

UNITED NATIONS DISPUTE TRIBUNAL

Introduction

- 1. By application filed on 10 June 2014, the Applicant, an Air Operations**

Case No. UNDT/GVA/2014/041

Judgment No. UNDT/2015/055

12. By Order No. 100 (GVA/2015) of 7 May 2015, in light of Counsel for the Applicant having informed the Tribunal that, in her view, a hearing was

j. By declining to adhere to basic contractual principles, the Administration failed to comply with its obligation of good faith and fair dealing with the Applicant; all the elements of a contract between the Administration and the Applicant were present in the case at hand; the Administration could not unilaterally change the terms of the contract after it had been fully executed, which is what it did when it determined, unilaterally, to recover, retroactively, the Applicant's underpayment of his health insurance premiums;

Therefore, the recovery was unlawful; the Applicant requested that the recoveries of underpayments be stopped, and that he be reimbursed for any and all recoveries made.

15. The Respondent's principal contentions are:

a. A failure to deduct the appropriate amount to cover a periodic payment, such as a periodic underpayment of insurance premiums, falls under the definition of overpayments as contained in Administrative instruction ST/AI/2009/1 and, hence, will result in recovery;

b. The Applicant authorized the Administration to deduct the premium amount at the appropriate rate to get the requested medical insurance coverage; the amount that was in fact deducted was lower than what it should have been and resulted in an overpayment of the Applicant's salary, which can be recovered under the terms of the administrative instruction;

c. The Applicant was not given an incorrect amount for the insurance coverage, and does not provide evidence to the contrary; the insurance application form does not include such a premium amount quote;

- i. The Applicant failed to prove that the contested decision was unlawful; the application should be dismissed.

Consideration

Receivability

16. The Applicant, who received the contested decision on 29 November 2013 and requested management evaluation on 28 January 2014, respected the statutory 60 calendar days provided for by staff rule 11.2 (c).

17. The Management Evaluation Unit reply is dated 11 March 2014, and the Applicant filed his application on 10 June 2014. The Respondent did not challenge the Applicant's statement that he received the management evaluation only on 12 March 2014. Therefore, by filing his application on 10 June 2014, the Applicant respected the statutory time limit for the filing of an application under art. 8.1(d)(i)(a) of the Tribunal's Statute.

18. In view of the foregoing, the present application is receivable *ratione materiae* (Eggesfield 2014-UNAT-402) and *ratione temporis*.

Merits

19. With respect to the merits of the application, the Tribunal notes that staff rule 6.6 provides:

Medical insurance

Staff members may be required to participate in a United Nations medical insurance scheme under conditions established by the Secretary-General.

20. Furthermore, staff rule 3.18(c)(ii)¹ in force at the time of the contested decision, stipulates that: "Deductions from salaries and other emoluments may also be made for: ... (ii) Indebtedness to the United Nations".

¹ Staff rule 3.18(c)(ii) replaced staff rule 3.17(c)(ii) referred to in ST/AI/2009/1 (Recovery of overpayments made to staff members), albeit with exactly the same wording.

21. ST/AI/2009/1 (Recovery of overpayments made to staff members) specifies:

Section 1
Definitions

The following definitions shall apply for the purposes of the present instruction:

(a) "Overpayments" are payments made by the

22. "Overpayment" is a clearly defined term for the purposes of ST/AI/2009/1. The definition is consistent with the plain language definition of overpayment that may be stated as "A payment that is more than the amount owed or due"³. "Payment" is defined and understood to mean the action of paying an amount payable. What is "due" is an amount determined by reference to all factors used in the calculation of the entitlements of a person. This is calculated by reference to such matters as a base salary, allowances for education, post adjustment and the like, less any payment by way of deduction for staff assessment and health insurance, this being a payment by direction of the staff member to the Organisation. If a person is paid more than the amount due after a proper calculation, then it is axiomatic, given the precise definition of "overpayment" in ST/AI/2009/1, that there has been an overpayment to that person, as they are in receipt of a greater payment than that to which they were entitled and was due to them.

23. The Vanbreda plan provides for medical insurance coverage worldwide for staff members who are not stationed in the United States. Information Circular ST/IC/2009/4 (Vanbreda medical, hospital and dental insurance programme for staff members away from Headquarters), determines three different premium rate groups established "to enable the determination of premiums that are broadly commensurate with the expected overall level of claims for the locations included within each rate group". A table lists the type of coverage and monthly premiums applying to various groups of staff members, depending on their duty station of assignment and the number of eligible family members to be covered, if any. Rate group 2 covers staff members with duty station Chile and Mexico, while rate group 3 covers Western Europe and includes, inter alia, staff members with their duty station in Italy. Finally, rate group 1 encompasses staff members with duty station at "all locations outside of the United States of America other than those listed under rate groups 2 and 3".

³ Black's Law Dictionary, Tenth Edition, 2004

24. It is uncontested that the Applicant—whose duty station at the relevant time was Brindisi, Italy—fell within rate group 3 and that the Administration erroneously placed him in rate group 1. The Tribunal notes that the form entitled “Group medical, hospital and dental insurance scheme g.c.v. J. Van Breda & C° International, Application or request for change of coverage” does not explicitly refer to the above-referenced information circular and/or mentions the different premium rate groups. However, the Applicant, by signing said request, certified that he authorized “the United Nations to make deductions from [his] salary to cover contributions to premiums at the rate appropriate to the coverage requested”.

25. The Applicant notes that he relied on and made his financial planning in light of the information contained both in the estimation of earnings and deductions dated 15 March 2009, and on his payslips, which refer to monthly Medical Insurance contributions of USD262.38. As such, the Applicant seems to suggest, relying on Wang 2011-UNAT-140, that he received assurances that he and his family would be entitled to insurance coverage with the monthly premium amount indicated in his payslip. This argument must fail.

26. While the placement of the Applicant in rate group 1 was a mistake imputable to the Organization, the above-mentioned request for change of coverage form, signed by the Applicant, clearly states that he would be entitled to insurance coverage and that he authorized deductions of premiums at the appropriate rate. As such, any assurance provided to the Applicant was limited to coverage at the appropriate rate, which, in view of the Applicant’s duty station, Italy, could only be rate group 3. The fact that the actual amount contained in the estimation of earnings and on the Applicant’s payslips did not correspond to the appropriate premium amount for rate group 3, though constituting an error of the Administration, does not change the fact that the Applicant was given assurance, and had accepted, nothing more than coverage at the “appropriate rate”, that is rate group 3.

27. Furthermore, the Applicant was not new to the Insurance Plan—he had joined it in August 2006 when he was working at MONUC—and, as the insured person, he cannot blame the Organization for his failure to inform himself about the relevant rate/conditions, as contained in ST/IC/2009/4, which is

Case No. UNDT/GVA/2014/041

Judgment No. UNDT/2015/055

31. The Tribunal notes that, in principle, overpayments shall be recovered in