



Introduction

1.

6. By Order No. 075 (GVA/2010) dated 28 September 2010, the then President of the Dispute Tribunal rejected the Respondent's Motion for change of venue and recusal.

7. On 17 February 2011, the Respondent filed a Motion for change of venue for purposes of Joinder, pursuant to articles 6.2 and 19 of the Rules of Procedure of the Tribunal, requesting that the venue be changed from the Tribunal in Nairobi to the one in New York for purposes of joining this matter with the case of 7

11. ECA's request for suspension was rejected by the ICSC Chairman and on

implement the ICSC decision “to upgrade the Addis Ababa duty station from Hardship Class C to hardship Class B, effective 1 January 2010”.

Respondent’s submissions

17. The Respondent rejects the Applicant’s contention that his Application relates solely to the Addis Ababa duty station. The Respondent claims that the Applicant’s position is factually at odds with the Application forms he submitted to the Tribunal on 15 June 2010 because in paragraph 1, section III of the Application form defining the scope of the Application, the Applicant stated that the contested decision was the Secretary-General’s decision to implement the ICSC decision to reclassify “the Nairobi and Addis Ababa duty stations from category C to B”.

18. The Respondent argues that in light of the clear statement of appeal presented by the Applicant, it is disingenuous of the Applicant to now claim that he was not also challenging the conditions of service at the Nairobi duty station in his submission.

19. The Respondent submits further that the stipulation limiting the scope of the Application appears for the first time in the Applicant’s submission of 15 September 2010 and is therefore not properly before the Tribunal and cannot be deemed to be an amendment to the Application because 42-5.7(e Tr0)7.1(n) oht t to Tf1.24895(pplic(bTe

21. Paragraph 1 of the application narrative stated specifically that he was contesting the decision taken by the Secretary-General to implement the decision of the ICSC to upgrade “the **Addis Ababa duty station** from Hardship Class C to Hardship Class B, effective 1 January 2010” (*emphasis added*). The narrative then went on to detail how the Contested Decision would affect staff members in the Addis Ababa duty station. No mention was made of the Nairobi duty station.

22. However, the application form indicated at section III that the decision being contested was the decision of the Secretary-General to implement the ICSC decision reclassifying “the **Nairobi and Addis Ababa duty stations** from category ‘C’ to ‘B’ (*emphasis added*).

23. In the face of these conflicting statements, the then President of the Tribunal held in Order No. 075 that the Applicant could have no interest in contesting a decision related to Nairobi, a duty station with which he had no relation and that it was “only logical” that the application related solely to Addis Ababa. Consequently, the then President held that the Application was in relation solely to the decision to reclassify the Addis Ababa duty station.

24. In light of the ruling in Order No. 075, this Tribunal finds that since the scope of the Application has been the subject of a previous order of the Tribunal, there is no need for additional considerations or a new ruling.

Whether the Contested Decision is an administrative decision of the Secretary-General of the United Nations pursuant to article 2.1(a) of the Statute of the United Nations Dispute Tribunal

Respondent’s submissions

25. The Respondent submits that the Applicant is not challenging an administrative decision within the meaning of art. 2.1(a) of the Tribunal’s Statute and as such, the Application is not receivable.

26. In this regard, the Respondent argues that the Application does not identify a specific administrative decision, or an implied administrative decision taken by the Respondent, which had directly imp

produced direct legal consequences to the legal order. While the decision of the ICSC has an impact on the entitlements and allowances of the Applicant, it is not *per se* in violation of a legal right of the Applicant or a change in the legal order applying to the Applicant.

27. Additionally, the Respondent contends that the decision to reclassify the Nairobi duty station is not a decision of the Respondent because the reclassification decision, which is akin to an administrative act, was issued by the ICSC pursuant to its authority to “establish such classification under its established methodology as approved by the General Assembly, in its resolution 44/198, Section E, paragraph 1”. Further, he contends that in accordance with art. 6 of its statute, the ICSC is responsible to the General Assembly and is fully independent of the Respondent.

28. The Respondent further submits that the Respondent has no discretion with respect to implementing ICSC decisions and that an administrative decision may only be taken when the Respondent has the discretion and power to choose among alternatives. In the instant case no such discretion has been vested in the Respondent.

Applicant's submissions

29. The Applicant submits that he is challenging the Secretary-General's decision to implement a decision of the ICSC to reclassify the Addis Ababa duty station. Additionally, he claims that the Secretary-General failed to request the ICSC to reconsider its decision, thereby failing in his obligations as the Chief Administrative Officer vis-à-vis the Addis Ababa duty station to accord full legal and judicial protection. Thus, the Secretary-General's failure to request reconsideration and his implementation of the decision constitutes an “implied” administrative decision within the terms of art. 2 of the Tribunal's Statute.

30. The Applicant argues that while decisions of the ICSC may be of a mandatory nature, the Secretary-General is required to exercise a particular level of care in implementing said decisions, in particular if such decisions would have an immediate impact on the terms of appointment of staff members of the United

Nations. In this respect, he submits that the Contested Decision has substantial impact on the remuneration and entitlements of staff members in the Addis Ababa duty station.

31. Additionally, the Secretary-General's failure was in violation of his obligation to exercise due diligence in the observation of the contractual rights of the Applicant, which includes an obligation to ensure that decisions of the ICSC that affect the terms of appointment of staff members have been arrived at in accordance with the Rules and Statute of the ICSC.

Considerations

32. Article 2.1(a) of the Statute of the Tribunal (UNDT Statute) provides that the Tribunal shall be competent to hear and pass judgment on an application filed by an individual against the Secretary-General of the United Nations:

To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance [...].

33. In *Andati-Amwayi* 2010-UNAT-058, the United Nations Appeals Tribunal ("Appeals Tribunal") held that:

What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.

34. The current Application appears to be challenging the Secretary-General's decision to implement a reclassification decision made by the ICSC with respect to the Addis Ababa duty station. However, after a careful review of the nature of the decision being challenged and the legal framework under which it was made, the Tribunal finds that the fundamental decision being contested in this case is actually the ICSC decision to reclassify the Addis Ababa duty station.

35. Thus, the crux of the issue is whether the ICSC's actions or omissions can be deemed to be that of the Secretary-General and therefore of the Administration.

36. In *Cherif* 2011-UNAT-165, the Appeals Tribunal held that its mandate is limited to situations where "a staff member is contesting the application of an administrative decision, usually taken on behalf of the Secretary-General".

its recommendations on conditions of service to the Secretary-General these will still have to be approved by the General Assembly and it is to the General Assembly that the ICSC is answerable and accountable.

46. Consequently, the Tribunal cannot impute the decisions of an independent entity, such as the ICSC, to the Secretary-General due to the different roles they play vis-à-vis the United Nations and its staff members.

47. In light of the very precise wording in articles 11 and 25 of the ICSC Statute and in A/67/241, the Tribunal finds that the Secretary-General has not been vested with any discretionary authority with respect to the implementation of

50. The direct consequences therefore stemming from such administrative decision, as per art. 2.1 of the Statute of the UNDT would as a matter of course relate to the Applicant's terms of appointment or his contract of employment. The Applicant therefore bears the onus to show that (1) the contested decision was

54. Noting that Article 2.1 of the Statute of the UNDT provides that the Tribunal is “competent to hear and pass judgment on an application...to appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”, the Tribunal finds that the decision is of general application because while it resulted in direct legal consequences, it was not a decision taken in a precise individual case i.e. the Applicant’s case.

55. In light of the foregoing, the Tribunal concludes that the Applicant is not challenging an administrative decision within the meaning of art. 2.1(a) of the Tribunal’s Statute.

If it is an administrative decision, whether the Secretary-General exercised due diligence in implementing the reclassification of the ICSC

56. In view of the Tribunal’s conclusion that the Contested Decision does not