



## **Introduction**

1. The Applicant is a former staff member of the United Nations Support Mission in Libya (UNSMIL) who was employed on a series of temporary contracts for over one and a half years. In his Application dated 2 January 2014, amended on 31 January 2014, he avers that he was entitled to receive a full assignment grant. It is the Applicant's case that he did not receive 30 days of Daily Subsistence Allowance (DSA) and post adjustment amounting to USD11,002.11.

2. The Respondent filed a Reply on 21 February 2014 in which it is asserted that the entitlement to only the DSA portion of the assignment grant forms part of the terms of the Applicant's temporary appointment in accordance with staff rule 7.14(d) and that the Application is not receivable.

## **Procedure**

3. On 11 March 2014, by Order No. 043 (NBI/2014), the parties were informed that the Tribunal had decided, in accordance with art. 16.1 of the Tribunal's Rules of Procedure, that an oral hearing was not required in determining this case and that it would rely on the parties' pleadings and written submissions. The Applicant was also directed to file his submissions in response to the issue of receivability by Wednesday, 19 March 2014.

4. The Applicant filed his submissions on receivability on 19 March 2014.

5. On 27 March 2014, the Tribunal ordered the Respondent to file a copy of a settlement agreement entered into with the Applicant concerning his claim that he should have been appointed to a Fixed-Term Appointment (FTA) following the conduct of a selection exercise for a D-1 position. The Respondent filed a copy of the said agreement on 28 March 2014.

**Facts**

6. UNSMIL was established for an initial period of three months pursuant to Security Council resolution 2009 of 16 September 2011.

7. The Secretary-General's Budget report (A/66/354/Add.6) for UNSMIL was issued on 15 November 2011. In paragraph 17 of the report, the Secretary-General proposed staffing requirements which included four positions in the

13. On the same date, the Applicant wrote an in email asking the CHRO for advice about the appropriate person to pursue his claims with.

14. On 15 July 2013, the Applicant filed a request for management evaluation of the decisions to cancel the selection process for the post of Principal Security Sector Officer and the failure to apply to him the same conditions of service as those offered to staff members on FTAs.

**Applicant's submissions**

15. The Applicant submitted that he was offered and accepted conversion to an FTA but this offer was then renegeed upon.

16. The relevant Administrative Instruction, Staff Regulations and Rules



exercise. His claim is not receivable since he has released the Organization from any liability for any failure not to appoint him to a fixed-term position. The Applicant is accordingly estopped from raising any issues concerning allegations of a right to appointment to a FTA in this case.

27. The principles enunciated in *Castelli* UNDT/2009/075 upheld in 2010-UNAT-037 are irrelevant to the Applicant's case as is his reliance on *Chen*.

28. The Applicant's reliance on the principle of "equal pay for equal work" has no application to his case as he is comparing his contractual rights with staff members who are under different contracts of employment. Where a staff member is appointed to a TA, he or she does not fall within the same class of staff members as those appointed on FTAs. Equal treatment in these cases demands that in both instances, the contractual provisions of the respective contracts are enforced.

29. The rationale in *McCluskey*, 2013-UNAT-332 applies in this case. As the Applicant was appointed on a temporary appointment, he does not fall within the same class of staff members as those appointed on a fixed-term appointment. He had been appointed in different circumstances under different rules.

30. The Noblemaire principle is not applicable to the Applicant's claim as it does not cover entitlements such as assignment grants.

31. For these reasons, the Respondent requests that the Application be dismissed.

### **Considerations**

#### **Receivability**

32. The competence of the Tribunal is determined by the provisions of art. 2.1 (a) of the Statute:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) 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. To determine whether this claim is receivable, the Tribunal must examine the substance of the Applicant’s Application to determine if it falls within the competence of the Tribunal.

34. The Applicant does not deny that he received the assignment grant that he was due as a staff member on a temporary appointment but alleges that the rules on assignment grants discriminate against staff members engaged on continuous temporary contracts.

**Assignment grant entitlements for staff members on temporary appointments**

35. In 2008, in A/63/298 (Detailed proposals for streamlining United Nations contractual arrangements: a way forward), the Secretary-General proposed to streamline United Nations contractual entitlements under a single set of staff rules. The proposal introduced the concept of temporary, fixed-term and continuing contracts. The General Assembly addressed the proposals in A/Res/63/250. Materially in articles 2.7 and 2.8 it decided that:

...temporary appointments are to be used to appoint staff for

36. ST/AI/2010/4 established terms to apply to staff members on Temporary Appointments. This was abolished and replaced by ST/AI/2010/4/Rev. 1. The provisional staff rules were abolished and replaced by ST/SGB/2010/6.

37. Section 11.1 (a) of ST/AI/2010/4/Rev.1 governs travel related entitlements of staff members on TAs:

Section 11

Travel-related entitlements

11.1 A staff member who holds a temporary appointment serving in posts subject to international recruitment as defined in staff rule 4.5 may be eligible, if not recruited at the duty station or from within commuting distance from the duty station, for the following travel-related entitlements in accordance with the applicable staff rules and the conditions specified in the present administrative instruction:

(a) The daily subsistence allowance portion of the assignment grant in accordance with staff rule 7.14 (d);

38. The effect of this section is that staff on temporary appointments are entitled to the assignment grant stipulated in staff rule 7.14(d). Staff rule 7.14(d) stipulates:

Rule 7.14

Assignment grant

*Definition and computation of the grant*

(a) The assignment grant is intended to provide staff with a reasonable amount of cash at the beginning of an assignment for costs incurred as a result of the appointment or assignment and is based on the assumption that the main expenses of installation are incurred at the outset of an assignment.

(b) The assignment grant consists of two portions:

(i) The daily subsistence allowance portion, which shall be equivalent to:

a. Thirty days of daily subsistence allowance at the daily rate applicable under subparagraph (c)(i) below; and



b. Thirty days of daily subsistence allowance at half the daily rate in respect of each eligible family member for whom travel expenses have been paid by the United Nations under staff rules 7.2 (d)(i) - iii);

...

(d) A staff member holding a temporary appointment who travels at United Nations expense pursuant to staff rule 7.1 (a)(i) above shall be paid only the daily subsistence allowance portion of the assignment grant for himself or herself only as specified in subparagraph (b)(i) above.

39. In his report A/65/202 dated 20 August 2010, the Secretary-General provided information to the General Assembly on the provisional staff rules to implement the new contractual arrangements.

42. It is clear from his submission that the gravamen of the Applicant's case is that the changes to the Human Resources regime and the rules which apply( )-155(w)-1 o

*(Signed)*

Judge Coral Shaw

Dated this 14<sup>th</sup> day of July 2014

Entered in the Register on this 14<sup>th</sup> day of July 2014

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi