



CSAC Appeal 012/2019 – Record of Decision

Appeal 012/2019 was received on 30 July 2019, with the remaining supporting documents received on 3, 6 – 9 and 13 January 2020 and on 6 February 2020, from the Appellant against the following decisions of the Respondent:

- 1) 4 July 2019 – to not approve the Appellant’s Official Travel Application Form (for travel to an overseas conference) (“the First Decision”); and
- 2) 21 June 2019 – to have the Appellant report to the Ministry (as opposed to her original Department) on 2 July 2019 (following a secondment without providing the Appellant with the relevant documentation outlining the terms and conditions of her employment as required by the PSML (i.e. job description, performance agreement, secondment/employment agreement) (“the Second Decision”).

However, at the hearing of the Appeal the Appellant also sought to appeal the Respondent’s decision to not approve her application for study leave from 24 – 28 June 2019 which she says was applied for in Leave Tracking in early May 2019 (“the Third Decision”).

The Appellant sought as a remedy a declaration that the First Decision was biased and unfair and an order to be reimbursed for her travel expenses as official travel expenses, and a declaration that the Second Decision was unfair although the Respondent acknowledged that her grievance had now been addressed by a new secondment agreement entered into in January 2020. However, she declined the invitation of the Respondent’s Legal Representative to withdraw her appeal against the Second Decision on the basis that the matters complained of were true and correct as at the date she submitted her appeal. However, no remedy other than a declaration was sought in respect of the Second Decision. The Appellant also sought approval of her study leave application.

Following receipt of submissions from the Respondent an Appeal Hearing was held on 13 February 2020. It is noted that Acting Chairman Olivaire Watler along with members Stacey Vandavelde, Shomari Scott, and Vicki Hulse participated in the Appeal Hearing. The Commission subsequently considered the written and oral submissions of both parties along with the relevant sections of the PSML.

The First Decision

CSAC accepts that the Respondent had a legal duty to provide adequate reasons for his decision.

Notwithstanding the Appellant's email to the Chief Human Resources Manager on 5 July 2019 requesting a follow up on the Official Travel Request which had been refused it did not appear to CSAC that such reasons were forthcoming from the Respondent.

CSAC makes the following observations from these submissions:

- (a) The Respondent provided no explanation for the long delay of 4 – 5 months in deciding the application for official travel, and in fact deciding it after the intended period of travel had concluded. In the absence of any explanation by the Respondent CSAC finds that the delay itself was unfair.
- (b) The Respondent appeared to rely solely or mainly upon his claim that the travel was a volunteer activity as his reason for denying approval. CSAC accepts the Appellant's submission that this was a misinterpretation of the correspondence. The Respondent accepted in his written submissions that mistake of a material fact may render a decision unlawful. CSAC finds that the decision fell foul of the principles of Wednesbury unreasonableness in this respect and was therefore unlawful. The Respondent stated that it was determined that no [employees] in the Ministry would be approved to attend the [overseas] conference as attendance at the said conference was not necessary. However, no evidence was provided as to when this decision was made or whether it was communicated to Department Heads under the Ministry. To that extent, CSAC finds that this reason, which was not communicated to the Appellant even after the Respondent had made the decision, cannot be used to justify the decision to refuse the Appellant's application.
- (c) As regards the decision not to reimburse the Appellant's travel expenses because the travel occurred before the travel was approved, CSAC considers it would be unfair to allow the Respondent to rely on his own failure to render a timely decision to deny approval of the travel expenses of the Appellant.

CSAC concluded that the Appellant failed to adduce any evidence of bias to support the claim, that approval had been granted for other employees to travel during the moratorium period; and the Respondent denied that this claim was true. Accordingly, the ground was dismissed.

The Second Decision

CSAC found that the evidence disclosed that the Appellant did not in fact, at her own request, return to her substantive post, but was placed in a role with significantly different responsibilities, and that the Appellant had not therefore as a matter of fact resumed her duties as per her substantive position, and accordingly the original employment contract and job description no longer applied. It was therefore incumbent on the Respondent to regularize the Appellant's position with the appropriate documentation establishing her new position and the relevant duties associated with it. The failure to do so did amount to an appealable decision in law.

CSAC appreciates that faced with the Appellant's decision not to return to her substantive position, it was challenging to find a new permanent position for the Respondent within the period before the Appellant filed the appeal, and that at the time was not an unreasonably long period.

CSAC concluded that the Respondent did not act unfairly in this respect. Further, evidence was adduced that the Appellant had by the time of the hearing entered into a new Secondment Agreement and the grievance had therefore been addressed. Accordingly, there was no need for CSAC to provide any relief to the Appellant in this regard.

The Third Decision

The Commission made no findings in respect of this decision, having only been introduced to the decision by the Appellant at the beginning of the Hearing.

The Commission made the following orders:

- that the decision not to approve the application for the Appellant to travel to the overseas conference was unlawful and was therefore quashed;
- the Respondent must reconsider the First Decision, including the study leave application, taking into account this Decision, the information submitted by the Appellant for this Appeal, any relevant travel policies that were promulgated at the time of the Appellant's application and the available financial resources; and render a new decision (including a decision as to reimbursement of travel expenses) within 30 days of the date of this Decision; and
- The Respondent must also render a decision ("the Third Decision") as to the study leave application within 30 days of the date of this Decision.

The Commission's decision was duly issued on 3 March 2020 to both the Appellant and the Respondent's legal representative.



Olivaire Watler
ACTING CHAIRMAN
CIVIL SERVICE APPEALS COMMISSION