



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/01

Introduction and Procedural Histo

Case No. UNDT/NBI/2014/066

Judgment

15. The Applicant was requested to contact the Movement Control Section (MOVCON) in order to make all the necessary arrangements, including the shipment of all his personal effects up to a maximum of 1000 kilograms to his new duty station.

16.

new assignment. Since staff members do not incur transportation costs when they move intra-mission, 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* of reimbursement of costs, when he did not have to incur any costs. At all times, MONUSCO undertook to transport the

28. ST/AI/2006/5 implements staff rule 7.15. Section 11 of ST/AI/2006/5 provides staff members with the right to opt between their right to reimbursement of costs under staff rule 7.15(d) and a lump sum *in lieu* of reimbursement of the actual costs incurred.

29. The relocation grant option is a lump sum payment *in lieu* of the entitlement to reimbursement for costs incurred in the shipment of personal effects. Where a staff member opts for payment of a lump-sum relocation grant, the staff member waives his/her normal entitlement to reimbursement for the costs of shipment of personal effects under the Staff Rules. The staff member agrees to accept full responsibility for arrangements relating to the shipment of personal effects as well as for the costs related to and resulting from the shipment of personal effects including, but not limited to, customs charges, insurance claims and damage to personal effects.

30. In circumstances where the Organization ships the unaccompanied personal effects of staff members, the right to reimbursement under staff rule 7.15(d) does not arise because the staff member does not incur any costs. Since the right to reimbursement does not arise, a staff member cannot elect to receive a relocation grant *in lieu* of this right.

31. On 7 January 2007, OHRM issued the OHRM Guidelines on Relocation Grant (OHRM Guidelines). The Guidelines state in paragraph 5 as follows:

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 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 the 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 Bunia to Entebbe within MONUSCO.

40. Staff rule 4.8 provides:

Change of official duty station

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But these Guidelines cannot replace the clear provisions of an Administrative Issuance or Staff Rule.

51. This principle has been discussed, and applied, both by the Dispute and Appeals Tribunals 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:

only be established by duly promulgated Secretary-
and¹²

53. Similarly, in *Verschuur*¹³

given the principle of legislative hierarchy as held by Judge Ebrahim-Carstens in *Villamorán*:

At the top of the hierarchy of the Organization is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins, and administrative instructions (see *Hastings* UNDT/2009/030, affirmed in *Hastings* 2011-UNAT-109; *Amar* UNDT/2011/040). Information circulars, office guidelines, manuals, and memoranda are at the very bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances.

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