



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/034

Order No.: 059 (NBI/2015)

Date: 11 February 2015

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TOYEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM

Nicole Wynn, ALS/OHRM

8. On 9 January 2015, the Chief, Policy and Conditions of Service section of the Office of Human Resources Management (OHRM) disseminated to headquarters offices and Chiefs of Administration in the field, the list of duty stations which the ICSC had approved for an R&R entitlement effective 1 January 2015. An updated list was issued on 14 January 2015. By facsimile dated 16 January 2015, the Director, Field Personnel Division of the Department of Field Services (FPD/DFS) further disseminated the list to all field missions. The most recent updated list was issued on 16 January 2015 and it excluded the Alpha side of the UNDOF area of operations.

9. The Applicant received notification of the R&R designation on 21 January 2015.

10. On 29 January 2015, she requested for a management evaluation of the decisions abolishing R&R entitlements and the “refusal of Danger Pay on A-side”.

Respondent’s submissions

11. The Respondent submits that the Application is not receivable for the following reasons:

- a. The Applicant does not challenge an administrative decision within the meaning of art. 2.1(a) of the Dispute Tribunal’s Statute.
- b. The Dispute Tribunal lacks jurisdiction to review decisions taken by the ICSC regarding hardship entitlements.
- c. The ICSC is a subsidiary body of the General Assembly charged with determining the conditions of service, including which duty stations are approved for the entitlement to a four-week R&R cycle. General Assembly resolution 65/248 expressly grants the ICSC the authority “to regulate the rest and recuperation framework”. The ICSC is independent of the United Nations.

under signature of the Chairman “shall be applied by each organization with effect from a date to be determined by the Commission”.

d. Contrary to the Applicant’s contention, OHRM did not take the contested decision. The decision whether to approve a duty station for a four-week R&R cycle is solely within the purview of the

To appeal an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance [...].

15. The current Application purports to challenge the decision of the ICSC not to approve a four-week R&R cycle for staff members such as herself serving at Camp Ziouani Amret Al-Faouar, Syrian Arab Republic. The issue for determination in this case is whether the ICSC’s actions or omissions can be deemed to be that of the Secretary-General and therefore of the Administration. This issue was considered by Boolell J in *Obino* where the Learned Judge concluded:

In view of the fact that art. 2.1(a) of the UNDT Statute expressly states that the Tribunal is competent to hear and pass judgment on an application filed by an individual “against the Secretary-General of the United Nations”; the Tribunal cannot extend its jurisdiction to include decisions made by the ICSC, regardless of how those decisions are couched to appear like decisions of the Secretary-General¹.

16. The Appeals Tribunal in *Obino* also held that the ICSC takes binding decisions in some matters such as hardship elements like R&R².

17. The Tribunal concludes that the Applicant is not challenging an administrative decision within the meaning of art. 2.1(a) of the Tribunal’s Statute.

Conclusion

18. In view of the foregoing, the Tribunal concludes that9(t)-538(i)22(s)5(9Q q BT /F1 19a)

Case No. UNDT/NBI/2015/034

Order No. 059 (NBI/2015)

(Signed)

Judge Nkemdilim Izuako

Dated this 11th day of February 2015

Entered in the Register on this 11th day of February 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi