
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/019

Judgment No.: UNDT/2022/121

Date: 11

Introduction

1. The Applicant is an FS-4 Administrative Assistant with the United Nations Interim Security Force for Abyei (“UNISFA”) based in Kadugli, Sudan.
2. On 21 February 2022, she filed an application before the Dispute Tribunal contesting the decision not to pay her daily subsistence allowance (“DSA”) for 23 days, from 24 August to 24 September 2021.
3. The Respondent filed a reply on 23 March 2022 urging the Tribunal to find that the contested decision was lawful.

Facts

4. In an email Broadcast dated 3 November 2016, UNISFA’s Office of the Chief of Mission Support (“OCMS”) reminded all international staff members, Military Observers, Staff Officers, United Nations Police Officers, United Nations Volunteers and contractors to submit their Sudanese visa renewal applications in a timely manner.¹ The pertinent parts of the Broadcast read as follows:

[...]

2. Staff are advised that renewal of Visa is a personal responsibility of the Visa holder. Visa renewal applications should be submitted to the office of the CMS, [...] and/or Mr.[...], maximum 5 weeks and minimum 3 weeks prior to the expiration date of the Sudanese visa.

3. Under no circumstances can staff travel out of Abyei and/or Sudan without a visa valid within three weeks beyond the return date of their journey. Should the visa expire while absent from

accommodation and food while in transit in Khartoum.

5. Periods of absence while waiting for renewal of Sudanese visa will be charged against annual leave/MSA leave.

5. On 24 June 2021, the Applicant travelled from her duty station, Kadugli, to Palestine on annual leave to be followed by Rest and Recuperation (“R&R”). She was approved to be absent on annual leave for one day, 24 June 2021, and for R&R from 12 July to 16 July 2021. According to the Applicant’s approved travel request, she was scheduled to return to her duty station on 8 August 2021.²

6. The Applicant submits that due to the closure of the Gaza/Israel border, she was unable to travel out of Gaza for some two weeks and when she finally got her exit permit, she was scheduled to arrive in Sudan on 23 August 2021 but had another one-day flight delay in Istanbul enroute to Khartoum. Her visa expired on arrival in Khartoum on 24 August 2021 where she remained stranded.³

7. On 24 August 2021, the Applicant addressed a memorandum to the Chief of Mission Support (“CMS”) informing him that she would work from Khartoum from 24 August to 24 September 2021 pending the renewal of her visa. She also requested the CMS to authorize payment of DSA while in Khartoum awaiting the renewal of her visa.⁴

8. On 5 September 2021, the CMS denied the Applicant’s request for DSA.⁵

9. On 6 September 2021, the CMS explained that the Applicant was not entitled to DSA for the 23 days that she requested to work from Khartoum and advised her to seek approval for the 23 days to be recorded as telecommuting.⁶

10. The Applicant requested for management evaluation of the CMS’ decision on

² Reply, para. 4.

³ Application, section VII(1) and annex A/5.

⁴ Application, annex A/2.

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25 October 2021.⁷ By letter dated 22 December 2021, the Management Evaluation Unit upheld the contested decision.⁸

11. The Tribunal held a case management discussion (“C

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c. During the first 30 days of DSA travel, the only requirement is that a staff member be on official travel which covers any staff member travelling at United Nations expense. Therefore, whatever the circumstances were that forced her to remain in Khartoum, she remained in travel status, and she is entitled to DSA for the actual days she was in Khartoum. The Secretary-General does not have discretion to withhold this entitlement until after the initial 30 days. The refusal to pay her DSA is therefore unlawful, violates her right to equal treatment and the right to be treated fairly and justly. Other staff members who spent two to three days in Khartoum enroute to Kadugli were paid their DSA.

d. The Respondent's argument that her stay in Khartoum was not authorized as official travel is faulty because it does not explain who else was supposed to authorize her travel. The staff rule she is relying upon for her DSA claim does not give a manager the authority to redefine the rules under which a staff manager can claim DSA. The Respondent appears to suggest that returning from extended period on R&R has the effect of disqualifying such travel from being official travel.

