

Case No.

7. The TSC/RSCE, on 10 December 2012, identified the published fare for the Applicant's travel from Kinshasa to Copenhagen as USD2,271 giving the Applicant a 75% lump-sum payment of USD2,041.

8. A Travel Assistant contacted the Applicant informing him that the TSC/RSCE were unable to obtain a quote for his daughter's travel to Copenhagen as the fare was not published in the GDS. On 15 December 2012, the Applicant

that the decision of TSC/RSCE to follow the standards provided by the TTS Guidelines in the calculation of the Applicant's lump-sum quotation be upheld.

Applicant's case

13. The Applicant's case as deduced from his pleadings is summarized below.

14. The MEU's position is that section 10.2 of ST/AI/2006/4 should read "base fare" instead of "fare", a technical term used by the airline industry, which excludes taxes, surcharges, fees and such, and that the TTS Guidelines only set standards that are consistent with the administrative instruction.

15. The Applicant cites *Warren* UNDT/2010/015 as authority that the TTS Guidelines are inconsistent with ST/AI/2006/4 and as such must be set aside in favour of the definition of "full economy fare" in paragraph 9-91(e) of the TTS Guidelines. (ET Q q BT /F4 1)] T8et 9-91(e)

18. The MEU's interpretation can lead to the absurd result that the least costly scheduled air carrier might have higher base fare than the most costly one and result in a higher lump-sum. This would be the case if the least costly carrier has no or few surcharges and consequently a high base fare while the most costly has an artificially low base fare but high surcharges as is increasingly observed by low-cost carriers in a de-regularized market. This introduces a random element to the calculation based on the interest of airlines to advertise an unrealistically low price while the real price is much higher and would take away the incentive to elect the lump-sum option which was introduced to reduce the administrative burden of the organization.

19. As such, it is prayed that the Tribunal Order the Respondent to calculate the lump-sum payment without the subtraction of any taxes or surcharges and pay the Applicant an additional sum of USD475.75.

Respondent's case

20. The Respondent's case is summarized as follows.

21. Section 10.2 of ST/AI/2006/4 stipulates, in relation to lump-sum option for

of any kind such as fuel, security or week-end travel; and surface transportation to and from airports or on intermediate sectors along the route.

25. The Applicant contends that the word “fare” in section 10.2 of ST/AI/2006/4 should be interpreted as money paid for a journey on public transport, and should therefore include the cost of the trip, including the taxes. He claims this is the ordinary meaning of the word “fare”. The Applicant’s claim is without merit for a number of reasons.

26. The Secretary-General’s interpretation is in line with the airline industry definition. A fare, according to the official International Air Transport Association (IATA) definition, is the amount published by a carrier as the charge for transportation between two points. This amount does not include taxes, which are not set by the carrier but instead by local authorities as airport usage fees, or surcharges such as fuel, security or weekend travel which are added separately and as such are not part of the fare.

27. The practical usage of the word fare in the airline industry refers to the

30. The usage of the word “fare” is consistent with the language used in section 10.2 of ST/AI/2006/4. Section 10.2 provides that the lump-sum “shall amount to 75 per cent of the full economy-class fare by the least costly scheduled air carrier”. This provision contemplates that the fare is the amount set “by” the “least costly scheduled air carrier”. There is no reference to taxes and charges in section 10.2. The express mention of the fare “by” the carrier, excludes any suggestion that other charges are to be included. If this provision had been

ensure that they apply ST/AI/2006/4 consistently in accordance with its consistent and reasonable interpretation

34. For practical reasons, the Secretary-General must base the calculation of the fare on a reference which is constant, reliable and published, in order to provide reliable estimates and accurate calculations of the lump sum entitlement. Taxes and surcharges are set independently of the fare and cannot be reliably incorporated into estimates of entitlements since they are not constant. Accordingly, in light of the administrative difficulties inherent in predicting the taxes and surcharges that may apply at any specific time, it was never the intention to take into account taxes and surcharges in the lump-sum calculation.

35. As such the Respondent prays that the Tribunal reject this Application in its entirety.

Issue

36. The legal issue arising for consideration in this case is whether the TTS Guidelines used by the Respondent in the

The following additional charges should not be factored into lump-sum calculations:

- Taxes
- Surcharges of any kind such as fuel, security or weekend travel.
- Surface transportation to and from airports or on intermediate sectors along the route.

39. The Applicant's case is that the TTS Guidelines are inconsistent with ST/AI/2006/4 and as such must be set aside in favour of the definition of "full economy fare" to include taxes, surcharges, fees and such. The Respondent, on the other hand, submitted that the TTS Guidelines expressly stipulate that the following additional charges should not be factored into the lump-sum calculations: taxes; surcharges of any kind such as fuel, security or week-end travel; and surface transportation to and from airports or on intermediate sectors along the route.

40. This case calls for an interpretation of how the phrase "full economy fare" in section 10.2 of ST/AI/2006/4 should be constructed. Each of the parties in their submissions have called upon the Tribunal to favour their preferred interpretations. Adams J in *Warren* articulated the basic rule of interpretation that a "provision is to be understood as it is read in an ordinary and literal manner. This principle applies both to statutory and contractual construction. Modifications are only allowed in certain instances, typically to avoid cruel or absurd results or to cure ambiguities"¹.

41. Meeran J stated in *Basanta Rodriguez* UNDT/2014/50 that:

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may be developed by the Organisation to implement promulgated issuances, it is unreasonable for said guidelines to be so far reaching as to effectively add new provisions to the overarching issuance. This would amount to a usurpation of the

Section 12

Lump-sum option for travel on home leave or family visit or education grant travel

12.1 For travel on home leave or family visit or education grant travel, staff members may opt for a lump-sum payment in lieu of all entitlements related to the particular travel.

12.2 For travel by air, including where there is a combination of other modes of transportation involving the purchase of a ticket (e.g. ferry, ship or train), the lump sum payable under this section shall amount to 70 per cent of the least restrictive economy class base fare, excluding taxes and surcharges, as determined in accordance with section 4.2 above, by the least costly scheduled air carrier between the staff member's duty station and:

(a) The closest airport to the established place of entitlement for home leave or family visit travel or an

Entered in the Register on this 3rd day of February 2015

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi