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JUDGE LUIS MARÍA SIMÓN, P

... On 2 January 2008, the Applicant accepted the offer and joined UNMIS on 12 January 2008.

... On 21 February 2008, the UNMIS Chief Civilian Personnel Officer (CCPO) was instructed by the UNMIS Director of Mission Support (DMS) to deploy the Applicant to the Nasser Team Site as an Administrative Officer.

... After deploying to Nasser, the Applicant and his supervisors wrote several emails to the Human Resources section in UNMIS requesting information and updates as to movement to the FS-5 level. No response was received.

... On 1 June 2009, the Applicant received a Reassignment Directive by email instructing him to travel to Khartoum at his “earliest convenience to commence [Joint Logistics Operating Centre (JLOC)] induction training” following which he was to be deployed to El Obeid.

... On 23 June 2009, the Applicant received a memo entitled “Reassignment Letter” from the UNMIS CCPO’s Office.

... In the midst of these instructions and movements, the Applicant continued to request updates as to his movement to the FS-5 level. No update was forthcoming.

... On 7 July 2009, Human Resources in UNMIS wrote to the Applicant:

Reference is made to your selection and movement to higher level (MTHL) as Administrative Assistant, FS-5 with [the United Nations Mission in the Republic of South Sudan (UNMISS)], effective 12 February 2008.

We regret to inform you that the [FPD], New York has decided not to proceed with your movement to higher level.

In the meantime, please be advised that FPD approved the granting of the special post allowance (SPA) to the FS-5 level from 12 February 2008 to

... On 30 August 2009, the Applicant wrote to the CCPO reminding her of his email dated 30 July 2009.

... On 31 August 2009, the Applicant received an email from UNMIS Human Resources:

We are in response to your memorandum to Human Resources in regards to your Movement to Higher Level case. Kindly note, that we are reviewing the latest developments with your case and will prepare a reply. We will respond to your memorandum shortly.

... On 7 October 2009, the Applicant's second reporting officer (SRO) wrote to UNMIS Human Resources for an update. She received a reply on the same day informing her that the matter was being dealt with and instructing the Human Resources Officer in charge of this case to urgently respond to the staff member.

... On 29 October 2009, the Applicant's SRO again wrote to Human Resources for an update.

... On the same day, UNMIS Human Resources replied as follows:

In reference to my email below, I have consulted with Mr. Kamal, HRO on Mr. Pirraku's case. After further review and consultation of the case, Mr. Kamal has advised that an official memorandum will be sent to Mr. Nicholson with regard to the case.

Please contact Mr. Kamal, HRO regarding future inquiries of Mr. Pirraku's case. As stated below, Mr. Kamal is the HRO for MSD cases.

Shahid – Please advise.

... On 3 December 2009, a Memo "Staff in Confidence" was sent from the Chief of JLOC to the DMS, requesting the DMS to: "i) Request FPD to approve [Mr. Pirraku's] move to higher level (FS-5), and ii) If FPD do[es] not approve his move to higher level (FS-5), then FPD [should] provide him with a detailed written explanation [as to] why the move is rejected, and iii) Grant him SPA from 1 June 09, until his move to higher grade is approved."

... On the same day, the Officer-in-Charge in the Office of the DMS (OIC/DMS) confirmed receipt of the memo and instructed the UNMIS CCPO to: "i) prepare fax to NYHQ requesting reconsideration of case; ii) Provide formal explanation to S/M".

... On 7 February 2010, the Applicant wrote to the DMS seeking updates on the memo sent to his office on 3 December 2009.

... A similar request was sent by the Chief of JLOC on 11 April 2010, attaching the correspondence of 3 December 2009 and 7 February 2010.

... On 19 May 2010, the DMS instructed the CCPO to provide the Applicant with feedback.

... On the advice of the UNMIS Ombudsperson, the Applicant forwarded a dossier of relevant documents to the CCPO.

... On 10 August 2010, the Chief of JLOC sent another email, again attached the memos of 3 December 2009 and 7 February 2010, to the Chief of Administrative Services (CAS) seeking assistance in having this matter resolved.

... On 15 September 2010, the Chief of JLOC sent a follow up email to the CAS, attaching the same memos; this time also informing her that the Applicant had been FCRB (Field Central Review Body) cleared for a post at the FS-5 level.

... On 6 November 2010, the CCPO wrote to the Applicant:

Dear [Applicant],

I refer to your two letters of 3 December 2009 and 7 February 2010

discuss options that we have for considering you for movement to higher level (FS-5) given that you are now FCRB rostered and initially/technically cleared at FS-5 level though in a different occupational group from administration.

Please let me know your availability during my visit to Juba.

Best regards. Martin Ojjero

... On 16 November 2010, the Applicant wrote to the Management Evaluation Unit (MEU).

... On 30 December 2010, the Applicant received an email from Jsrceiv

In addition, we'd be grateful if you could advise as to when the SPA panel will meet to look into that matter. Also, we'd appreciate if you could advise as to a focal person with whom we can consult in the future on this case.

Please don't hesitate to contact me with any questions you may have.

Kind regards,

Marco

... On 14 April 2011, the Applicant wrote to MEU expressing his frustration with the delays in this case and seeking a management evaluation decision.

... On 9 May 2011, the Applicant wrote to MEU once again. MEU was at this time still waiting for a response from UNMIS.

... On 10 May 2011, the Applicant, feeling that he needed "neutral and impartial support/opinion" sought the assistance of the Office of Staff Legal Assistance (OSLA).

... On 11 May 2011, OSLA advised the Applicant to wait for MEU to complete its efforts at having the dispute informally resolved.

... Three months later, after numerous exchanges between the Applicant, OSLA, UNMISS and MEU, on 26 August 2011 OSLA informed the Applicant that an informal agreement was at hand.

... On 30 August 2011, the Applicant received an email from MEU attaching an Annex "Release Form" outlining details of the informal resolution settlement.

... On 13 September 2011, the Applicant wrote to OSLA seeking clarification on some of the issues in the Release Form.

...

Dear Esther

Thank you for your email and your assistance in my case. I tried to call but it seems you were away from your desk. Before I sign and send the doc. back to you, I want you to confirm the following.

1- If any of the items (a, b) under paragraph II, is not fulfilled, I can still appeal to UNDT.

2- The 60 days period is given for the establishment of an SPA panel.

What about the result of this panel, is there a deadline for that, or is this also going to drag on for another year. I apologize, but I need to be clear on what I am signing.

As soon as I get your input, I will sign and send it back to you.

... OSLA replied:

Dear [Applicant],

Thanks for your email. With regard to point 1, yes, if either item a or b is not performed, we will appeal to the Tribunal.

With regard to the second point, while we cannot put a specific time limit on

THE UNITED NATIONS APPEALS TRIBUNAL

... On 26 August 2013, the Tribunal issued Order No. 190 (NBI/2013) formally referring the matter to the Mediation Division, and directed the Division to advise the Tribunal if the matter is amenable to being mediated.

... On 13 September 2013, the Tribunal received a letter from Mr. Marc Vaucher of the Mediation Division informing the Tribunal that the:

Division contacted the parties to this case to assess if the matter was amenable to mediation. Unfortunately, *it appears that there is no matter to discuss at this stage*. Accordingly the matter is not suitable for mediation.⁴

4. On 3 July 2014, the UNDT rendered its Judgment. On receivability, the UNDT noted that the release agreement was subject to two conditions, namely that Mr. Pirraku be granted an exception to apply for an FS-6 position while encumbering an FS-4 position; and that a panel be established within 60 days from 15 September 2011 to review his eligibility for an SPA as from June 2008. The UNDT found that the agreement was not implemented within the deadline stipulated therein or in the absence of a deadline within a reasonable time thereafter and as a result there was no agreement Mr. Pirraku could be properly held to. The UNDT concluded that the application was receivable.

5. On the merits, the UNDT held that the fact that the Administration mistakenly interviewed and cleared Mr. Pirraku for the post could not be held against him and that the withdrawal of the offer for the FS-5 position was “unreasonable and wrong”. The UNDT further found that there had been an inordinately long delay in the implementation and ultimately a breach of the release and settlement agreement. Based on these findings, the UNDT awarded compensation in the amount of six

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11. The Secretary-General asks that the Appeals Tribunal reverse the UNDT's finding that the application was receivable and vacate the order of payment of compensation.

Considerations

12. The Appeals Tribunal affirms, albeit on different grounds, the UNDT's award of compensation to Mr. Pirraku.

13. At the outset, the Appeals Tribunal observes that the issues related to Mr. Pirraku's non-promotion should not have been presented to, and addressed by, the Dispute Tribunal. Pursuant to Article 8(2) of the Dispute Tribunal Statute:

An application shall not be receivable if the dispute arising from the contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented and the application is filed within 90 calendar days after the last day for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of the signing of the agreement.

14. Therefore, the legal consequences of a valid agreement are similar to those of a final judgment (*res judicata*). The issues regarding Mr. Pirraku's non-promotion were the subject of a settlement and release agreement reached through mediation, and pursuant to Article 8(2) of the UNDT Statute, were not subject to judicial review. The UNDT could not base its award of compensation on its determination that the administrative decision giving rise to the dispute was illegal. This matter had been subject of the settlement agreement, which did not provide for an award of compensation.

15.

...

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

17. The part of the application concerning the request for execution of judgment was

23. Moreover, this Court finds that the compensation in the amount of six months' net base salary awarded by the Dispute Tribunal was adequate in the circumstances of the case and fairly reflected the prejudice suffered by the staff member.

24. Hence, the UNDT's award of compensation is affirmed.

Judgment

25. The appeal is dismissed and the award of compensation included in the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Thomas-Felix

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar