



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/098

Judgment No.: UNDT/2016/081

Date: 13 June 2016

Original: English

Before: Judge Vinod Chaudhary
Registry: Nairobi
Registrar: Abena Kwakye Berko

MAIA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Introduction and Procedural History

1. The Applicant holds a fixed term appointment with the United Nations. He is currently a Senior Legal Officer at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) serves at the P level and is based in Goma Democratic Republic of the Congo (DRC).
2. On 17 October 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 being reassigned from Kinshasa to Goma in 2014.
3. The Respondent replied to the Application on 21 November 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.
6. On 23 March 2015, the Tribunal issued Order No 60 (NBI/2015) granting the motion.
7. 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.
8. On 13 May 2015 the Tribunal issued Order No 69 (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 Tribunal if they wished to have this matter set down for an oral hearing.

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

10. On 17 June 2015, the Tribunal issued Order 206 (NBI/2015) granted the motion, and extended the deadline as requested by Parties.

11. 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 Resources Management (OHRM) to offer testimony regarding the rationale and basis for the policy regarding payment of the relocation grant and the application of the policy in this case

12. The Tribunal has decided, in accordance with art. 16.1 of its Rules of Procedure, to determine this Application on the basis of the pleadings filed by both Parties

Facts

13. By resolution 2098 (2013) of 28 March 2013, the Security Council decided, inter alia, that "MONUSCO shall strengthen the presence of its military, police and civilian components in eastern DRC and reduce, to the fullest extent possible for the implementation of its mandate, its presence in areas not affected by conflict in particular Kirsha

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

17. 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).

18. 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

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

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

21. 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 and moves, or a full relocation.

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

23. As the reassignment memo indicates it is clear that the Applicant was being reassigned to a new duty station. Indeed, the reassignment memo states that the Applicant's eligibility for an assignment grant, which depends upon either "travels at United Nations expense to a duty station for an assignment"⁴ "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)

move intra

The RLG [Relocation Grant] option does not apply to movements within countries. In these cases, staff members retain their rights to unaccompanied shipments

33. 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.

34. 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.

35. 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 in (FPD Personnel Division (FPD) guidance).

36. 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.

37. In a subsequent fax of 24 June 2009, FPD provided guidance on the movement of staff within a 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 of

shipment of personal effects for within mission transfers, even if the within mission transfer is to a different country within the mission area.

38. 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 of 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 due. The Guidelines and FPD guidance implement this provision consistent with the Staff Rules and relevant administrative issuances.

39. 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 no potential costs that he may have incurred. In the absence of a 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

40. The only legal issue arising for consideration is whether the Applicant was entitled to a relocation grant for his assignment from Bunia to Entebbe within MONUSCO.

41. 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

42. The Applicant was being assigned from Kinshasa to Goma, both duty stations being within the MONUSCO mission area. Since both duty stations are in MONUSCO, can that assignment be interpreted to mean that the Applicant was not entitled to a lump sum relocation grant on grounds, as the Respondent informed the Applicant on 18 June 2014 that his reassignment “was in the same mission”?

43. 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 and for the DRC where MONUSCO is. Kinshasa and Goma are classified as separate duty stations. It is not DRC that is classified as one duty station but the two different regions of Kinshasa and Goma that are classified as such. purposes of classification of family duty stations or non-family duty stations, OHRM’s list of non-family “duty stations” as at 1 January 2014 classifies Kinshasa and Goma as two distinct duty stations. Additionally, the report of the Secretary-General to the General Assembly of, the list of refers to Kinshasa and Goma as two duty stations¹⁰

44. The Tribunal finds that the ICSC’s list and classification of duty stations has informed, and forms the basis of the Secretary-General and OHRM’s own lists and reports. DRC

46. 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 107.21 [aff 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"

47. The wording of section 11.1 above is clear. The option or discretion of the choice of opting for a relocation grant rests in the staff member and not with the Respondent

48. 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).

49. The Respondent also submitted that in January 2007, the Personnel Management Support Service (now DFP) 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 intra-mission transfers and that, in these cases, staff members retain their right to unaccompanied shipment of personal effects.

51. 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.

52. This principle has been discussed and applied both by the Dispute and Appeals Tribunals in several cases.

53. In Asariotis 2015-UNAT-496,

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