



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2020/002

Judgment No.: UNDT/2020/156

Date: 27 August 2020

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TARABAY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Counsel for the Applicant:
Evelyn W. Kamau, OSLA

Counsel for the Respondent:
Nicole Wynn, AAS/ALD/OHR, UN Secretariat

training programme with honours.³

7. In August 2017, the Administration reclassified [redacted] post to the G-6 level.⁴

8. On 27 February 2019, the Applicant requested Mr. Kratzheller to approve payment to her of a retroactive SPA to cover the period from June 2015 to August 2017.⁵

9. Mr. Kratzheller responded to the [redacted] request on 18 March 2019 informing her as follows:

As you know, ST/AI/1999/17 requires that in order for a staff member to be eligible for SPA, a post has to be advertised and the staff members should be competitively selected against it. In your case, there was no advertisement and no selection process took place. Therefore, unfortunately, no SPA can be paid in your case.⁶

10. On 11 June 2019, the Applicant submitted a claim to Ahmad Dik, Acting Director, Administrative Services Division at ESCWA, requesting an *ex gratia* payment in lieu of SPA pursuant to staff rule 12.3(b).⁷

11. Mr. Dik responded to the Applicant on 26 June 2019 informing her that she had failed to submit a request for management evaluation within the 60-day period provided for in staff rule 11.2(c) for the refusal to pay her an SPA and that the authority for extending the deadline for filing a request for management evaluation as well as for awarding an *ex gratia* payment is delegated to the Under-Secretary-General for the Department of Management Strategy, Policy and Compliance

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³ Amended application, para. 32.

⁴ Amended application, annex 2.

⁵ Amended application, annex 3.

⁶ Ibid.

⁷ Amended application, annex 4.

⁸ Amended application, annex 5.

12. On 26 August 2019, the Applicant sought management evaluation of the impugned decision.⁹

The parties submissions on receivability

The Respondent

13. The Applicant was notified of the decision in writing by email dated 26 June 2019. The 60-day time limit to request management evaluation of the alleged decision expired on Sunday, 25 August 2019. The Applicant requested management evaluation on Monday, 26 August 2019, one day late. Article 34(b) of the UNDT Rules of Procedure does not apply to the calculation of time limits under the Staff Rules. Accordingly, the Dispute Tribunal does not have competence to hear the application as the request for management evaluation was not timely submitted under staff rule 11.2.

14. As the Applicant is stationed outside New York, the 45-day time limit under staff rule 11 2(d) for the Secretary-General's response to be communicated in writing to the Applicant expired on Wednesday, 9 October 2019. The Secretary-General has not responded to the Applicant's request for management evaluation. The 90-day time limit to file the application under art. 8(1)(d)(i)b of the Statute expired on Tuesday, 7 January 2020. The Applicant filed her application on Wednesday, 8 January 2020, one day late. The Applicant did not make a written request for waiver or suspension of the time limit to file her application. Accordingly, the application is not receivable *ratione temporis*.

15. The Applicant does not contest an administrative decision. The Acting Director of the Administrative Services Division, did not purport to exercise any function or power in his correspondence of 26 June 2019 responding to the request for an *ex gratia* payment in lieu of SPA. The Acting Director informed Counsel for the Applicant that the authority

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legal framework under which the decision was made.¹² In the instant case, the Tribunal agrees with the Respondent that the Acting Director of the Administrative Services Division did not purport to exercise any function or power in his

.¹⁵ Similarly, in the case at bar, the Applicant was advised that it is the USG/DMSPC who had authority to decide on her request. This was not a final decision.

39. The Applicant has failed to identify an administrative decision capable of being reviewed, that is, a final, specific decision taken by a competent authority having present and direct adverse impact on her contractual rights within the meaning of art. 2.1(a) of the UNDT Statute. In view of this finding, it is not necessary for the

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