



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-144

Borg-Olivier
(Appellant)



Counsel for Appellant: George Irving

Counsel for Respondent: Melanie Shannon

THE UNITED NATIONS APPEALS TRIBUNAL

6. On 13 September 2004, following a request from the Special Representative of the Secretary-General in Kosovo, DPKO sent Borg-Olivier an offer for a fixed-term appointment (100 series) with UNMIK at the D-2 level. Pursuant to former Staff Rule 103.21, the offer provided for the payment of a mission subsistence allowance, but no post adjustment or MHA.

7. On 15 September 2004, Borg-Olivier requested DPKO to reconsider the terms of the offer to compensate for the loss of earnings resulting from the discontinuation of his post adjustment and MHA. On 1 October 2004, DPKO responded that “the entitlement to post adjustment [and MHA] does not exist if a person does not have a link to a parent duty station or UN Agency” and that, upon his separation from UNRWA, effective 1 September 2004, UNMIK could only retain his services as a mission appointee, in which case no post adjustment and MHA were payable.

8. On 11 October 2004, Borg-Olivier sought further assistance in this matter from the DPKO, the Chef de Cabinet of the Secretary-General and the Secretary-General. On 21 March 2005, DPKO informed Borg-Olivier that, after a consultation with the Office of Human Resources Management (OHRM), there was “no administrative mechanism to grant [him] the entitlements to post adjustment and [MHA]”. Thus, another offer of appointment was sent to Borg-Olivier. On 25 April 2005, the ASG for Human Resources Management informed Borg-Olivier that she had not been able to find an alternative arrangement for him and that he had until 30 April to accept the offer. On 27 April 2005, Borg-Olivier accepted the offer.

9. On 27 and 29 June 2005, respectively, Borg-Olivier signed his letters of appointment for the periods from 1 September 2004 to 31 August 2005 and from 1 September 2005 to 31 August 2006. He added on each letter the handwritten note “without prejudice”.

10. By letter dated 20 June 2005, Borg-Olivier requested that the Secretary-General review the 25 April 2005 decision.

11. On 4 October 2005, Borg-Olivier filed an appeal with the New York Joint Appeals Board (JAB). In its report issued on 2 October 2006, the JAB made no recommendation in support of the appeal. The Under-Secretary-General (USG) for Management took no

decision on the JAB report within the one-month period stipulated in former Staff Rule 111.2(p) and (q) and a copy of the JAB report was transmitted to Borg-Olivier on 2 November 2006. On 14 March 2007, the USG for Management notified Borg-Olivier of the Secretary-General's decision to accept the JAB conclusions and take no further actions in his case.

12. Borg-Olivier requested five extensions of time to file an application with the former Administrative Tribunal. All of hi

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