e. The Respondent operates under a mistaken belief that her stay in Khartoum needed to be approved. The reason why she was forced to remain in Khartoum is not relevant to whether or not she is entitled to DSA under the circumstances. The same considerations apply to whether or not she worked remotely while in Khartoum. Her entitlement to DSA is unaffected by whether or not she worked while she was stranded.

f. The decision not to pay her DSA is part of a pattern of harassment she has endured in the mission. She has seen junior staffers promoted over her despite her excellent performance reviews. She has been stuck at the FS-4 level for nearly 20 years. She believes the decision to deny her DSA was part of this pattern. The decision was made

a. The contested decision was lawful. DSA is paid to staff members on official travel who are authorized by the Secretary-General to participate in activities related to the work of the Organization which are organized by a government, intergovernmental organization, non-governmental organization or other private source. Official travel must be authorized before it is undertaken.

b. A staff member is responsible for obtaining the proper authorization before commencing travel. Pursuant to staff rule 7.1(c) and section 2.3 of ST/AI/2013/3 Amend.3, (Official travel), the Secretary-General may reject any claim for payment or reimbursement of travel expenses which are incurred by a staff member in contravention of any provision of the staff rules and ST/AI/2013/3 Amend.3.

c. The Applic792 reW-9(d.3 0 612 7135.38 423.67 Tm0 g0 G -0.048 Tc[(c.)] TJET@.000009

Before the Applicant left the duty station, she was told that periods of absence while waiting for renewal of a Sudanese visa were to be charged against annual leave. She was also told that she would have to bear the cost of any stay in Khartoum.

f.

Staff Rules

1.2(w) Travel and per diem for outside activities

Staff members who are authorized by the Secretary-General to participate in activities related to the work of the Organization which are organized by a Government, intergovernmental organization, non-governmental organization or other private source **may receive from that organizing entity** accommodation, travel and **subsistence allowance** generally in line with those payable by the United Nations. In such cases the daily subsistence allowance that may otherwise be payable by the United Nations shall be reduced as envisaged by staff rule 7.10(a).

5.2 Home leave

(a) Internationally recruited staff members, ... who are residing and serving outside their home country and who are otherwise eligible shall be entitled once in every 24 months of qualifying service to visit their home country at United Nations expense for the purpose of spending in that country **a reasonable period of annual leave**. Leave taken for this purpose by staff

...

23. Thirdly, the Applicant's subsequent request to have the period in Khartoum treated as telecommuting was refused. Even if it had been granted the regulatory framework indicates that there is to be no cost to the Organization based on flexible work arrangements.

24. Fourthly, if the Applicant were to be considered as being on a stopover in returning from R&R, the last basis for her leave, there is no provision in the regulatory framework for persons on R&R to be entitled to DSA.

25. It is only based on her annual leave that the Applicant could possibly qualify as being on "official travel status" but there are factual deficiencies in her case that detract from this possibility. The factual deficiencies are that under staff rule 7.1, the sole category for which the Applicant could be considered on official travel status is her annual leave which under that provision may be considered home leave. However, on the facts of this case the Applicant's annual leave amounted to only one day, which was 24 June 2021.

26. Thereafter, her absence from duty was for other reasons including R&R from 12 July to 16 July 2021. On 8 August 2021 when the Applicant was scheduled to return to work, she was not on home leave and her R&R was long concluded. Then, after her delayed arrival in Khartoum, during her time awaiting visa renewal the Applicant was not on home leave. Accordingly, there was no factual basis for her to be considered on official travel status pursuant to staff rule 7.1.

27. Even if the Applicant's time in Khartoum could be considered as a continuation of "official travel", the Staff Rules expressly exclude DSA as an entitlement for staff members in the 'home leave' category of official travel. Staff rule 7.5 provides that persons on official travel are entitled to four types of travel expenses including DSA. However, under staff rule 7.10(g), DSA is not payable to persons on home leave except for stopovers under conditions established by the Secretary-General.

28. The Applicant has not submitted that there are any such conditions that have

