



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Santiago Villalpando

BERNADEL

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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CaseNo. UNDT/NY/2010/004/UNAT/1571

JudgmenNo.

Applicant received an SPA for the period of 1 January to 31 October 1996. On 1 November 1996 she was promoted to the level, step IX, and retained this level until her retirement on 30 August 2006. She subsequently received several short-term appointments for temporary assistance, the most recent of which expired on 7 December 2007.

5. The first request to grant the Applicant a retroactive SPA was made on 13 August 1997. The request was made on behalf of the Applicant by the then Director of the New York Office, Centre for Human Rights/High Commissioner for Human Rights, under cover of facsimile to the then Officer-in-Charge of the Centre for Human Rights. The request stated:

As you are aware, since the departure of [name of a staff member] from [the New York Office], [the Applicant] has been officially assisting me, at the professional level, in the discharge of the functions of the New York Office. [The Applicant] has, *inter alia*, represented [the New York Office] at meetings of the Task Force on the Great Lakes which has been established by the Secretary-General. She has attended, as the representative of HC/Centre for Human Rights, all the meetings of both the Inter-Departmental Committee on Charter Repertory and the Working Group of the Committee, and has reported on discussions that took place at such meetings.

Moreover, [the Applicant] has given briefings on human rights to College Students who visit the United Nations in the framework of the Group Programme of DPI. Since 1993, she has also briefed, on a yearly basis, College students in preparation for the National High School Model United Nations

In compliance with [staff rule No. 103.11(c) ... I would like to request that a retroactive Special Allowance ... at the P2 level be granted to [the Applicant].

6. Thereafter the Applicant—by email dated 4 May 1998, addressed to the Special Assistant, Office of the Assistant Secretary-General, Office of Human Resources Management (“OHRM”)—provided further information regarding her work responsibilities and requested consideration of placing her, retroactively, on an SPA.

7. On 20 May 1998 the Applicant was informed by memorandum from the Chief, Overseas Service Cluster, Operational Services Division, OHRM, that, “at the moment”, OHRM was unable to support her request for an SPA, but “once the classified job description is available should it be evident that [she] had been fulfilling those functions then [she] would be eligible for consideration for an SPA upon recommendation of the Head of ~~the~~ Office”. The Tribunal therefore accepts that no final decision concerning the Applicant’s request was made at this time and the matter remained open.

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reconsideration of her case and stated that “[i]n [her] several discussions with Officials in Geneva, [she] was led to understand that if OHRM were able to find a ‘technical’ way to grant [her] request, it would be approved”. The Applicant sought OHRM’s assistance in making this possible.

15. On 19 March 2004 the Head of the Human Resources Unit, OHCHR, Geneva, wrote to the Applicant confirming that OHCHR was not in a position to agree to her request for an SPA. The Applicant responded on 30 March 2004, offering supporting arguments as to why she should be granted an SPA. The Applicant concluded the letter by requesting OHCHR to reconsider her case on an urgent basis.

16. By letter dated 5 May 2004, the Head of the Human Resources Unit, OHCHR, Geneva, responded to the Applicant’s request for reconsideration.

I have reviewed your file and in particular the Human Resources Unit's letters dated 5 [May] and 19 [May] 2004. I regret to inform you that I do not see any grounds on which I can intervene on your behalf. As a result, I am afraid I must consider this matter closed.

20. The Applicant requested administrative review of the decision not to compensate her for functions performed at the professional level by letter dated 2 May 2005, addressed to the Secretary-General. The Applicant subsequently filed an appeal with the JAB. The JAB issued its report on 7 December 2006, concluding that the appeal was not receivable and that there were no valid grounds for going into the merits of the case.

21. By letter dated 2 March 2007 the Under-Secretary-General for Management transmitted a copy of the JAB report to the Applicant and informed her of the Secretary-General's decision to
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Respondent's submissions

24. The Respondent's submissions may be summarised as follows:

- a. The Applicant's appeal is time-barred. The Applicant did not submit any evidence of exceptional circumstances that would warrant a waiver of the time limit. The administrative decision to deny the Applicant an SPA was taken in 2001 and she was informed by letter dated 3 August 2001. The Applicant had until 3 October 2001 to request administrative review of the decision contained in that letter. Instead, the Applicant requested administrative review almost four years later, on 2 May 2005. The High Commissioner's letter of 30 March 2005 was only a response to the Applicant's personal appeal to her to intervene in the Applicant's case.
- b. Should the Tribunal find this application to be receivable, the Applicant is not entitled to compensation as she failed to demonstrate that she fulfilled the conditions required for consideration for an SPA. The Applicant did not show that she discharged the duties and responsibilities of a higher level post. Additionally, there was no professional post within the New York Office of OHCHR against which the Applicant's performance could have been assessed.
- c. Payment of an SPA is within the discretion of the Secretary-General. The Applicant's situation did not warrant this discretion to be exercised in her favour due to the incidental nature of the few higher level duties that she discharged.

Consideration and findings

25. While the Respondent submits that the administrative decision was communicated to the Applicant on or about 3 August 2001, the Applicant contends that the decision expressed in the letter was not final because she had subsequent

exchanges with the Administration about the matter. Further, the Applicant submits that the letter was not addressed to her, although she acknowledged in her written pleadings and at the case management hearing that she had received a copy of the letter from her supervisor.

26. The Respondent does not seek to argue correctly, in my view—that any of the decisions prior to the letter dated 3 August 2001 constituted a final administrative decision in this case. The Tribunal finds that the matter was under consideration by the Administration between August 1997 and August 2001.

27. Having considered the parties' submissions and the contemporaneous records before it, the Tribunal finds that the final decision concerning the Applicant's request was that expressed in the letter dated August 2001, stating that "obligatory provisions of our rules have prevented OHCHR to accede to [the Director's] request [for an SPA]". The language of that letter should have left no doubt in the mind of the Applicant that the final decision on her request had been rendered. It is instructive that in her subsequent communications on the matter the Applicant was requesting "reconsideration" of the decision. Further, the procedure and the deadline for the filing of a request for administrative review were clearly stated in the former Staff Rules (see former staff rule 111.2(a) (App's)), which were applicable at the time and formed part of the Applicant's contract of employment.

28. The precise date on which the Applicant was given the aforesaid letter is unclear, although it was, at the latest, on or before 15 April 2002, as the Applicant referred to it in her letter of that date. Under these circumstances, the Tribunal cannot accept that 3 August 2001 should be considered the date of written notification of the decision under former staff rule 111.2(a). However, it is an admitted fact that although not addressed to her, a copy of the letter of 3 August 2001 was provided to the Applicant by the Director of the New York Office pursuant to the request of the Chief of Administration (her letter stated "I should appreciate it if you would share this letter with [the Applicant]"). The Tribunal therefore finds that there was

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Conclusion

33. The Applicant failed to file a timely request for administrative review and this application is therefore not receivable. The application is rejected in its entirety.

(Signed