Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

STEPHAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Applicant:
Evelyn W. Kamau, OSLA

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

Introduction

1. The Applicant, who was a staff member at the United Nations Economic and Social Commission for West Asia , is refusal to grant her an *ex gratia*

training programme with honours.[3]

7. In August 2017, the Administration reclassified 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 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.

justice system, it cannot be read as excluding the calculation of time limits of a . Therefore, since the deadline for filing the MER was Monday, 26 August 2019, the deadline for receiving the Management Evaluation Unit (MEU) response was Thursday, 10 October 2019, and thus the deadline for filing the application was Wednesday, 8 January 2020 the day the application was filed. The application is thus receivable.

20.
actions of Mr. Dik made the decision not to pay the Applicant an *ex gratia* payment. A challengeable administrative decision thus exists and the application is receivable.

21. The authority of the Officer-in-Charge, Administrative Services Division, had March 2019 decided on the SPA request and the authority remained in June 2019 when Mr. Dik was serving as decide as opposed to him not having the delegated authority to make the decision. A decision was thus made based on which a request for management evaluation was submitted.

22. In light of the above, the Applicant submits that the MER and application we9(n)] TJ BT /F1 12 T0 1 99.408 423.98 Tm 0 1 0 0 1 48 675.58 Tm 9 4(a)-15(n)20(t)-21( )01500130

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and Rules.

25. Annex 1 of ST/SGB/2019/2 states that the authorization of *ex gratia* payments pursuant to financial regulation 5.11 and financial rule 105.12 is delegated to the USG/DMSPC effective 1 January 2019. The relevant parts read:

> Regulation 5.11. The Secretary-General may make such ex gratia payments as are deemed to be necessary in the interest of the Organization, provided that a statement of such payments shall be submitted to the Board of Auditors with the financial statements.
>
> Rule 105.12
>
> Ex gratia payments may be made in cases where, although in the

> automatically be delegated on a temporary basis to the officer-in-charge or the officer ad interim, unless otherwise specified formally by the official who designated the officer-in-charge or the officer ad interim.

27. In the response dated 26 June 2019 *ex gratia* payment in lieu of SPA, Mr. Dik informed the Applicant that he did not have the delegated authority to award her an *ex gratia* payment.

28. The Applicant, however, argues,

> It would thus appear that the authority of the Officer-in-Charge ASD arch 2019 made a decision on the SPA request and the authority still remained in June 2019 when Mr. Dik was serving email of 26 June 2019 was therefore a refusal to make a decision as opposed to him not having the delegated authority to make the decision.

29. The Applicant interpretation and application of the relevant regulations and rules. The authority to grant an SPA, which, at Annex IV to ST/SGB/2019/2, is delegated to Heads of entity (D-1 and below) and which the Officer in Charge exercised in handling the SPA request is different from the authority to grant an *ex gratia* payment which the Applicant requested from Mr Dik, because according to Annex I above, that authority is delegated to the USG/DMSPC.

30. The Applicant does not provide any evidence to prove that the authority to award an *ex gratia* payment was at any point delegated from the USG/DMSPC to either the Officer-in-Charge or Mr. Dik as per sections 2.5 and 2.6 of ST/SGB/2019/2.

31. In this regard, the Tribunal is guided by United Nations Appeals Tribunal (UNAT) jurisprudence that ny mechanism used for the purpose of delegation of authority must contain a clear transmission of authority to the grantee concerning

[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 Tribunal to consider whether the application is not receivable *ratione temporis.*

Purpose of management evaluation

40. The starting point is, as pointed out by UNAT, that, a decision of the MEU is not an administrative decision subject to challenge but it is a mere instance of a reassessment of the original- and challengeable- administrative decision[16]. Its mandate is to receive management evaluation requests pursuant to Secretary-

Management).[17]

41. The Tribunal agrees with the Respondent that the Applicant's request for management evaluation cannot be construed as a request for an *ex gratia* payment. The role of the MEU in the formal justice system is to review contested administrative decisions so that remedial action may be taken in cases where management has made an error of judgment in arriving at a decision and thereby avoid judicial review of the decision.[18]

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[15] Paragraph 33.
[16] *Tosi* 2019-UNAT-946, para. 40.
[17] *Olowo-Okello* 2019-UNAT-967, para. 29.
[18] *Pirnea* 2013-UNAT-311, para. 42.
[19] *Olowo-Okello, op. cit.*