Judgment No. 2020-UNAT-1041

JUDGE JOHN RAYMOND MURPHY, PRESIDING

1. Ms. Dufresne appeals against the decision of the

Judgment No. 2020-UNAT-1041

6.

Judgment No. 2020-UNAT-1041

payments up to September 2016. The staff member has advised that she stopped contributing because Payroll was using her funds for other purposes – you might want to comment on this.

Given the importance of Pension to staff members, it is only fair that the Pension Fund is allowed to consider the staff member's request, and we will respect their decision. In this case, it appears Payroll has conveyed its own decision and not that of the Pension Fund.

We appreciate it may involve a lot of work on the part of Payroll in making retroactive adjustments, but since the staff member had every intention to pay, and made an effort to pay for some months, please allow the Pension Fund to review and respond to the staff member's request for exceptional approval to pay post facto payments for her SLWOP period as demonstrated by her commitment to make payments for part of this period.

	Judgment No. 2020-UNAT-104
Thank you very much for taking	

Judgment No. 2020-UNAT-1041 Payroll indicated to the MEU that i

Judgment No. 2020-UNAT-1041

Judgment No. 2020-UNAT-1041

submitted to management evaluation, namely, the request to make retroactive pension contributions.

 \mathbf{C}

- 24. Staff Rule 11.2(a) requires a staff member who wishes to formally contest an administrative decision to first submit a request for management evaluation of the administrative decision. Staff Rule 11.2(c) provides that a request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. Time limits in the context of the administration of justice in the United Nations' internal justice system must be observed and strictly enforced.²!
- 25. It is incumbent on the UNDT to individualize and define the administrative decision challenged by a party and to identify the subject of judicial review.³ As already discussed, the UNDT defined the contested decision as the decision taken by the Acting Chief of Payroll on 28 July 2017 in which he advised that the request to contribute with the UNJSPF retroactively was against the rules of the UNJSPF. The primary question for determination in this appeal is whether the decision of the Acting Chief of Payroll was the relevant impugned administrative decision.
- 26. The decision of the UNDT is correct.!
- 27. In her request for management evaluation, Ms. Dufresne, although making some reference to her dissatisfaction regarding her earl

Judgment No. 2020-UNAT-1041

facilitate that payment on the grounds that the rules of the UNJSPF did not permit such a payment.⁴!

- 28. While it is doubtful that the Acting Chief of Payroll had the authority or discretion to authorise such a payment without the concurrence of the UNJSPF, his refusal to pursue the matter was nonetheless a decision in the exercise of a function adversely affecting the rights or interests of Ms. Dufresne, which had a direct legal effect in her relationship with the Organisation.⁵ As such, it was an administrative decision which finally determined the position of the Organisation in relation to Ms. Dufresne's claim against it. The door remained open for Ms. Dufresne to approach the UNJSPF and to challenge any decision it might have taken in relation to any right to pay arrear contributions. She has, however, not challenged any decision of the UNJSPF.!
- 29. Ms. Dufresne's assertion that it "is the lack of action or decision by Payroll that is being contested" is not sustainable. The UNJSPF Regulations provide that the contributions to the UNJSPF must be paid concurrently with the period of SLWOP.6 On 31 July 2017, the Acting Chief of Payroll reiterated that clearly, stressing that the UNJSPF had already rejected similar requests for retroactive payment of such contributions in the past. The e-mail also invited Ms. Dufresne "to directly communicate with UNJSPF if you think you can have them revisit their position on this". Hence, the e-mail of 31 July 2017, and the subsequent clarifications

Judgment No. 2020-UNAT-1041

by the Director or Ms. Dufresne pinpointing any specific administrative error or asking the Administration to confirm that an error had been made regarding the non-payment of contributions, presumably for the obvious reason that the contributions were not stopped in error, but rather, at the voluntary instance of Ms. Dufresne.

31. While Ms. Dufresne may or may not have legitimate complaints regarding the handling of her earlier contributions, it

Judgment No. 2020-UNAT-1041