



UNITED NATIONS DISPUTE TRIBUNAL

Date: 27 March 2013

Original: English

---

Before: \_\_\_\_\_

Country: \_\_\_\_\_

Registrar: \_\_\_\_\_

Counsel for  
Atas Alih

Counsel for  
Karya Mel

## **Introduction**

1. The Applicant, a Stock Clerk at the G-3 level in the Mail, Pouch and Archives Unit, Facilities Management and Travel Service (“FMTS”), United Nations Office at

relevant law to those facts, the Secretary-General had decided to uphold the contested decision.

8. The present application was filed on 25 October 2012.

9. The Respondent filed a reply on 13 December 2012 in which it is argued that the application is not receivable.

10. On 27 January 2013, the Applicant filed a response to the reply in which he maintains that the application is receivable.

### **Respondent's submissions**

11. The Respondent's submissions on receivability are as follows:

- a. The Applicant, with the assistance of the Office of Staff Legal Assistance ("OSLA"), negotiated a settlement agreement with the Respondent whereby he would be granted retrospective SPA at the GS-4 level effective 1 May 2010 to 31 August 2010 and at the GS-3 level from 10 November 2009 to 7 February 2010, in consideration for which the Applicant would not pursue any claim against the Respondent through the internal justice system.
- b. Article 8.2 of the Statute of the Tribunal provides that an application shall not be receivable if the dispute arising from the contested administrative decision has been resolved by an agreement reached through mediation.
- c. The settlement agreement reached between the Applicant and the Respondent amounts to "an agreement reached through mediation" and that by seeking "to go behind that to the Dispute Tribunal is unconscionable and an abuse of process."

- d. The Applicant is estopped in equity from pursuing his claim. The agreement in the present case was not documented as a formal settlement or mediation agreement but the Respondent has proof of the agreement by way of correspondence between the parties. The Respondent submits that he has relied to his detriment on the agreement reached with the Applicant by granting him SPA on an exceptional basis.
- e. The Respondent avers that proof of the negotiated agreement rather than the discussions preempting such an agreement are not privileged and may be viewed by the Tribunal in circumstances such as the present case.
- f. The application is not receivable *ratione temporis* or *ratione materiae*. The Respondent submits that the Applicant pins his application on the decision said to have been taken on 20 March 2012, at the same time, he also seeks to contest the failure to grant him adequate compensation for duties he performed between 2006 and 2010. The Respondent submits that the Applicant seeks to use the decision of 20 March 2012 as a “prop on which to hang a number of general complaints about his remuneration dating back as long as six years” and that this is an abuse of process.
- g. Any challenge regarding the non-payment of SPA prior to 10 November 2009 is out of time since that was not the subject of the review which resulted in the contested decision.
- h. Any challenge to the classification of his post is not receivable *ratione materiae*. Insofar as the Applicant contests that his post was wrongly classified, the matter fell to be argued under ST/AI/1998/9 (System for the Classification of Posts), not by virtue of Chapter XI of the Staff Rules.

**Applicant's submissions**

12. The Applicant's submissions on receivability are as follows:

- a. There has never been any settlement agreement arrived at between the parties through mediation or any other process where the Applicant agreed to accept the retroactive compensation granted on 20 March 2012 as a bar to pursuing any claim against the Respondent through the just/F1 12 T981 0 0 1 171.36 548.16 Tm [(t)-22(h)19(e)3( )-10(u 1 171.19(r)-7(o)-20(

recognition that there was a systemic failure, dating back three years, to recognize the duties and responsibilities he had carried out.

- f. The Applicant submits that he had faith in the internal administrative mechanisms of the United Nations and that he resorted to using informal means of dispute resolution to resolve the issue of compensation from 2006 to 2012. When his efforts failed, he sought assistance from OSLA to articulate and intervene on his behalf with the Administration. The instructions he gave OSLA were to seek compensation for the higher level duties that he had performed since 2006.
- g. The Applicant submits that, despite the assertion that his case had been comprehensively reviewed in 2011, the UNON Administration went ahead and further granted retroactive compensation for the period between 10 November 2009 and 7 February 2010 and 1 May 2010 to 31 August 2010. This was a clear indication that the review undertaken by the administration in 2011 was not comprehensive.
- h. The Applicant submits that by taking the contested decision to grant him compensation in 2012, the Administration was conceding that he was unfairly denied compensation for prolonged durations during

when OSLA's efforts failed to satisfy the Applicant that he sought management evaluation.

- j. The Applicant submits that in approaching the Dispute Tribunal, he is not seeking to challenge the classification of his post.

### **Consideration**

13. On 20 March 2012, the Applicant was informed that he would be granted retrospective SPA at the GS-

agreement or, when the mediation agreement is silent on the matter,  
after the thirtieth day from the date of the signing of the agreement.

*Did the Applicant and the Respondent resolve the dispute arising from the contested  
administrative decis*





mediation” as expressed in art. 8.2 of the Statute of the Tribunal, the Tribunal takes the following factors into account:

- a. The informal resolution of conflict is a crucial element of the system of administration of justice and all possible use should be made of the informal system in order to avoid unnecessary litigation.
- b. “Mediation” in the United Nations requires the involvement of a trained, neutral person from the Mediation Division of the Office of the Ombudsman to assist the parties to work towards a resolution of their dispute.
- c. The agreement of all parties to a dispute is required for mediation to proceed.
- d.

23. The Tribunal accordingly finds that the application contesting the failure to grant the Applicant adequate compensation for the higher level duties he performed between 2006 and 2010 is receivable.

24. It is also noteworthy that in their review letter dated 1 August 2012, the MEU concluded that the contested