



UNITED NATIONS

Original: English

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Jud

Nairobi

Kenya

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY AND
RELIEF

ant:

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dent:

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Introduction and Procedural History

1. The Applicant holds a permanent appointment with the United Nations. She is currently an Information Analyst at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). She reserves at the P-2 level and is based in Goma, Democratic Republic of the Congo (DRC).
2. On 15 December 2014, the Applicant filed an Application with the United Nations Dispute Tribunal in Nairobi challenging the decision denying her the lump sum relocation grant for the shipment of personal effects on being reassigned from Kinshasa to Goma in 2014.
3. The Respondent replied to the Application on 15 January 2015.
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.102(NBI/2015) granting the motion.
6. On 29 April 2015, the Parties jointly informed the Tribunal that the informal discussion

9. On 17 June 2015, the Tribunal issued Order 208 (NBI/2015) granting the motion, and extended the deadline as set by the Parties.

10. The Parties f

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"

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

20. Under staff rule 7.15(h) and (i) 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 or 200 kgs/1.24m³ for fixed term appointments.

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 Classification⁷, OHRM’s list of nonfamily duty stations as at 1 January 2014⁸, the list of the largest duty stations that the Secretary-General has reported to the General Assembly⁹, the categorization 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, cannot administratively issue issuances to change benefits. It can grant Respondent discretion to provide

offer. She cannot claim a relocation grant in lieu of reimbursement of costs, when she did not have to incur any costs. At all times, MONUSCO undertook to transport the Applicant's personal effects to her 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 of 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 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 free 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 Missions (Field Personnel Division (FPD) guidance).

35. On 15 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 or for within-mission transfers and that, in these cases, staff members retain their right to unaccompanied shipment of personal effects.

36. In a subsequent fax of 24 June 2009, FPD provided guidance on the movement of staff within a non-family mission from 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.

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 cost 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 shall 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 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 Kinshasa to Goma within MONUSCO.

40. Staff rule 4.8 provides:

Change of official duty station

(a) A change of official duty station shall take place when a staff member is assigned from one duty station to another for a period 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

52. In *Asariotis*¹² 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 Secretaries-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 *Mashhour*¹⁴, the Appeals Tribunal held that the principle of legislative hierarchy determined in *Villamorán*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 was a conflict between the Guidelines and ST/AI/2006/5. The issue is whether the Guidelines should have been made to prevail over the Administrative Instruction given the principle of legislative hierarchy as held by Judge Ebrahim Carstens 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, Secretaries-General’s bulletins, and administrative instructions (see *Hastings* UNDT/2009/030, affirmed in *Hastings* 2011-UNAT-109; *Amar*

¹² *Charles* 2013-UNAT-286.

¹³ 2011-UNAT-149 and *Contreras* 2011-UNAT 150.

¹⁴ 2014-UNAT-483.

¹⁵ UNDT-2011-126 as confirmed in 2011-UNAT-160.

¹⁶ *Manco* 2013-UNAT-342; *Valimaki* 2012-UNAT-276

UNDT/2011/040). Information circulars, office guidelines, manuals, and memorandums 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 day of June 2016

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

(Signed)

Abena Kwakye Berko, Registrar Nairobi