



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2020/039

Judgment No.: UNDT/2021/033

Date: 29 March 2021

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

LATORRE LEÓN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Maureen Munyolo, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a staff member of the United Nations Verification Mission in Colombia (“UNVMC”), appealed the “denial [of the] possibility of refund of [Value Added Tax (“VAT”)] from [the] Government of Colombia”.

2. The Respondent replied that the application is not receivable and, in any event, without merit.

3. For the reasons set out below, the Tribunal finds that the application is not receivable and, therefore, dismissed.

Facts

4. On 22 February 2019, the Applicant purchased a motor vehicle in the duty station for personal use.

5. On 19 March 2019, the Privileges and Immunities Coordinator of the Government of Colombia responded to a request from the Applicant informing her that pursuant to the agreement signed between the Government of Colombia and UNVMC, staff members are not exempted of VAT on the local purchases of goods and services.

6. The Applicant inquired with the Chief, Budget and Finance Officer (“CBFO”) of UNVMC whether she would be allowed to include her VAT refund claim for the purchase of her vehicle as part of the UNVMC’s refund claim to the Government of Colombia.

7. On 20 July 2019, having consulted with the United Nations Office of Programme Planning, Finance and Budget (“OPPFB”), the CBFO responded to the Applicant that official accounts could not be used for personal transactions.

8. On 16 August 2019, UNVMC forwarded to the Applicant the advice received from OPPFB.

9. Following these exchanges, the Applicant reached out directly to the Colombian Ministry of Foreign Affairs inquiring about possible ways to obtain a VAT refund.

10. On 6 November 2019, following a request from the Applicant, the Chief Mission Support (“CMS”) wrote to the Controller seeking clarification whether UNVMC could receive tax refunds due to eligible international staff members.

11. On 20 February 2020, OPPFB responded to the CMS, with copy to the Applicant, reiterating their previous advice that UNVMC could not request tax refunds on behalf of staff members or have refunds deposited in its account.

12. On 21 February 2020, OPPFB responded to a request from the Applicant reiterating its previous advice.

13. Following these exchanges, the Applicant continued to contact the Government of Colombia who reiterated that she was not entitled to VAT reimbursement.

14. On 20 April 2020, the Applicant sought management evaluation of the “decision of the administration that tax refund of staff member would not be taken on the Mission’s bank account”. On 3 June 2020, the Management Evaluation Unit advised the Applicant that the request for management evaluation was not receivable.

Consideration

Scope of the contested administrative decision

15. In the application, the Applicant defines the challenged administrative decision as the “denial possibility of refund of VAT from Government of Colombia, DIAN (Tax Agency) (sic.)”.

16. As grounds for contesting the administrative decision, the Applicant refers to her request for management evaluation.

17. In the 20 April 2020 request for management evaluation, the Applicant defines the contested administrative decision as the “[d]ecision of the administration that Tax Refund of staff member would not be taken on the Mission’s bank account”. She further identifies the decision as the 20 February 2020 email from the Chief Finance Analytics and Reporting Section.

18. The Dispute Tribunal recalls the well-established jurisprudence of the Appeals Tribunal that it is the former’s role to adequately interpret and comprehend the application regardless of how the moving party describes it (see for instance, *Kennes 2020-UNAT-1073*, para. 34).

19. In light of the Applicant’s pleadings and the documentation provided, the Tribunal understands that the Applicant is challenging the Administration’s refusal to claim the refund of the VAT for the purchase of her vehicle through the UNVMC official account.

Receivability

20. The Respondent objects that the Applicant is not contesting an administrative decision capable of judicial review because agreements between the Organization and Member States do not create individual rights for staff members.

21. He further states that the contested administrative decision was not submitted for management evaluation within the 60-day deadline provided by staff rule 11.2(a) and art.8.1(c) of the Tribunal’s Statute. The Respondent states that the Applicant was first denied her request to submit her VAT refund claim through UNVMC’s official account on 20 July 2019. However, the Applicant only requested management evaluation on 20 April 2020, thereby missing the deadline. The Respondent avers that further confirmations of this decision do not reset the deadline.

22. The Tribunal recalls that under staff rule 11.2(c), a request for management evaluation must be submitted within 60 days of the date on which the staff member was notified of the contested administrative decision.

23. The Appeals Tribunal has consistently stated that the reiteration of an administrative decision, when repeatedly questioned by the staff member, does not reset the clock with respect to statutory timelines. Rather, the deadline to contest the administrative decision starts from the date on which the staff member was notified of the original decision (see, for instance, *Abu Nqairah* 2018-UNAT-854, para. 17).

24. The evidence shows that on 19 July 2019, the CBFO unequivocally informed the Applicant, after consultation with OPPFB, that she may not submit her VAT refund claim through the Mission's account.

25. The 20 February 2020 email from OPPFB merely reiterates this decision by stating "the Mission would not be able to, on behalf of its international staff, apply for refunds or receive the refunds into its bank account".

26. In application of the Appeals Tribunal jurisprudence cited above, the Tribunal finds that the Applicant was first notified of the contested decision through the 19 July 2019 correspondence from the CBFO. Therefore, as the Applicant only submitted her request for management evaluation on 20 April 2020, she missed the 60-day deadline.

27. The application is therefore non-receivable *ratione materiae*.

Conclusion

28. In light of the foregoing, the application is rejected.

(Signed)

Judge Joelle Adda

Dated this 29th day of March 2021

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

(Signed)

Nerea Suero Fontecha, Registrar, New York