installments.

31. In view of the foregoing, the Respondent requests the Dispute Tribunal to dismiss the Application.

Considerations

Suspension of action during the proceedings

1. At any time during the proceedings, the Dispute Tribunal may order interim measures to provide temporary relief where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

34. It is well-settled jurisprudence that all three cumulative conditions must be fulfilled.

Prima facie unlawfulness

35. The Tribunal considers that the application is unnecessarily centred on the issue of how entries are made in the

Rule 4.17 Re-employment

(a) A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18.

(b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service **shall not be considered as continuous between the prior and new appointments.**

38. Based on the correspondence on file, it is obvious to the Tribunal that the Applicant was given an option between resignation and transfer, and, having discussed the implications, accepted the former as it gave her the immediate benefit of a higher step within the grade. She was not reinstated. The Applicant's service was thus not "continuous" under the terms of staff rule 4.17.

39. Moving on to the question of mobility allowance, in the same ST/SGB/2011/1, staff rule 3.13 provided in relevant part:

Rule 3.13 Mobility allowance

(a) A non-pensionable mobility allowance may be paid under conditions established by the Secretary-General to staff members in the Professional and higher categories, [...] provided that they: (i) Hold a fixed-term or continuing appointment; (ii) Are on an

is also explained as “successive” or “sequential”. Conversely, the term “continuing” in the ordinary meaning denotes “incessant”, “unceasing”, “constant”.

44. As such, given that in July 2011 the Applicant moved between UNMIS and UNEP without any break in service and her appointments with the Organization followed consecutively from one day to another, she had possessed at the relevant time “five consecutive years of service” within the meaning of staff rule 3.13 as then applicable. Calculating this move for the purpose of mobility allowance was appropriate. UNON communication with the Applicant which, implicitly, asserted no detriment to this entitlement, was appropriate.

45. It was not until the Staff Rules’ revision effected by ST/SGB/2016/1 that staff rule 3.13 was amended to read:

Mobility incentive

- (a) A non-pensionable mobility incentive may be paid under conditions established by the Secretary-General to staff members in the Professional and higher categories [...] provided that they:
 - (i) Hold a fixed-term or continuing appointment;
 - (ii) Are on an assignment of one year or more to a new field duty

service accrued before the separation shall be forfeited and a new

Conclusion

53. In light of the foregoing, the Tribunal ORDERS that the motion for interim measure is GRANTED and the contested decision is suspended pending the Dispute Tribunal's proceedings.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 10th day of November 2017

Entered in the Register on this 10th day of November 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi