



Judgment No. 2018-UNAT-831



Counsel for Appellant:

Ludovica Moro

Counsel for Respondent:

Philippe Gautier

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against an “implied decision” by the Registrar of the International Tribunal for the Law of the Sea (ITLOS Registrar and ITLOS, respectively) following the recommendation of the ITLOS

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THE UNITED NATIONS APPEALS TRIBUNAL

that the United Nations financial and Staff Regulations and Rules apply to ITLOS staff *mutatis mutandis*.

19. While ITLOS claims that the ITLOS Registry has its own rules, practices and staff selection system in recruitment matters, which are codified in Administrative Instruction ITLOS/AI/06/11 (Procedure for th

The Registrar's Answer

23. The JAB did not err in concluding that ITLOS Staff Rule 3.17 applied to a request for review of entry level and therefore excluded all claims relating to the determination of Ms. Mizerska-Dyba's step-in-grade. When a staff member joins ITLOS, his or her salary is determined in accordance with the relevant grade and, within the grade, the relevant step. This matter is governed by ITLOS Staff Rule 3.17 which applies to a situation of underpayment due to an alleged error or mistake by the Administration arising at the date of entry on duty of a staff member. ITLOS Staff Rule 3.17 establishes a time limit of one year for the staff member to request correction of a possible error. Ms. Mizerska-Dyba's step was determined upon recruitment, so if an error had occurred, it

recruitment what the ITLOS policy on determination of steps was and that she was therefore not in a position to contest the step assigned to her, the Registrar agrees with the JAB which found that the fact that Ms. Mizerska-Dyba was a new staff member in 2007 did not alter her obligation to comply with the time limits established in the ITLOS Staff Regulations.

27. The JAB correctly concluded that the 2004 United Nations Guidelines would have been available in 2007 regardless of their applicability and that, contrary to Ms. Mizerska-Dyba's contention, the ITLOS Administration had no duty to inform the staff members of such guidelines. In any event, the 2004 United Nations Guidelines for determination of level and step are not applicable to the ITLOS Registry and therefore have no relevance in this case. As provided in ITLOS Staff Rule 12.3(bis)(b), United Nations instructions or guidelines do not automatically apply to the ITLOS Registry. Under that provision, the Registrar is to be "guided" by the United Nations instructions, directives and practice to the extent that they are implementing ITLOS Staff Rules similar to those contained in the United Nations Staff Rules. The United Nations Guidelines, however, were adopted pursuant to the adoption of a new staff selection system (Administrative Instruction ST/AI/2010/3) which does not apply to ITLOS. The ITLOS Registry has its own staff selection system which, in 2006, was codified in ITLOS/AI/06/11.

28. In relation to Ms. Mizerska-Dyba's request for production of documents, the Registrar remains at the disposal of the Appeals Tribunal, should it deem the production of documents necessary under its Statute and Rules of Procedure.

29. The Registrar requests that the Appeals Tribunal reject the appeal in its entirety.

Considerations

30. The Appellant submits that the JAB failed to consider her request for correction of the administrative error affecting her *current* contract of employment, which commenced on 1 March 2016, and which, if framed within the time limits set out in ITLOS Staff Rule 3.17, is not time-barred.

31. Having carefully considered the facts of this case, we find it important to repeat the relevant time line in this appeal.

- a) On 30 December 2015, the Appellant submitted a memorandum to the H/PBS whereby she requested a revision of her step level.
- b) By memorandum dated 23 February 2016, the Appellant was informed by the H/PBS that her request for revision could not be considered as it was submitted more than eight years after her initial appointment.
- c) On 26 February 2016, the Appellant signed her letter of appointment for a further five-year appointment starting 1 March 2016 and appended the following proviso: "I have signed this Letter of Appointment without prejudice to my rights in connection with the steps I am now in the process of taking to have the administrative decision set out in the Interoffice Memorandum, PER/2016/EB/007, dated 23 February 2016, by the Head of Personnel to be reviewed by the Registrar and without prejudice to the outcome thereof."
- d) On 18 March 2016, the Appellant submitted a memorandum requesting that the ITLOS Registrar review the H/PBS's decision to reject her request for revision of her step level. By memorandum dated 15 April 2016, the ITLOS Registrar informed her that her request could not be considered.

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34. ITLOS Staff Rule 3.17 which provides for the retroactivity of payments to staff members excludes all claims for monetary compensation relating to periods dating back to more than one year of the date on which the staff member would have been entitled to the initial payment. This rule states as follows:

A staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled shall not receive retroactively such allowance, grant or payment unless the staff member has made [a] written claim:

- (i) In the case of the cancellation or modification of the staff rule governing eligibility, within three months following the date of such cancellation or modification;
- (ii) In every other case, within one year following the date on which the staff member would have been entitled to the initial payment.

35. As a result, the Appellant cannot succeed on a claim for “retroactive monetary compensation” where that claim was made several years after the “initial payment”.

36. For the foregoing reasons, we find that the Appellant’s claims are not receivable. The implied decision by the ITLOS Registrar is upheld.

Judgment

37. The appeal is dismissed.

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