

**B. (No. 2)**

*v.*

**WHO**

**135th Session**

**Judgment No. 4597**

THE ADMINISTRATIVE TRIBUNAL,

Considering the second complaint filed by Mrs E. B. against the World Health Organization (WHO) on 23 September 2019, WHO's reply of 6 January 2020, the complainant's rejoinder of 30 January 2020 and WHO's surrejoinder of 8 May 2020;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the changes made with respect to her salary pursuant to the implementation of the unified salary scale as adopted by the United Nations (UN) General Assembly.

In 2015, after having carried out a comprehensive review of the compensation package for all UN common system staff in the Professional and higher categories, the International Civil Service Commission (ICSC) produced a report in which it recommended the introduction of a unified net salary scale, which would replace the existing salary scale that included a single and a dependency rate. The new scale would contain one single salary rate payable to all staff, irrespective of their family status, and support for dependent family members would be provided through a separate allowance. Officials with a non-dependent

spouse who had previously been in receipt of a salary at the dependency rate by virtue of a first dependent child would instead receive a child allowance in respect of that child. These officials would receive a transitional allowance of 6 per cent of net remuneration in order to mitigate salary reductions, but the allowance would be reduced by one percentage point every 12 months thereafter until the amount of the transitional allowance became equal to or less than the amount of the child allowance. At that point in time, the child allowance would become payable instead.

In December 2015 the UN General Assembly adopted the ICSC's recommendation in Resolution 70/244, and, in January 2016, WHO so informed its staff adding that WHO rules would have to be amended. In November 2016 the Director-General submitted to the Executive Board the report of the ICSC on the conditions of service applicable to staff in the Professional and higher categories. In February 2017 WHO announced that the Staff Rules concerning the remuneration of staff in the Professional and higher categories were amended with effect from 1 January, to introduce the "unified salary scale". Further emails ensued regarding each element of the revised compensation package. Of particular interest are the emails of 13 April, 15 May and 28 June 2017, which informed staff of the modifications made to the single parent allowance, within-grade increase, and education grant.

On 22 March 2018 the complainant submitted a request for administrative review contesting the decision to reduce her salary as of February 2018 and to apply a further reduction as of June 2018 following modifications made to the post adjustment. This part of her request was decided in Judgment 4135, delivered in public on 3 July 2019. In her request for administrative review, she also contested the decisions to reduce her salary, allowances and benefits as a result of the revised compensation package, which included the decision to change the dependency salary scale to a unified base salary scale, the decision to reduce annually her dependency allowance by 1 per cent of her "net base salary plus post adjustment" as of January 2018, and the decision to reduce her education grant entitlements as from the 2017-2018 school year.

WHO rejected the request for review in full as unfounded, and the complainant filed an appeal with the Global Board of Appeal (GBA) on 8 January 2019 contesting that rejection.

In its report of 11 June 2019, the GBA recommended dismissing the appeal in its entirety, stressing that a staff member should expect the rules governing conditions of employment to be revised when necessary. The revisions to the compensation package, which removed the dependency element from the salary scale and limited expenses that could be claimed under the education grant scheme, did not alter the complainant's fundamental or essential terms of appointment, neither did it violate the complainant's acquired rights. Indeed, the dependency element was not eliminated as a new allowance for dependents was established. The revisions followed the legitimate aims of equitable and fair treatment of all staff, cost-effectiveness and capacity to attract a competitive workforce. The GBA further noted that WHO had adopted transitional measures to mitigate any negative impact the new measures may have, and thus met its duty of care towards staff.

In his decision of 9 August 2019, notified to the complainant on 16 August 2019, the Director-General endorsed the GBA's findings and conclusions, in particular concerning acquired rights, equal treatment and duty of care. He therefore dismissed her appeal. That is the impugned decision.

The complainant asks the Tribunal to set aside the impugned decision and to draw all legal consequences from that setting aside, in particular to order WHO to pay her "the amounts she is entitled to". She also claims costs.

WHO asks the Tribunal to dismiss the complaint as unfounded.

## CONSIDERATIONS

1. The complainant is a member of the staff of WHO. In November 2016, the Executive Board of WHO adopted alterations to the Staff Rules to introduce a new compensation package for staff, progressively introduced in 2017 and early 2018. The genesis of the

package is outlined shortly. On 22 March 2018 the complainant lodged a request for administrative review. In that request the complainant identified four decisions made by WHO as the final administrative decisions she was contesting. The first was the “WHO pay-cut decision”. Judgment 4135, decided in 2019, has already determined legal issues raised, successfully, by staff of WHO about the reduction of their salaries. Nothing further need be said on this topic.

2. The second identified decision was “the WHO decision to change from the dependency salary scale to a unified base/floor salary scale”. The third was “the WHO dependency allowance decision” and the fourth was “the WHO education grant decision”. The latter three decisions were collectively described by the complainant as “the WHO compensation package decisions”. These three decisions were general decisions and not individual implementing decisions which themselves adversely affected the complainant. This has a bearing on the receivability of this complaint discussed shortly.

