



UNITED NATIONS DISPUTES



## Introduction and Procedural History

1. The Applicant holds a fixed term appointment with the United Nations. He is currently a

8. On the evening of 15 June 2015, the Parties filed a motion requesting that the

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new assignment. Since staff members do not incur transportation costs when they move intramission, there is no basis for payment of a lump sum in lieu of reimbursement of transportation costs.

27. The mission offered the Applicant the opportunity to transport his personal effects at no cost to him by United Nations Transport to Entebbe. He declined the offer. He cannot claim a relocation grant in lieu

The RLG [Relocation Grant] option does not apply to movements within countries. In these cases, staff members retain their rights to unaccompanied shipments

32. The OHRM Guidelines acknowledge that in a field operation, mission staff may frequently be reassigned between duty stations within the mission area by the Chief/Director of Mission Support due to operational needs. For moves between mission duty stations, the mission itself arranges shipment of the staff member's personal effects from the previous duty station to the new duty station of the office using United Nations air transportation and/or United Nations vehicle.

33. The relocation grant option is not applicable where there is no prospect of the staff member incurring costs and, as such, no obligation to reimburse the staff member could possibly arise. Where there are no potential costs that may be reimbursed under staff rule 7.15(d), the right to reimbursement does not arise, nor does the right to opt out and receive a relocation grant in lieu of reimbursement.

34. The application of staff rule 7.15(d) and section 11.1 of ST/AI/2006/5 to intra-mission transfers, as detailed in paragraph 5 of the Guidelines, was confirmed in two communications from the Administration to the Missions (Field Personnel Division (FPD) guidance).

35. On 15 January 2007, the Personnel Management Support Service (now FPD) provided additional guidance on applying the relocation grant option in the context of peacekeeping operations and special political missions where it clarified that the relocation option is not applicable to movements within the same country or for within-mission transfers and that, in these cases, staff members retain their right to unaccompanied shipment of personal effects.

36. In a subsequent fax of 24 June 2009, FPD provided guidance on the movement of staff within a new family mission from 1 July 2009 and reiterated that staff members transferred within a mission are entitled to shipment of personal effects from the previous mission duty station to the new duty station, to be arranged by the mission, and that there is no option for payment of relocation grant in lieu of

shipment of personal effects for within-mission transfers, even if the within-mission transfer is to a different country within the mission area.

37. The Applicant's argument that the Guidelines and the FPD Guidance unlawfully supplement the policy regarding relocation grant and/or the determination of how it is to be implemented has no merit. Staff rule 7.15(d) clearly states that staff members have a right to reimbursement for costs incurred for unaccompanied shipments. Section 11.1 of ST/AI/2006/5 provides that a staff member may opt for lump sum payment of relocation grant in lieu of reimbursement for the costs of an unaccompanied shipment of personal effects. There is no provision that allows a staff member to claim a relocation grant where there are no costs that may be incurred and, consequently, no reimbursement that could be due. The Guidelines and FPD guidance implement this provision consistent with the Staff Rules and relevant administrative issuances.

38. The Applicant has no contractual right to opt for a lump sum relocation grant in lieu of reimbursement of costs that may be incurred, since there were no potential costs that he may have incurred. In the absence of any right to reimbursement under staff rule 7.15(d), there cannot arise any right to relocation grant in lieu of a claim for reimbursement.

#### Considerations

#### Issues

39. The only legal issue arising for consideration is whether the Applicant was entitled to a relocation grant for his assignment from Kinshasa to Goma within MONUSCO.

40. Staff rule 4.8 provides:

Change of official duty station



(a) A change of official duty station shall take place when a staff member is assigned from one duty station to another for a period exceeding six months or when a staff member is transferred for an indefinite period.

(b) A change of official duty station shall take place when a staff member is assigned from a duty station to a United Nations field mission for a period exceeding three months

41. The Applicant was being assigned from Kinshasa to Goma, both duty stations being within the MONUSCO mission area. Since both duty stations are within MONUSCO, can that assignment be interpreted to mean that the Applicant was not entitled to a lump sum relocation grant on grounds, as the Respondent informed the Applicant on 26 February 2014, that his reassignment "was in the same mission

42. Mission area was not defined in ST/AI/2006/5. However the ICSC Hardship Classification<sup>9</sup> gives a list of duty stations located in a country, and the DRC where MONUSCO is. Kinshasa and Goma are classified as separate duty stations. It is not DRC that is classified as one duty station but the two different regions of Kinshasa and Goma that are classified as such. purposes of classification of family duty stations or non-family duty stations, OHRM's list of non-family "duty stations" as at 1 January 2014 classifies Kinshasa and Goma as two distinct duty stations. In addition the report of the Secretary General to the General Assembly the list of refers to Kinshasa and Goma as two duty stations<sup>10</sup>

43. The Tribunal finds that the ICSC's list and classification of duty stations has informed, and formed the basis of, the Secretary General and OHRM's own lists and reports. DRC is clearly the Mission Area, within which Kinshasa and Goma exist as distinct duty stations.

44. At the time when the Applicant was informed he was being assigned to Goma from Kinshasa the relevant applicable law was ST/AI/2006/5

45. Section 11.1 of ST/AI/2006/5 stated that:

On travel on appointment or assignment for one year or longer, transfer or separation from service of a staff member appointed for one year or longer, internationally recruited staff members entitled to unaccompanied shipment under staff rules 107.21ff [rule 7.15], 207.20 [cancelled] or 307.6, as detailed above, may opt for a lump sum payment in lieu of the entitlement. This lump-sum option shall be known as a "relocation grant"

46. The wording of section 11.1 above is clear. The option or discretion of the choice of opting for a relocation grant vests in the staff member and not with the Respondent.

47. The Respondent has referred in his Reply to the application of staff rule 7.15(d) and section 11.1 of ST/AI/2006/5 to mission transfers, as detailed in paragraph 5 of the Guidelines and as confirmed in two communications from the Administration to the Missions (FPD guidance).

48. The Respondent also submitted that in January 2007, the Personnel Management Support Service (now FPD) provided additional guidance on applying the relocation grant option in the context of peacekeeping operations and special political missions where it clarified that the relocation option is not applicable to movements within the same country or for mission transfers and that, in these cases, staff members retain their right to unaccompanied shipment of personal effects.

49. Reference was also made to a fax of 24 June 2009 from FPD that provided guidance on the movement of staff within a family mission as of 1 July 2009

50. It is perfectly permissible for the Respondent to issue Guidelines or manuals that may explain the implementation of a Staff Rule or an Administrative Issuance. But these Guidelines cannot replace the clear provisions of an Administrative Issuance or Staff Rule.

51. This principle has been discussed and applied by the Appeals Tribunal in several cases

52. In *Asariotis 2015 UNAT-496*, the Court held that an Instructional Manual for the Hiring Manager on the Staff Selection System does not have legal force. The Appeals Tribunal observed:

“[R]ules, policies or procedures intended for general application may only be established by duly promulgated Secretariat General’s bulletins and administrative issuances<sup>12</sup>”

53. Similarly, in *Verschuur<sup>13</sup>* the Appeals Tribunal stated that the Staff Selection Guidelines and the Guide to Workflow and Rules for Processing Vacancies in Galaxy, are “merely comments and guidelines issued with a view to facilitate the implementation of the applicable law. Those comments and guidelines can in no way prevail over the administrative instruction”

54. In *Masthour<sup>14</sup>*, the Appeals Tribunal held that the principle of legislative hierarchy determined in *Villamorán<sup>15</sup>* is applicable only where there is a conflict between guidelines and manuals and a properly promulgated administrative issuance. In the absence of an Administrative Issuance the manual or guideline is applicable.

55. A policy that is not reflected in an administrative issuance has no legal basis<sup>16</sup>

56. In the case of the impugned decision at hand, the issue is not whether there was a conflict between the Guidelines and ST/AI/2006/5. The issue is whether the

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