



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/049

Judgment No.: UNDT/2010/043

Date: 18 March 2010

Original: English

Before: Judge Memooda Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

IHEKWABA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:

Barbara Lew

Counsel for respondent:

Alan Gutman, ALS

Introduction

1. The applicant is a general service staff member at the G-7 level, step X. She is receiving a special post allowance (SPA) to the P-2 (professional) level, step I, as a result of having successfully passed the 2007 English proofreader and editor exam. She alleges that her gross salary at the P-2 level was incorrectly calculated. The applicant claims that, although the applicant's net income has increased, her gross salary decreased as a result of her placement on the SPA, and this is detrimental to her. The applicant contests that the Organization's calculation of the income of staff in circumstances similar to hers is unfair to higher level general service staff members as they do not enjoy the same level of salary increase as lower level general service staff.

2. On 1 February 2010, the applicant filed an application with the Dispute Tribunal. On 26 February 2010, the respondent filed a motion to summarily dismiss the application arguing that it was not receivable under art. 2.1(a) of the Statute. The applicant's reply to the motion, as well as the respondent's reply to the application, were filed on 5 March 2010. I subsequently informed the parties that the issue of receivability will be addressed in this judgment. On 8 March 2010, the parties informed the Tribunal that they had no objections to this case being disposed of on the papers.

Facts

3. The applicant joined the Organization in 1994 and worked as a general service staff member in the Department for General Assembly and Conference Management until November 2009. In July 2008, the applicant was notified of her successful completion of the 2007 English proofreader and editor exam, pursuant to ST/IC/2007/24 (Information circular on 2007 competitive examination for English proofreaders/copy prepares/production editors), and

subsequently placed on a roster of qualified candidates. On 2 November 2009, she began working as an associate editor in the Treaty Section of the Office of Legal Affairs, having been selected from this roster. During the first two probationary years the applicant is placed on an SPA at the P-2 level (para. 14 of ST/IC/2007/24). Following successful completion of the two-year trial period, the applicant may be promoted (para. 16 of ST/IC/2007/24).

4. In November 2009, the applicant filed a request for management evaluation, contesting the reduction of her gross annual income and requesting “a review of the viability and applicability of form P.269/A in calculating the income of G to P staff who are coming from a very high G level”. The applicant explained that her former gross income at the G-7/X level was higher than her newly assessed gross income at the P-2/I level. The applicant alleged that she was informed in 2004 by an OHRM officer that under no circumstances should a promotion-related salary recalculation lead to a reduction in a staff member’s gross or net income.

5. The results of the management evaluation were communicated to the applicant by a letter dated 30 December 2009. The letter, signed by the Under-Secretary-General for Management, stated that the determination of the applicant’s SPA at the P-2/I level was made in accordance with the applicable rules.

Applicant’s submissions

6. The applicant’s submissions may be summarised as follows:
- a. Prior to starting her work on 2 November 2009, she received nothing in writing about the salary she would be given at the P-2 level. It was on 10 November 2009 that her SPA to the P-2 level

was processed. The applicant was surprised to discover that she had been given a salary level of P-2/I.

- b. The applicant's gross income at the G-7/X level was USD112,268 per annum. Now, at the P-2/I level, her annual gross income is USD105,948 per annum, which is USD6,421 lower than it used to be at the G-7/X level. Since this assignment is a promotion for the applicant, her gross annual income should increase, not decrease. The applicant never agreed to a voluntary reduction of her gross income.
- c. Form P.269/A (Computation sheet for salary on promotion on SPA), used in calculating her G to P income is flawed, arbitrary and outdated. It is also unfair to higher level general service staff and benefits those staff coming to the professional level from a lower general service level. Just because the applicant chose to work very hard over the last 15 years in the UN to attain the level of G-7/X, she is being punished with a reduced gross annual income, rather than an improvement in her financial circumstances.
- d. ST/IC/2007/24 states in para. 14 that staff who passed the language exam and who were already earning an income at the P-2 or P-3 levels would retain their levels during the trial period. Nothing in para. 14 suggests that this category of staff would suffer any loss in their gross annual income, and neither should the applicant be subjected to such loss.
- e. The reduction of the applicant's gross income is affecting her prejudicially in her financial obligations. Her bank reduced her credit line following her report that her gross annual income has been reduced. As a single parent, a negatively impacted credit

score and line can result in a reduced standard of living for the applicant and her children.

7. The applicant seeks a retroactive recalculation, effective 2 November 2009, of her new income to ensure that her new gross income is higher than her G-7/X gross income, plus an additional amount to indicate that her current assignment is a promotion and not a demotion; a declaration that form P.269/A is discriminatory towards G-7 level staff and should be used only in calculating the income of staff in the G-6 and lower categories; and that G-7 level staff be automatically placed at least at the level of P-2/X. As an alternative, the applicant requests that a new form be created to ensure that G-7 staff receive at least the level of P-2/X upon conversion to the professional grade.

Respondent's submissions

8. The respondent submits as follows:

a. The application is not receivabl dtt/P 4.9 assign only evsH-18725(s) chaff/E of the anInt r

the requirement of challenging an administrative decision. The applicant fails to meet the second requirement of art. 2 of the Statute, i.e., that the administrative decision violates the terms of

correct application of provisional staff rule 3.4, promulgated in 2009.

- f. The Tribunal is not empowered to grant the relief requested by the applicant. The applicant requests the Tribunal to issue a judgment that ensures that all staff members at the G-7 level are placed at the P-2/X level upon conversion to the professional category, or in the alternative the issuance of a new form. Article 10 of the Tribunal's Statute states that the Tribunal may, in cases of non-compliance with the terms of appointment, grant rescission of a contested decision or specific performance. The applicant, by requesting a change in the application of provisional staff rule 3.4, is requesting the Tribunal to legislate, which is not a remedy provided for under the Dispute Tribunal's Statute.

Receivability

9. The respondent submitted that the application is not receivable as there is no administrative decision affecting the applicant's rights in this case. Further, the respondent submitted that because the applicant accepted the terms of her appointment, she therefore agreed to accept the respondent's calculation of her new salary on her assignment to SPA to the P-2 level. I do not accept this argument. Although it is of course true that the applicant accepted the assignment, this does not mean that all decisions taken by the Administration with respect to the applicant must be deemed correct and lawful. The applicant argues that the basis for the calculation of her salary was flawed and discriminatory against high step G-7 level staff. I am satisfied that the Organization's decision to base its calculation of the applicant's salary on her net income constitutes an administrative decision affecting her contractual right to proper remuneration and that the case is therefore receivable.

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unable to find any merit in the applicant's arguments. Therefore, I do not need to decide on the propriety of the relief claimed by the applicant.

Conclusion

18. The application is dismissed.

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