



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2017/105

Introduction

1. On 16 October 2017, the Geneva Registry of the United Nations Dispute Tribunal (UNDT) received 323 similar applications filed by the Office of Staff Legal Assistance (OSLA) on behalf of staff members employed by different United Nations entities at the Geneva duty station.

2. The 323 applications were grouped into six cases. Most of the cases were incomplete and were completed between 24 October and 3 November 2017. The Geneva Registry assigned these cases to Judge Teresa Bravo.

3. All the Applicants are requesting the rescission of the Organization's decision to implement a post adjustment change in the Geneva duty station which results in a pay cut. The Applicants also seek compensation for any loss accrued. The present case concerns a staff member of the United Nations Entity for Gender Equality and the Empowerment of Women also known as UN Women.

4. On 13 November 2017, Judge Bravo issued Orders Nos.: 208, 209, 210, 211, 212, and 213 (GVA/2017) recusing herself from handling the cases.

5. On 14 November 2017, Judge Rowan Downing, then President of the UNDT, issued Order No. 215 (GVA/2017) accepting the recusal of Judge Bravo, recusing himself from adjudication of the cases, and ordering the transfer of the six cases to the Dispute Tribunal in Nairobi.

Summary of relevant facts

6. In September and October 2016, cost-of-living surveys were conducted by the International Civil Service Commission (ICSC) at seven headquarter duty stations outside New York (Geneva, London, Madrid, Montreal, Paris, Rome and Vienna). The purpose of these surveys was to gather price and expenditures data to be used for the determination of the post adjustment index at those locations. In the years prior to

this round of surveys, the ICSC had approved a number of changes to the survey methodology based on recommendations of the Advisory Committee on Post Adjustment Questions (ACPAQ).¹

7. The results of the surveys were included in the ACPAQ Report presented to the ICSC Secretariat at its 84th meeting in March 2017. The ICSC Secretariat noted at the time that, in the case of Geneva, implementation of the new post adjustment would lead to a reduction of 7.5% in the net remuneration of staff in that duty station as of the survey date (October 2016).²

8. On 11 May 2017, the Applicant received an email broadcast from the Department of Management, United Nations Headquarters, informing them of a post

The post adjustment index variance for Geneva has translated into a decrease in the net remuneration of staff in the professional and higher categories of 7.7%.

The Commission, having heard the concerns expressed by the UN Secretariat and other Geneva-based organizations as well as staff representatives has decided to implement the post adjustment change for Geneva, effective 1 May 2017 (in lieu of 1 April as initially intended) with the transitional measures foreseen under the methodology and operational rules approved by the General Assembly, to reduce the immediate impact for currently serving staff members.

Accordingly, the new post adjustment will initially only be applicable to new staff joining the duty station on or after 1 May 2017; and currently serving staff members will not be impacted until August 2017.

During the month of April, further appeals were made to the ICSC by organizations and staff representatives to defer the implementation of the revised post adjustment. On 24 and 25 April 2017, Executive Heads, Heads of Administration an

10. Following the issuance of the broadcast, Geneva-based organizations expressed concerns regarding the cost of living surveys and post adjustment matters.⁵

11. During July and August 2017, numerous staff members based in Geneva, including the Applicant, filed management evaluation requests as well as applications on the merits concerning the May 2017 decision. To date, those proceedings for the present Applicant resulted in Judgment No. UNDT/2018/025.

12. On 19 July 2017, an article was posted on the Geneva intranet by the

Assembly resolution 3357(XXIX) of 18 December 1974 in which it approved the ICSC Statute. Article 11(c) of the ICSC Statute provides that the Commission shall establish the classification of duty stations for the purpose of applying post adjustments. The ICSC does not advise the Secretary-General on post adjustment; rather, the ICSC takes decisions which have to be implemented by the Secretary-General. Therefore, the implementation of the ICSC decisions on the post adjustment multiplier does not constitute an administrative decision taken pursuant to advice obtained from technical bodies.

25. The application is not receivable under staff rule 11.2(b), and should be filed under staff rule 11.2(a), requiring staff members to, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

The Application is not receivable as the Applicant is not adversely affected by the ICSC decisions on post adjustment multipliers.