3. By memorandum dated 30 October 2018, the complainant’s request for administrative review was rejected. The complainant appealed against that decision which resulted in a report of the GBA dated 11 June 2019 recommending to the Director-General that the appeal be dismissed. The Director-General did so by letter dated 9 August 2019 which is the decision impugned in these proceedings.

4. The new compensation package complained of in these proceedings applied not only to staff of WHO but to the staff of many other international organisations in the UN common system. Its introduction has already resulted in several judgments of this Tribunal including judgments concerning the dependency allowance (see Judgment 4381 based on a payslip) and the education grant (see Judgment 4465 based on an individual decision). The genesis of the new compensation package was discussed by the Tribunal in, amongst other places, Judgment 4381. It arose in the following way.

5. In 2012, the ICSC proposed that it undertake a review of the compensation package of the staff in the UN common system in the Professional and higher categories. The UN General Assembly decided in 2013 to request that review be undertaken. The 2015 ICSC Annual Report contained a detailed discussion of what emerged from that review and proposals for the future involving changes to salary structures and benefits payable to staff in the UN common system.

6. The changes included that, firstly, a unified salary scale was introduced eliminating the distinction between staff who were single and those with dependents. For those staff with dependents that would suffer significant reductions in their salary because of the introduction of the unified salary scale, transitional allowances were introduced. Secondly, the frequency of the salary steps increase was changed from annually for all to annually for some and biennially for others. Thirdly, the basis on which a mobility allowance (renamed mobility incentive) was paid was altered as were the grounds for eligibility. It was no longer to be calculated having regard to the past number of geographical moves but was payable as a flat amount according to grade. Service in some duty stations no longer attracted the incentive.

7. Fourthly, relocation entitlements were altered. The possibility of payment for household goods left behind was eliminated (the non-removal allowance). Payment was to be made for the real cost of removal of household goods (with a possibility of a lump sum payment). The former assignment grant, potentially payable in two instalments (after two years of service in a hardship duty station), was replaced with a one-off settling-in grant. Fifthly, the education grant was streamlined, and payment ceased for some non-tuition costs (including for transportation, lunches and boarding). Sixthly, the basis on which a staff member could access home leave travel entitlements was altered. Also, and seventhly, the basis on which compensatory payments were paid for staff at non-family duty stations was altered and the method of calculating the payments by reference to grade was abandoned. Eighthly, the method of calculating a hardship allowance

was altered focusing only on the hardship of the station as an effect on the staff member but not her or his dependents.

8. In her complaint, the complainant sets out the relief she seeks which includes orders that the Tribunal find itself competent and also that the complaint is receivable. WHO does not argue that the complaint is irreceivable but this is an issue the Tribunal can raise *ex officio* (see, for example, Judgment 4334, consideration 5). There are two principles emerging from the Tribunal's case law which are relevant. The first is that usually a complainant cannot challenge a rule of general application unless and until it is applied, by way of decision, in a manner prejudicial to her or him (see, for example, Judgment 4075, consideration 4). The second is that a complainant must have exhausted internal means of redress to render a complaint receivable in the Tribunal (as required by Article VII, paragraph 1, of the Tribunal's Statute).

9. In her pleas, the complainant impugns three decisions, namely, the decision to introduce a unified salary scale, the decision to reduce the dependency allowance and the decision to alter the benefits payable by way of education grant. As noted earlier, these are general decisions. The complainant characterises the decision of the Director-General of 9 August 2019 as an individual decision. In some senses it is, in that it disposed of the complainant's particular appeal brought as an individual staff member. However, this is not the focus of the case law. A relevant individual decision is one in which a general decision is applied to the particular circumstances of the complainant in a way that adversely affects the complainant. It is for this reason that many general decisions are challenged by reference to a payslip in which individual payments are made to a complainant who seeks to argue the relevant general decision underpinning the payment has adversely affected her or him (see, for example, Judgment 3614, consideration 12). By confining challenges to general decisions in this way, two related objectives are achieved. The first is that it requires the Tribunal to focus on the individual circumstances of the complainant, given that the Tribunal's jurisdiction conferred by its Statute is substantially concerned with individual grievances. The second concerns relief. Generally, the

Tribunal's power to grant relief (see Article VIII of the Tribunal's Statute) is limited to remedying the effect of an organisation's unlawful conduct in relation to the complainant alone and not relief cast more broadly.

10. The complainant challenges in these proceedings three general decisions but in respect of which there were no implementing decisions. She cannot do so. Accordingly, her complaint is irreceivable.

11. This conclusion renders it unnecessary to address the detailed arguments of the complainant about the unified salary scale, the dependency allowance and the education grant. Suffice it to note, however, that her specific arguments were considered by the GBA in a thoughtful and balanced opinion and rejected.

12. In the result, the complaint should be dismissed as irreceivable.

#### DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 26 October 2022, Mr Michael F. Moore, President of the Tribunal, Ms Rosanna De Nictolis, Judge, and Ms Hongyu Shen, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered on 1 February 2023 by video recording posted on the Tribunal's Internet page.

MICHAEL F. MOORE

ROSANNA DE NICTOLIS

HONGYU SHEN

DRAŽEN PETROVIĆ