



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/104
Judgment No.: UNDT/2016/082
Date: 13 June 2016
Original: English

Before: Judge Vinod Boolell

Registrar

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Introduction and Procedural History

1. The Applicant holds a permanent appointment with the United Nations. He is currently a Field Service Officer at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) and serves at the FS 5 level and is based in Goma, Democratic Republic of the Congo (DRC).

2. On 26 November

9. On 17 June 2015, the Tribunal issued Order 207 (NBI/2015) granting the motion, and extended the deadline as requested by the Parties.

10. The Parties filed a joint statement of facts on 20 June 2015. The Applicant submitted that the matter could be decided on the papers without an oral hearing because the legal issues arising for determination are technical. The Respondent sou

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 net base salary plus post adjustment and thirty days Di 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".

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 Goma. 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 Applicant's personal effects to his new duty station.

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 will 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:

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 the shipment of the staff member's personal effects from the previous duty station to the new duty station of charge 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 mission (FPD guidance).

35. On 15 January 2007, the Personnel Management Support Service (now FPD)

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

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 107.2 [staff 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 to opt for the relocation grant vests in the staff member and not with the Respondent.

47. The Respondent has referred in his Reply to 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 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 for within-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 and reiterated that staff members transferred within a mission are entitled to shipment of their 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.

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, 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

given the principle of legislative hierarchy as held by Judge Ebro Clainstens in Villamorán

At the top of the hierarchy of the Organization's internal legislation 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

57. 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.

58. 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

59. The Tribunal orders rescission of the impugned decision.

(Signed)

Judge Vinod Boolell

Dated this 13th