



Introduction and Procedural History

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

of all his personal effects up to a maximum of 1000 kilograms to his new duty station

16. The Applicant was advised that he would be entitled to the payment of an Assignment Grant comprising a lump sum of one month's net base salary plus post adjustment and thirty days' Daily Subsistence Allowance (DSA).

17. The Applicant was also informed that he would not be eligible for Relocation Grant as his reassignment was within the same mission.

Applicant's submissions

18. Staff are entitled to "official travel" "on change of official duty station"¹

19. Pursuant to staff rule 7.15 a reimbursement mechanism is provided for the shipment of personal effects and household goods upon "assignment"²

20. Under staff rule 7.15(h) and (j) these entitlements are governed by the nature of the appointment (temporary or fixed term) and the duration of the relocation. The amounts can either be 100 kgs/0.62m³ for short-term appointments and moves, or a full relocation.

21. Pursuant to this scheme, the Administration established lump-sum equivalents of the "relocation grant"³. ST/AI/2006/5 (Excess baggage, shipments and insurance) has the same scheme, triggered by "assignment" or "transfer" to another duty station.

22. As the reassignment memo indicates it is clear that the Applicant was being reassigned to a new duty station. Indeed, the reassignment memo confirms the Applicant's eligibility for an assignment grant, which depends upon either travel at United Nations expense to a duty station for an assignment⁴ or a change of official

¹ Staff rule 7.1(a) (iii) and staff rule 4.8.

² Staff rule 7.15(h) or "transfer to another duty station" staff rule 7.15(i)(i).

³ Section 11, ST/AI/2006/5.

⁴ Staff rule 7.14(e)

duty station.⁵ The reassignment memo also confirms that the DSA portion will be at the destination duty station rate.⁶

23. “Duty station” is uniformly considered to be a city, not a country, a province, area or a Mission. This is apparent from the International Civil Service Commission (ICSC) Hardship Classification,⁷ OHRM’s list of nonfamily duty stations as at 1 January 2014,⁸ the list of the largest duty stations that the Secretary-General has reported to the General Assembly,⁸ the categorisation by the United Nations Department of Safety and Security and the Applicant’s letters of appointment and personnel action forms

24. Pursuant to section 11.1 of ST/AI/2006/5, a staff member who is eligible may opt for a lumpsum payment in lieu of the entitlement to shipping. No discretion is conferred upon the Administration to take a decision in specific cases. There is nothing in ST/AI/2006/5 that could be plausibly read as creating an exception for “Mission area” or “within country” travel

25. The Organization, subject to certain constraints, can amend administrative issuances to change benefits. It can grant Respondent discretion to provide benefits. It can even abolish benefits outright. In short, it can change the law. What the Organization cannot do is ignore the law as it stands. If ST/AI/2006/5 provides that a benefit must be given, it must be given

Respondent’s submissions

26. There is no merit to the Application. Intra-mission transfers in the DRC are made using United Nations Transportation. For reasons of efficiency and reliability, the Organization transports staff members’ personal effects to the location of their new assignment. Since staff members do not incur transportation costs when they

⁵ Staff rule 7.14(f)

⁶ Staff rule 7.14(c).

⁷ ICSC/CIRC/HC, January 2014

⁸ A/68/256, 30 August 2013

move intramission, there is no basis for payment of a lump sum in lieu of reimbursement of transportation costs.

27.

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 reflect that in a field context, 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 the shipment of the staff member's personal effects from the previous duty station to the new duty station for recharge 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, an 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 return 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 mission (Field Personnel Division (FPD) guidance).

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

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 reassigned from Kinshasa to Entebbe both duty stations being within the MONUSCO mission area. Since both duty stations are the MONUSCO mission area, can that assignment be interpreted to mean that the Applicant was not entitled to a relocation grant on grounds the Administration informed the Applicant on 21 January 2014 that this reassignment "was in the same mission"?

42. "Mission area" was not defined in ST/AI/2006/5. However, the ICSC Hardship Classification⁹ gives a list of duty stations located in a country. MONUSCO comprises DRC and Entebbe in Uganda. Kinshasa is classified as a separate duty station within DRC. Entebbe is classified as a separate duty station as is evidenced by the report of the Secretary-General to the General Assembly. The list of duty stations refers to Kinshasa and Entebbe as distinct duty stations.¹⁰

43. The Tribunal finds that from the ICSC's list and classification of duty stations and the report of the Secretary-General, Kinshasa and Entebbe are two separate duty stations. Within the MONUSCO mission area, Kinshasa and Entebbe exist and are listed as distinct duty stations.

44. At the time the Applicant was informed he was being assigned to Entebbe from Kinshasa, the relevant applicable law was ST/AI/2006/5.¹¹

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

⁹ (ICSC/CIRC/HC, January 2014), 4

¹⁰ (A/68/256, 30 August 2013)

¹¹ ST/AI/2015/1 has since been promulgated to replace ST/AI/2006/5.

unaccompanied shipment under staff rules 107.21 [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 secs

51. In Asariotis 2015 UNAT-496, it was held that an instructional Manual for the Hiring Manager on the Staff Selection System

and memorandums at the very bottom of this hierarchy which lack the legal authority vested in properly promulgated administrative issuances.

55. The Tribunal concludes therefore that it was not lawful for the Administration to substitute ST/AI/2006/5 with its own Guidelines so as to deprive the Applicant of his right to opt for the relocation grant.

56. The circumstances surrounding this Application, however, fall squarely within the ambit of ST/AI/2006/5; which affords the Applicant with the right to a relocation grant.

Conclusion

57. The Tribunal orders the rescission of the impugned decision.

(Signed)

Judge Vinod Boolell
Dated this 13th day of June 2016

Entered in the Register on this 13th day of June 2016

(Signed)

Abena Kwakye Berko, Registrar Nairobi