



Before: Judge Eleanor Donaldson-Honeywell

Registry: Geneva

Registrar: René M. Vargas M.

SOLVSTEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT
ON RECEIVABILITY**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, AAS/ALD/OHR, UN Secretariat

Rosangela Adamo, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant serves as an Information Systems Assistant at the United Nations Assistance Mission in Afghanistan (“UNAMA”). He holds a continuing appointment and is based in Kabul.
2. On 4 April 2019, he filed an application before the United Nations Dispute Tribunal to challenge the Respondent’s decision to apply “the old rules” relating to rest and recuperation breaks in hardship duty stations, which practise the Applicant argues requires him to knowingly provide false information.
3. The Respondent filed his reply on 19 June 2019. It is the Respondent’s case that the application is not receivable and should be dismissed as such. He also argues that the impugned decision, as described by the Applicant, was lawfully made.
4. On 5 February 2021, the Tribunal issued Order No. 28 (GVA/2021) inviting the Applicant to make any submissions he might have in response to the Respondent’s reply. The Respondent was afforded the opportunity to make final submissions on the matter. Both parties filed their respective submissions as directed by the Tribunal.

Facts and submissions

5. It is the Applicant’s case that the existing procedure for the approval of rest and recuperation leave (“R&R”) does not accord with the provisions of ST/AI/2018/10 (Rest and recuperation). It also requires him, he says, to knowingly “provide false information” and a “personal deviation itinerary.” This, he argues, has a “direct impact” on his conditions of service. The provision of false information, the Applicant submits, prevents him from meeting the requirements pertaining to integrity as defined in staff regulation 1.2.
6. The Respondent’s position is that UMOJA notifications are not administrative decisions within the meaning of art. 2.1(a) of the Dispute Tribunal’s Statute. The UMOJA notification has produced no legal consequences directly affecting the Applicant’s terms of appointment or employment contract. The

Respondent underscores that the Applicant is entitled to the cost of R&R travel to Dubai and there has been no decision to deny him the entitlement.

7. The Respondent's further submission is that while section 2.7 of ST/AI/2018/10 allows the Applicant to avail himself of R&R in Istanbul rather than Dubai, section 4.5 limits the financial responsibility of the Organization to the transportation costs between Kabul and Dubai. Any R&R destination other than Dubai is considered a personal deviation from the authorized itinerary. If the staff member chooses to make a personal deviation, any cost beyond the cost of the authorized itinerary is borne by the staff member. The UMOJA system must reflect Dubai as the travel destination to abide by the requirement to document the official travel. The system then creates a record that the staff member is being paid the entitlement as authorized, while also documenting the staff member's actual itinerary on the personal deviation form.

Considerations

Receivability

8. Under art. 2.1(a) of its Statute, the Tribunal is only competent to hear and pass judgment on an application challenging administrative decisions that have been made by the Respondent. An application is only receivable if the subject matter is an administrative decision which fails to comply with the staff member's terms of appointment or the employment contract, which includes all pertinent rules and administrative issuances.

9. The interpretation and application of this rule have been extensively addressed by this Tribunal and UNAT in their decisions. Notably, the former United Nations Administrative Tribunal in its Judgment No. 1157, *Andronov* (2003), para. V held that "administrative decisions are ... characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences."

10. This was further clarified by UNAT in *Hamad* 2012-UNAT-269. It was underscored that the unilateral decision challenged must have been "taken by the [...] Administration in a precise individual case".

11. Identifying a decision that falls within the definition of an appealable administrative decision is often clear cut, in matters such as non-promotion or disciplinary measures that impact directly on an individual staff member. However, there are other cases, such as this one, where administrative decisions being challenged “might be of general application seeking to promote the efficient implementation of administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment.” (*Andati-Amwayi*, 2010 UNAT-058, para 18) Challenges to these decisions do not fall within the regulatory limits of receivability by the Tribunal

12. Accordingly, if there was no action taken in the Applicant’s precise individual case but there was only general action applicable to all staff members, there is no administrative decision for purposes of pursuing a receivable appeal to the Tribunal. If the action that is challenged produced no direct legal consequences, this is a further *lacuna* in the subject matter of an appeal that renders it not receivable. The subject matter of the Applicant’s appeal fails, on both counts, to fall within the definition of an administrative decision.

13. As contended by the Respondent, it is clear that the challenge against the alleged decision to apply “the old rules” relating to R&R in hardship duty stations, which practise the Applicant argues requires him to knowingly provide false information, does not qualify as an administrative decision. This is so because the contested decision was effected by way of the same automated UMOJA processing of R&R travel entitlement requests that applies to all staff members, who qualify for such benefit under sections 2.7 and 4.5 of ST/AI/2018/10, and ST/IC/2019/4/Amend.1 (Designation of duty stations for purposes of rest and recuperation).

14. Therefore firstly, the contested decision does not qualify as an administrative decision because it was not taken in a precise individual case.

15. Secondly, the contested decision does not qualify as an administrative decision because the UMOJA processing of the R&R request merely operationalised the provisions of the applicable rules. There was no failure to comply with any applicable rules which form part of the Applicant's terms of appointment. In other words, the UMOJA processing produced no legal consequences directly affecting the Applicant.

16. ST/AI/2018/10 provides, in its relevant part, as follows:

2.7 The Organization takes into consideration the availability of United Nations transportation when designating rest and recuperation destinations. **Staff members, however, may travel to any location outside of the duty station other than the designated rest and recuperation destination, subject to the provisions of section 4.5 below. (emphasis added)**

...

4.1 **The Organization shall pay for the cost of travel in the lowest fare, economy class, by the cheapest and most direct route from the duty station approved for rest and recuperation to the designated rest and recuperation destination. (emphasis added)**

...

4.5 **Regardless of the destination chosen for travel by staff members, the Organization's financial responsibility shall be limited to the transportation costs between the duty station and the designated rest and recuperation destination. [emphasis added]**

17. Accordingly, the UMOJA processing by online form, and automated responses, simply implemented the relevant rules by requesting that the Applicant input in the field under "[t]rip [i]tinerary" denoted for "[a]uthorized [t]rip [d]estination" his designated R&R destination. Accordingly, instead of inputting Kabul to Istanbul as the Applicant attempted to do, he was required to input Kabul to Dubai which was the designated destination applicable for R&R travel from his duty station.

18. This input was necessary because although staff members are entitled to take R&R leave at their location of choice, the rules stipulate that the Organization will only accept liability to pay the costs that would apply to travel to the designated destination. Thus, a travel itinerary to that destination must be inputted. Thereafter, the Applicant was entitled, as any other staff member, to input his chosen itinerary if it differed from the designated destination. That information could be inserted in the field denoted for “[p]ersonal [d]eviation”. This was fully explained to the Applicant in the UMOJA automated responses, and in a written explanation provided by the Kuwait Joint Support Office on 17 February 2019.

19. The Applicant is entitled to the cost of R&R travel to Dubai. There has been no administrative decision to deprive him of that entitlement, which is provided for in the rules applicable to his employment contract. The contested UMOJA automated responses or notifications do not constitute an administrative decision, because they neither applied individually to the Applicant nor produced any legal consequences that were inconsistent with his terms of employment. The challenge against the UMOJA process and its automated response to the Applicant, as articulated in this application, is therefore not receivable *ratione materiae*.

20. The Applicant in his closing submission raised a point which was not included in his initial request for management evaluation. He contended that the designated place of R&R at the applicable time was, in fact, Istanbul and not Dubai.

21. This new point is diametrically opposed to the case previously presented by the Applicant and he admits that this may be considered a new accusation.¹ In the circumstances, the Tribunal’s finding is that the introduction of this new allegation is also not receivable *ratione materiae*.

22. The Applicant did not comply with the requirement under staff rule 11.2(a) to seek management evaluation on new aspects of the decision before appealing to the Tribunal. The raising of the point, at this late stage, appears to be an afterthought on the part of the Applicant.

¹ Para 5 of the reply and additional information filed by the Applicant on 11 February 2021.

23. Additionally, as with the rules governing applications for R&R, and the UMOJA processing of such requests outlined above, the designation of an R&R location is also a policy of general application. It does not impact individually on the Applicant. The designation of Dubai as the R&R designation for Afghanistan is therefore not an administrative decision as per art. 2.1(a) of the Tribunal's Statute.

Conclusion

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

The application is rejected as not receivable.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 29th day of March 2021

Entered in the Register on this 29th day of March 2021

(Signed)

René M. Vargas M., Registrar, Geneva