

to be paid at the GL-5/7 salary rate stipulated in this contract from March 2009 to July 2009.

6. On 20 July 2009 Mr. Amadou Koumago, Human Resources Officer, MONUC-Kinshasa sent an e-mail to Mr. Jimmy Mawisa, Associate Human Resources Officer, MONUC-Kinshasa, in which it was stated that the Applicant had been mistakenly reclassified to G-5 level. The Applicant was not copied on this message, nor was he aware of it.

7. Mr. Koumago requested Mr. Mawisa to issue a “Personnel Action correction”. This was done. The “Personnel Action correction” stated that overpayment occurred as follows: from January 2007 to February 2009 the Applicant was paid at the GL-5/A level instead of at GL-4/B, and from March 2009 to July 2009 the Applicant was paid at the GL-5/7 level instead of at GL-4/6. The total alleged “overpayment” was USD2012.82.

8. This “Personnel Action correction” was forwarded to the Finance Department, which promptly began recovery of the “overpayment” in monthly instalments, commencing August 2009.

9. Mr. Koumago advised Mr. Mawisa in the e-mail of 20 July 2009 that “a memo should go to the staff member informing on the mistake”. Marie-Michelle Aurelus, Human Resources Assistant, MONUC-Kinshasa was also asked to amend a new contract “to reflect G-4 level, instead of G-5”.

10. The Applicant says he never received formal notification of the supposed administrative error and decision to recover overpayment, nor did he sign an amended contract.

11. As it happens, the Applicant gave notice of resignation from his post at MONUC on 10 August 2009 and checked out on 21 August 2009. Upon check-out, the process of recovery of overpayments due to an alleged misclassification of his grade was orally communicated to the Applicant by Andy Mukendi, Human Resources Assistant, MONUC-Kinshasa.

12. Upon receipt of his final pay slip of August 2009, the Applicant noted that his

receivability considered as a preliminary issue. The Applicant was invited to provide a response on this issue.

Parties' Submissions

18. The Respondent's submits as follows:

- a. The Respondent submits that this application is not receivable due to

- b. The Applicant avers that the administration did not immediately notify him upon discovery of overpayment, which contravenes the provision in ST/AI/2009/1 Section 2.3 that “If the Organization discovers that an overpayment has been made, the office responsible for the determination and administration of the entitlement shall immediately notify the staff member”. The Applicant further submits that the Personnel Action which corrected his grade level is signed off by the Human Resources Officers but formal notification of the change was not received by the Applicant.
- c. The Applicant further submits that the contested decision was taken on the advice of Mr. Koumago, Human Resources Officer, MONUSCO-Kinshasa, who is “supposed to be a UN expert in management of Human Resources” therefore a management evaluation should not be required. Staff rule 11.2(b) provides that administrative decisions taken on advice obtained from technical bodies are exempt from the pre-requisite of filing a management evaluation.

Consideration

20. It must be considered whether in the present application a management evaluation is required for access to the Tribunal’s jurisdiction.

21. According to staff rule 11.2 (a):

A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1(a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

22. Article 8.1 of the UNDT Statute further indicates that “an application shall be receivable if...(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required.” The Tribunal notes the fact that

and of the deductions it proposed to take from his salary. Unfortunately and sadly the Tribunal cannot make any substantive determination on the matter.

Conclusion

37. Regrettably, the Application is dismissed as not receivable due to the absence of a management evaluation request.

(Signed)

Judge Vinod Boolell

Dated this 6th day of September 2012

Entered in the Register on this 6th day of September 2012

(Signed)

Jean-Pelé Fomété, Registrar