



JUDGE ROSE BOYKO, Presiding.

Synopsis

1.

was receivable as the decision regarding the SPA constituted an administrative decision affecting Ihekwaba's contractual right to proper remuneration. The Dispute Tribunal found that Ihekwaba's contention that her gross income could not be reduced as a result of being placed on an SPA was not supported by any regulation, rule, or administrative instruction. The determination of Ihekwaba's step at the P-2 level and the calculation of her SPA were based on her net base salary at the G-7 level, step X, in accordance with provisional Staff Rules 3.4(b) and 3.10(d). Ihekwaba's net base salary increased under the SPA. With respect to Ihekwaba's assertion that she was informed in 2004 by an officer of the Office of Human Resources Management (OHRM) that a promotion-related salary recalculation should not lead to a reduction in gross or net income, the Dispute Tribunal found that this conversation took place before Ihekwaba passed the examination and was selected for the post as Associate Editor. The Dispute Tribunal also found that Ihekwaba was unable to establish that the basis for the calculation of her salary was discriminatory against G-7 level staff or otherwise improper.

6. Ihekwaba filed an appeal against the Dispute Tribunal's Judgment on 15 April 2010. After receiving the appeal from the Registry on 19 April 2010, the Secretary-General filed an answer to the appeal on 3 June 2010.

Submissions

Ihekwaba's Appeal

7. Ihekwaba seeks to introduce new evidence before the Appeals Tribunal in support of her assertion that it is contrary to the policy of OHRM for a staff member's gross or net income to be reduced upon his or her assumption of a higher-level function. She argues that Form P.269, entitled "Computation sheet for salary on promotion or special post allowance from the General Service to the Professional category" should not have been used in her case as the calculation of her SPA resulted in a lower gross income.

8. Ihekwaba submits that there is an underlying assumption in the United Nations system that an "increase in net income follows an increase in gross income". Form P.269 is flawed as it does not lead to an increase in gross income on promotion or SPA for higher level G-7 staff, such as her.

9. Ihekweba contends that the reduction of her gross income represents a demotion. Ihekweba submits that “gross income is one’s actual income at any workplace” and it is unconscionable, unfair and discriminatory for a staff member who has worked hard to reach the top of the General Service ladder only to find his or her gross income reduced as a result of the flawed Form P.269.

10. Ihekweba requests that the Appeals Tribunal retroactively recalculate her gross/net income from 2 November 2009 so that it is higher than her previous gross salary and declare that Form P.269 is flawed “as it pertains to staff entering the P-level from the higher steps on General Service level 7”.

Secretary-General's Answer

11. The Secretary-General submits that the Dispute Tribunal correctly determined that the calculation of Ihekweba’s SPA was in accordance with the applicable rules, and that Ihekweba has not identified any error that would require a reversal of the Dispute Tribunal’s determination.

12. The Secretary-General contends that Ihekweba does not have a right to maintain her gross income upon her assignment to her Professional post. There is no basis for such a right under the Staff Rules and related administrative issuances. Provisional Staff Rule 3.4(b) establishes that, upon promotion, a staff member has the right to an increase in his or her net base salary. The fact that some General Service staff members at a lower level than Ihekweba may receive a larger salary increase upon promotion to the Professional category does not amount to unfair treatment or violate provisional Staff Rule 3.4(b). If it were accepted that staff entering the Professional category from the higher steps of the G-7 level should be allowed to maintain the same gross salary, this would effectively create two classes of General Service staff. The Dispute Tribunal has recognized that this outcome would be unfair.

13. The Secretary-General submits that Ihekweba is mistaken in asserting that the calculation of her SPA using Form P.269 was flawed. In essence, Ihekweba disagrees with the Organization’s policies concerning promotion. The Staff Rules reflect the policy that a staff member is entitled to receive only a higher net base salary upon promotion. This policy choice is eminently reasonable and within the prerogative of the Secretary-General. The

Secretary-General argues that the Dispute Tribunal correctly declined to substitute its own judgment for his in determining the appropriate policy for implementing promotions.

14. The Secretary-General contends that Ihekweba is mistaken in claiming that OHRM has acknowledged that a promotion should result in an increase in gross salary. The new evidence which Ihekweba seeks to adduce before the Appeals Tribunal does not support this claim.

15. The Secretary-General requests that the Appeals Tribunal make a number of findings and dismiss the appeal in its entirety.

Considerations

16. Ihekweba tenders as additional evidence under Article 2(5) of the Statute of the Appeals Tribunal excerpts from her personnel file relating to her pay status but not specifically to the calculation of her SPA for the post of Associate Editor. She asserts that the OHRM policy is to the effect that her gross income cannot be reduced upon a promotion. This evidence would have been available to her at the time of her UNDT hearing and she gives no reason why it was not produced at that time. We nevertheless observe that this evidence would be of no assistance to Ihekweba in her appeal.

17. Ihekweba does not challenge the reasoning of the UNDT in the Judgment, but appeals on the ground that the administrative policy in place should be changed because in her situation she was promoted but her gross income was reduced. We note however that her pay calculations also took into account other deductions and increases such that her net income increased.

18. The real issue before this Tribunal is whether the UNDT made a reversible error in fact or law such that this Tribunal as the reviewing c(Co)-/Tinatio as ibu7chmi-5(s)4(h)e5wu1TJ-0.IP AMCI

Judgment

19. This Tribunal finds that no reversible error was made by the UNDT. The appeal is dismissed.

Dated this 27th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Boyko, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar