



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/058

Judgment No.: UNDT/2016/074

Date: 13 June 2016

Original: English

President: Judge Vinod Chaudhury
Registry: Nairobi
Registrar: Abena Kwakye Berko

OWENS

v.

SECRETARY-GENERAL

Introduction and Procedural History

1. The Applicant holds a fixed term appointment with the United Nations. He is currently an Information Technology Assistant at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) serves at the F5 level and is based in Goma, Democratic Republic of the Congo (DRC).
2. On 2 July 2014, the Applicant filed an Application with the United Nations Dispute Tribunal in Nairobi challenging the decision denying him the lump sum relocation grant for the shipment of his personal effects on being reassigned from Kinshasa to Goma in 2014.
3. The Respondent replied to the Application on 5 August 2014. Applicant filed his comments in response to the Respondent's Reply on 11 August 2014.
4. The Tribunal held a case management discussion in this matter on 18 February 2015 during the course of which the Tribunal urged the Parties to consider informal resolution of the dispute.
5. On 20 March 2015, the Parties filed a motion seeking additional time for their ongoing informal settlement discussions. On 23 March 2015, the Tribunal issued Order No. 03 (NBI/2015) granting the motion.
6. On 29 April 2015, the Parties jointly informed the Tribunal that the informal discussions had failed to resolve the dispute between them and requested that the matter proceed before the Tribunal.
7. On 13 May 2015, the Tribunal issued Order No. 062 (NBI/2015) ordering the Parties to, inter alia, jointly file a concise statement of facts and identify the legal issues arising from those facts for determination by the Tribunal and to notify the

8. On the evening of 15 June 2015, the Parties filed a motion requesting that the deadline be extended up to Friday, 19 June 2015.

9. On 17 June 2015, the Tribunal issued Order No. 99(NBI/2015) granted 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 sought an oral hearing in order to proffer a witness from the Office of Human

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. 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.

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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 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:

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 determined. The Guidelines and FPD guidance on I20 0 0 rg 0.9(e)

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

But these Guidelines cannot replace the 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:

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

53. Similarly, in *Verschuur*¹³ the Appeals Tribunal stated that 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*¹⁴, the Appeals Tribunal held that the principle of legislative hierarchy determined in *Willamoran*¹⁵ 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 basis¹⁶.

56. In the case of the impugned decision at hand, the issue is not whether there

given the principle of legislative hierarchy as held by Judge Ebrahims 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 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 day of June 2016

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

(Signed)

Abena Kwakye Berko, Registrar Nairobi