Translated from French

UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/GVA/2010/041 (UNAT 1655)
Judgment No.:	UNDT/2010/083
Date:	06 May 2010
	English
Original:	French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

BARNED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
None

Counsel for respondent:
Stéphanie Cochard, UNOG

Introduction

1. In August 2008, the applicant, a former staff member of the United Nations Conference on Trade and Development (UNCTAD), filed with the United Nations Administrative Tribunal (UNAT) an application against the Secretary-General's decision of 1 August 2007 to accept the conclusions and recommendations of the Geneva Joint Appeals Board (JAB).

2. The applicant's appeal is against a decision of January 2004 to withhold a total of 8,235.04 Swiss francs from the amount due to her retroactively from 1996 in respect of a long-service step, in order to recover another amount she owed in respect of medical insurance premiums for the period from February 2002 to January 2004. JAB rejected her appeal on the grounds that she had not complied with the time limit set in the then staff rule 111.2 (a).

3. Having been pending before UNAT, the application was, pursuant to the transitional measures set out in General Assembly resolution 63/253, transferred to the United Nations Dispute Tribunal (UNDT) on 1 January 2010.

Facts

4. The applicant entered the service of the United Nations Secretariat at New York on 14 February 1973 on a temporary contract as a Clerk-Stenographer at the G-3 level. In February 1975 she received a permanent appointment and in December 1977 she joined UNCTAD at Geneva.

5. At the time in 2004 when the decision being appealed was brought to her notice, she was working as a Personnel Assistant, Human Resources Service, UNCTAD, Geneva, at the G-6 level. On 31 December 2009 she retired.

6. In February 2002, the applicant's husband, who was also a United Nations staff member, retired. He applied for and obtained after-service health insurance for himself and his spouse, who was then still employed.

7. In January 2004, the United Nations Office at Geneva (UNOG) made the retroactive payment of the amount corresponding to the long-service step due to the applicant for the period 1996-2004 and, at the same time, recovered the medical insurance premiums that the applicant, and not her husband, should have paid from February 2002 to January 2004. This adjustment was reflected in the applicant's electronic payslip. However, she had not been in receipt of e-payslips since late 2003, having refused to be registered in the system because she was unhappy for religious reasons with the index number she had been assigned 30 years previously.

8. The applicant states that on 27 April 2004, when checking her bank statement, she noticed that the amount paid to her as salary was lower than usual. She then contacted the UNOG Financial Resources Management Service (FRMS), which informed her that the decline was attributable to the recovery of medical insurance premiums unpaid since February 2002, the point at which her husband had retired and since which he had, wrongly, been paying an after-service health insurance premium for himself and the applicant. The recovery was effected by deducting the amount in question from the roughly equivalent amount due retroactively to the applicant in respect of her long-service step.

9. On 28 April 2004, the applicant had a meeting with the Executive Secretary of the United Nations Staff Mutual Insurance Society at Geneva (UNSMIS), who said that he would examine her case.

10. On 29 April 2004, the applicant had a meeting with a member of the staff of FRMS, who confirmed the decision to make the recovery.

11. On 30 April 2004, the applicant telephoned UNSMIS and was informed that in January 2004, following a review of her husband's file, it had been decided to cancel the arrangement whereby he had been able to pay the medical insurance premiums for the two of them.

12. By memorandum dated 26 October 2004, the applicant asked the Chief, FRMS, for explanations concerning the amount due to her for her long-service step, the amount recovered from her and the amount reimbursed to her husband in respect of medical insurance premiums. She added that, if she did not receive answers within a month, she would have to make a formal claim to the Secretary-General.

13. By memorandum dated 15 November 2004, the Chief, FRMS, replied to the applicant, with details of the amounts paid retroactively and recovered in January 2004. She said that pay slips were the formal method by which staff were informed of the calculations behind their pay and that, as the applicant was not receiving her payslips, she had been unable to see the details of those calculations. She added that the applicant's long-service step increment had been paid retroactive to 1996 in January 2004. At that time, the Administration had realized that the applicant's husband had wrongly paid medical insurance premiums for himself and for her and it had therefore recovered from the applicant's January 2004 salary the medical insurance premiums she should have been paying since February 2002.

14. In a letter dated 20 December 2004, but sent only on 17 March 2005, the applicant requested the Secretary-General to review the decision to go back on the Administration's agreement to her husband's paying her medical insurance premiums while she was still employed on the one hand and to deduct from the amount due to her for her long-service step the amount she owed in respect of medical insurance premiums for the period from February 2002 to January 2004 on the other. In a note dated 17 March 2005 and placed at the head of her request for administrative review, the applicant explained that, although she had prepared the request in December 2004, she had decided to postpone sending it, and her search for personal satisfaction, in the wake of the Indian Ocean tsunami disaster and the evident need to concentrate on relief to its victims.

15. On 27 July 2005, the applicant wrote again to the Secretary-General to complain that she had not received any response to the above letter.

16. By letter dated 16 August 2005, the Administrative Law Unit, United Nations Secretariat, acknowledged receipt on 11 August 2005 of the applicant's letters to the Secretary-General dated 20 December 2004 and 27 July 2005.

17. On 3 November 2005, the applicant asked the Secretary of the Geneva JAB for an extension of the deadline for the submission of an appeal.

18. On 15 December 2005, she filed an appeal before the Geneva JAB seeking the reversal of the decision to withhold, without advice or consultation, 8,235.04 Swiss francs from the amount due to her since 1996 as a long-service step in order to recover the amount she owed in respect of medical insurance premiums for the period from February 2002 to January 2004.

19. On 26 April 2007, JAB submitted its report to the Secretary-General. JAB held that the applicant had not complied with the time limit set in the then staff rule 111.2 (a) for submitting a request for review to the Secretary-General and that there had been no exceptional circumstances within the meaning of staff rule 111.2 (f) to justify the waiver of that time limit. It therefore found the appeal inadmissible.

20. By letter dated 1 August 2007, the Officer in Charge, Department of Management, informed the applicant of the Secretary-General's decision to accept JAB's findings

21. On 28 August 2008, after having requested and obtained from UNAT several extensions of the relevant deadline, the applicant filed the present application.

22. After correction, the application was resubmitted to UNAT in November 2008 and transmitted to the respondent on 16 December 2008.

23. On 11 June 2009, after having requested and obtained from UNAT two extensions of the relevant deadline, the respondent submitted his reply to the application. It was immediately forwarded to the applicant.

24. On 14 October 2009, after having requested and obtained from UNAT three extensions of the relevant deadline, the applicant submitted her observations on the respondent's reply.

25. Having been pending before UNAT when that body was abolished on 31 December 2009, the case was transferred to UNDT.

26. By letter dated 27 April 2010, the Tribunal informed the parties that it considered an oral hearing unnecessary and gave them one week to state their positions on the matter.

27. On 4 May 2010, counsel for the respondent indicated that she concurred with the Tribunal's view that an oral hearing was not necessary. The applicant, expressing concern that the essential facts of her case might have been obscured by the repeated and prolonged exchanges, asked for the opportunity to clarify them. She said that she wished to bring it to the Judge's attention that the case concerned two distinct issues, the payment of her long-service step on the one hand and the question of her medical insurance premiums on the other.

Parties' contentions

28. Concerning receivability, the applicant's contentions are:

a. The Administration took more than seven years to pay her the long-service step due to her. The appeals procedure has lasted for more than five years. In each case, the Administration has frequently disregarded the reasonable time limits. The date on which she submitted her request for administrative review to the Secretary-General should therefore not be used as a pretext for allowing the Administration to evade examination of its acts by the Tribunal;

b. Her empathy with the victims of the December 2004 tsunami was a reasonable reaction to a major humanitarian catastrophe.

29. The respondent's contentions are:

a. The application is time-barred because the applicant did not respect the time limit set in the then staff rule 111.2;

b. The applicant provides no evidence of an exceptional circumstance that might justify the waiving of the time limit.

Judgment

30. The Tribunal considers that there is no need for an oral hearing and that it can decide the case on the basis of the written submissions. It has duly taken note of the applicant's concerns regarding the need to distinguish between the question of the payment of her long-service step on the one hand and the question of her medical insurance premiums on the other. Those questions are, however, irrelevant as regards the receivability of the application, the first matter on which the Tribunal must rule.

31. At the relevant time, staff rule 111.2 provided that:

> (a) A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing.
> …
> (f) An appeal shall not be receivable unless the time limits specified in paragraph (a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal.

32. In her request for review to the Secretary-General, the applicant contests in particular the decision to go back on the Administration's agreement to her husband's paying her medical insurance premiums while she was still employed on the one hand and to deduct from the amount due to her for her long-service step the amount she owed in respect of medical insurance premiums for the period from February 2002 to January 2004 on the other.

33. It follows from the provisions quoted above that, by submitting her request for administrative review to the Secretary-General in March 2005, the applicant, who, by her own admission, became aware of the above-

mentioned decision on 27 April 2004 and received written confirmation of it on 15 November 2004, failed to comply with the two-month time limit set in staff rule 111.2 (a). The request was therefore late.

34. It having been established that the applicant failed to meet the deadline set in staff rule 111.2 (a), the Tribunal must determine whether there were exceptional circumstances within the meaning of staff rule 111.2 (f), which prevented her from doing so.

35. As it said in its Judgment UNDT/2010/031, *Bidny*, this Tribunal sees no reason to depart from the definition of "exceptional circumstances" adopted by the former UNAT and upheld by this Tribunal in various judgments (for example UNDT/2010/019, *Samardzic et al*.), namely "any circumstances beyond the control of the Appellant which prevented the staff member from submitting a request for review and filing an appeal in time" (see UNAT Judgment No. 372, *Kayigamba* (1986) as cited for example in Judgments No. 713, *Piquilloud* (1995) and No. 868, *Bekele* (1998)).

36. In the instant case, the applicant does not indicate any exceptional circumstance that prevented her from submitting her request for administrative review within the time limit. Her empathy with the tsunami victims, however praiseworthy, does not constitute an exceptional circumstance as defined above. Similarly, the Administration's delay in paying her the amount owed to her for her long-service step and the duration of the appeal proceedings are not sufficient to release her from the obligation stated in the aforementioned staff rule 111.2.

37. It follows from the above that the application is irreceivable as time-barred.

Decision

38. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(*signed*)
Judge Jean-François Cousin

Dated this 6th day of May 2010

Entered in the Register on this 6th day of May 2010

(*signed*)
Víctor Rodríguez, Registrar, UNDT, Geneva