28. With the July 2017 ICSC decision, the Applicant has not been adversely affected as the ICSC has approved the payment of a PTA as a gap closure measure to address any reduction in net remuneration as a result of the revised post adjustment multiplier. This allowance will be reviewed in February 2018, which means that it will be in place until then. Moreover, further modifications to the post adjustment in Geneva are expected. According to a notice on iSeek, the reduction in Geneva may be further mitigated by the positive movement of the Geneva post adjustment index (that already increased from about 166 in March to 172.6 in July), as well as by the effects of the expected positive evolution of the United Nations/United States net remuneration margin in 2018. Therefore, given that the effect of this new decision cannot be foreseeable, the application should not be receivable at this stage.

The Applicant should not be allowed to file multiple applications to contest a new post adjustment multiplier for Geneva.

29. The Applicant has submitted that she has deliberately filed multiple applications of the same decision and has taken multiple distinct and contradictory positions to justify it – that the decision may or may not have been taken by a

Case No.:

Case No.: UNDT/NBI/2017/105

Judgment No.: UNDT/2018/034

adjustment change as of 1 August 2017

first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

40. To the extent the Respondent argues economy of proceedings, postulates that applicants before UNDT “should not be allowed” to file multiple applications against the same decision and imputes frivolousness to the Applicants, the Tribunal finds itself compelled to note that the issue would not have occurred had the Respondent

authority)¹⁷ and rebuttal panels¹⁸ are not technical bodies in the sense of staff rule 11.2(b).; conversely, the Advisory Board on Compensation Claims (ABCC)¹⁹ and the Local Salary Survey Committee (LSSC)²⁰ are such technical bodies.

42. As has been already noted by the Dispute Tribunal in *Syrja*²¹, making a determination as to what constitutes a technical body is not a function of the Dispute or Appeals Tribunals. This said, it is recalled that the Appeals Tribunal pronounced in *Faust* that an investigation panel has, as a general rule, specific tasks and a limited and temporary scope of activities, this being in contrast to a “technical body”, which has a more durable and broader mandate and is generally composed of professionalized members in a specific matter²². This Tribunal observes that this delineation does not assist in determination of the issue at hand. The ICSC has clearly a durable and broad mandate and is generally composed of professionalized members in a specific matter. The elements argued by the Respondent, on the other hand, such as that the ICSC is a subsidiary organ of the General Assembly and not an advisory body of the Secretary-General and that the Secretary-General has no discretion in implementation of the ICSC decisions, are not ultimately dispositive of the issue. No provision limits the notion of “technical bodies” to bodies convened by the Secretary-General; likewise, no provision requires that advising be the only mandate of the body from which the Secretary-General chooses to seek advice; the question, in turn, of functional relation between ICSC’s decisions which are not authorized by the General Assembly and the decisions of the Secretary-General is unresolved and the subject of the substantive argument in this case. Moreover, the Applicant rightly notes an inconsistent stance among representatives of the Respondent as to “technical body” in particular cases.²³

¹⁷ *Fayek* 2017-UNAT-739, *Masyllkanova* 2014-UNAT-412, *Faust* 2016-UNAT-695.

¹⁸ *Gehr* 2014-UNAT-479.

¹⁹ *McKay* 2013-UNAT-287, *James* 2015-UNAT-600, *Likukela* 2017-UNAT-17.

²⁰ *Tintukasiri* 2015-UNAT-526.

²¹ *Syrja* UNDT/2015/092, para. 39.

²² *Faust* 2016-UNAT-695, para. 39.

²³ *Syrja* UNDT/2015/092, see also *Ovcharenko* UNAT 2015-UNAT-530

Case No.: UNDT/NBI/2017/105

Judgment No.: UNDT/2018/034

this reasoning, the Tribunal considers that the answer to the debated question is negative, and that the application which had been filed without awaiting the result of management evaluation (or expiry of the time limit for it) remains not receivable also after the management evaluation has been issued. Such situation, for an applicant who wishes to pursue his or her claim before the Dispute Tribunal, calls for a new filing made in accordance with the applicable time limits.

48. This conclusion renders unnecessary discussing and deciding the remainder of arguments.

CONCLUSION

49. The present application is dismissed as not receivable.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 8th day of March 2018

Entered in the Register on this 8th day of March 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi