



JUDGE SABINE KNIERIM , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2016/053, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 4 May 2016, in the case of *Tarr v. Secretary-General of the United Nations*. Ms. Emily Caroline Marie Tarr filed a complete appeal on 7 July 2016, and the Secretary-General filed an answer on 9 September 2016.

Facts and Procedure

2. Ms. Tarr entered the service of the Organization on 6 July 2013 as an Investigator with the Investigation Division (ID), Office of Internal Oversight Services (OIOS), assigned to the United Nations Mission in Liberia (UNMIL) in Monrovia, Liberia.

3. In the wake of the outbreak of the Ebola virus disease in West Africa, on 8 August 2014, the Director-General of the World Health Organization declared Liberia among others as a country affected by “a public health emergency of international concern”.

4. Also on 8 August 2014, the Deputy Director/Officer in Charge, OIOS Vienna, signed

...

7. Assignment grant: You will be entitled to an assignment grant (on a pro-rated basis) to compensate for the initial extraordinary costs incurred on moving to a new location, as well as the pre-departure expenses associated with relocation. The grant has two elements, a daily subsistence allowance (DSA) portion and a lump sum portion, both payable on arrival at the duty station.

a) The DSA portion of the assignment grant consists of 30 days DSA in respect of the staff member, at the rate applicable for your location (Entebbe), currently \$176 daily.

b) The lump sum portion is equivalent to one month's net base salary and post adjustment and it will be prorated to six months. Should your assignments in Entebbe be extended you will be paid the remaining lump-sum portion in proportion to the number of months the assignment is extended up until you've reached one year in the duty station.

6. On 8 September 2014, Ms. Tarr reported for duty in Entebbe, Uganda.

7. On 12 September 2014, a Personnel Action (PA) titled "Record Assignment" with an effective date of 4 September 2014 was finalized and approved, indicating that Ms. Tarr was on "assignment for six months effective 4/9/14 through 3/3/15 from OIOS, UNMIL to OIOS, RSCE. [She is entitled] to \$1200 [relocation grant (RLG)] & [assignment grant (ASG)] (30 days DSA & 1 month [lump sum (LS)] pro-rated)." Ms. Tarr received a copy of the PA on 13 September 2014.

8. On 6 November 2014, Ms. Tarr requested management evaluation of the "[d]enial of DSA beyond the initial 30-day period; denial of entitlements related to official duty station". She did not make specific reference to post adjustment, hardship allowance or additional hardship allowance. In a letter dated 31 December 2014 the Management Evaluation Unit informed Ms. Tarr that her request for management evaluation was not receivable, as it was time-barred.

9. Ms. Tarr appealed to the Dispute Tribunal contesting the refusal to pay her DSA beyond the initial period of 30 days of her assignment to RSCE, refusal to pay her post adjustment and hardship allowance at the Monrovia rate, as well as refusal to pay her additional hardship allowance.

10. In Judgment No. UNDT/2016/053 now under appeal, the UNDT rejected Ms. Tarr's application as not receivable, because she had failed to contest the terms of her reassignment to RSCE by requesting management evaluation of the decision within 60 days as of 12 August 2014. In that connection, the UNDT found that the 12 August 2014 e-mail from the OIOS Executive Office constituted a valid notification to Ms. Tarr of the benefits and entitlements relating to her assignment, and that the PA of 12 September 2014 was merely a reiteration of the decision conveyed to her on 12 August 2014.

Submissions

Ms. Tarr's Appeal

11. The Dispute Tribunal committed a factual error resulting in a manifestly unreasonable decision when it found that the 12 August 2014 e-mail constituted a valid notification of an administrative decision. On 12 August 2014, Ms. Tarr was given notice of the entitlements and payments to be made to her, but not of her actual status in RSCE. The e-mail of 12 August 2014 notified her that she was being "laterally reassigned". But she was in fact sent to RSCE "on assignment". "Reassignment" and "assignment" are two "separate and distinct" statuses carrying different entitlements and benefits, the former being a move within a department from one post to another, and the latter being a type of movement that denotes a return to a parent post. In sum, the 12 August 2014 e-mail communicated a different administrative decision than the one that was actually taken on 12 September 2014. The 12 August 2014 decision of laterally reassigning her to Entebbe "never occurred". The UNDT's reliance on that e-mail notification was misguided.

12. Communication of entitlements and benefits cannot constitute notification of the underlying administrative decision concerning status. Such entitlements and benefits can be challenged only at the time of the communication of the underlying administrative decision, n

14. Ms. Tarr requests that the Appeals Tribunal overturn the impugned Judgment and remand her case for a hearing on the merits.

The Secretary-General's Answer

15. As the impugned Judgment is limited to the question of receivability and does not address the merits of the case, any argument put forward by Ms. Tarr about the merits of her case should be dismissed.

16. Ms. Tarr failed to establish any error of fact in the UNDT's findings. The UNDT correctly found that Ms. Tarr was notified of the terms of her relocation to Entebbe on 12 August 2014. The decision to temporarily relocate Ms. Tarr to Entebbe was taken in August 2014 and was never modified. Subsequent communications including the PA of 12 September 2014 merely reiterated the decision and its terms in the 12 August 2014 e-mail.

17. Contrary to Ms. Tarr's assertion, the PA of 12 September 2014 did not communicate a new decision. It was issued to record Ms. Tarr's temporary relocation from Monrovia to Entebbe and the terms of such relocation. The remarks in the PA reflected the decision to relocate and install Ms. Tarr in Entebbe with the entitlements and benefits that were communicated to her on 12 August 2014.

18. The Secretary-General requests that the Appeals Tribunal reaffirm the impugned Judgment and dismiss the present appeal.

Considerations

22. Ms. Tarr further submits that a communication of entitlements and benefits cannot constitute a notification of the underlying administrative decision concerning status. Such entitlements and benefits, she assumes, can only be challenged at the time of the communication of the underlying administrative decision, which, in her view, was 13 September 2014.

23. This argument is also without merit. Apart from the fact that, as stated above, there is no legal difference between “reassignment” and “assignment” and the 12 August 2014 e-mail contained not only a notification of the benefits and entitlements but also of Ms. Tarr’s status of (re)assignment to Entebbe, Ms. Tarr’s understanding of administrative decisions and their

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Murphy

Entered in the Register on this 26th day of May 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar