



Case No.: UNDT/NBI/2020/080
Order No.: 218 (NBI/2020)
Date: 4 November 2020

Introduction

1. The Applicant, a former staff member of the Regional Service Center in Entebbe (“RSCE”), filed an application on 5 October 2020 to contest the 7 July 2020 decision to withdraw his entitlement to after-service life insurance (“ASHI”). The Applicant seeks the following remedies: (a) rescission of the impugned decision; (b) the retroactive reinstatement of ASHI from 7 July 2020; (c) financial compensation for the economic loss incurred due to the improper withdrawal of ASHI; and (iv) compensation of six months’ net base salary as moral damages for the harm, stress and anxiety caused by the Respondent’s actions.

2. The Respondent’s deadline to file a reply is 5 November 2020.

3. On 30 October 2020, the Respondent filed a motion to have receivability determined as a preliminary matter and moved the Tribunal to suspend the deadline for the filing of the reply pending determination of the motion. The Respondent asserts in his motion that the application is not receivable *ratione materiae* because: (i) the contested decision is not one of the specifically delineated disciplinary measures set forth in staff rule 10.2(a) thus the Applicant should have requested management evaluation pursuant to staff rule 11.2 but did not do so; and (ii) the matter is moot because the Applicant’s entitlement to ASHI is being restored after he made a payment to the Organization of sums owed.

completion of a disciplinary process is not required to request a management evaluation.

9. Staff rule 10.2 lists the available disciplinary measures under (a) and subsequently provides:

(b) Measures other than those listed under staff rule 10.2(a) shall not be considered to be disciplinary measures within the meaning of the present rule. These include, but are not limited to, the following administrative measures:

- (i) Written or oral reprimand;
- (ii) Recovery of monies owed to the Organization;

...

10. In this connection, ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) provides:

9.5 In conjunction with a decision to impose a disciplinary measure, the Under-Secretary-General for Management [...] may [...] decide to recover, in part or in full, any financial loss suffered by the Organization pursuant to staff rule 10.1(b).

11. It is undisputed that the present matter does not concern any of the legally recognized disciplinary measures. The Respondent considers it to be an “administrative measure”, but maintains that staff rule 11.2(b) is inapplicable as there had not been a completion of disciplinary process pursuant to ST/AI/2017/1. This Tribunal disagrees.

12. As transpires from the letter of 7 July 2020, the measure in question was imposed in connection with two events. One was a par excellence disciplinary process, which resulted in a disciplinary measure of separation and an agreement between the Organization and the Applicant pursuant to which, among other, the Applicant would return the equivalent of undue payments that he had received while the Organization would keep his health insurance and pension intact. The Applicant failed to follow his undertaking and the Organization imposed the impugned measure. The crux of the matter, thus, is in recovery of monies owed to the Organization as contemplated in staff rule 10.2 and section 9.5 of ST/AI/2017/1. The Respondent’s

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 4th day of November 2020

Entered in the Register on this 4th day of November 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi