



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/055

Judgment No.: UNDT/2016/071

Date: 13 June 2016

Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye-Berko

BRUNO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON LIABILITY AND
RELIEF**

Counsel for the Applicant:

Daniel Trup, OSLA
Robbie Leighton, OSLA

Counsel for Respondent:

Steven Dietrich, ALS/OHRM
Nicole Wynn, ALS/OHRM

Introduction and Procedural History

1. The Applicant holds a fixed-term appointment with the United Nations. He is currently a Fire Officer at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He serves at the FS-6 level and is based in Goma.

2. On 2 July 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 on being reassigned from Kinshasa to Goma in 2014.

3. The Respondent replied to the Application on 5 August 2014. The Applicant filed his comments in response to the Respondent's Reply on 11 August 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. On 23 March 2015, the Tribunal issued Order No. 090 (NBI/2015) granting the motion.

6. 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

4(e)-16(b)19(r)-7(ua)3(q 7()-170(d)-2608-170(7(e)3(()-17a5145q 7())-17(r)-7c)3(us)8(s)-gTn)19nf-1

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

9. On 17 June 2015, the Tribunal issued Order No. 196 (NBI/2015) granting the motion, and extended the deadline as requested by the Parties.

10. 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.

11. 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

12. By a 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 Kinshaha and in western DRC [...]”

13. As a result MONUSCO decided to move its main activities and resources to the Eastern DRC. That involved the redeployment of a number of personnel.

14. On 21 January 2014, the Applicant was informed by a memorandum that he was being reassigned to MONUSCO offices in Goma, DRC.

15. The Applicant was requested to contact the Movement Control Section (MOVCON) in order to make all the necessary arrangements, including the shipment

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

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 entitled to the 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"¹.

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

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 shorter-term appointments and moves, or a full relocation.

21. Pursuant to this scheme, the Administration established lump-sum equivalents of the "relocation grant"³. ST/AI/2006/5 (Excess baggage, shipments and insurance) has the same scheme, triggered by "assignment" or " " or "as

duty station⁵. The reassignment memo also confirms that the DSA portion will be at the destination duty station rate⁶.

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 non-family duty stations as at 1 January 2014, the list of the largest duty stations that the Secretary-General has reported to the General Assembly⁸, the categorisation by the United Nations Dep h,

move intra-mission, there is no basis for payment of a lump sum *in lieu* of reimbursement of transportation costs.

27.

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, [6\(d\)\(e\) of the UNDP Guidance, BT /F1 12 Tf 0q](#) 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

45. Section 11.1 of ST/AI/2006/5 provided 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 (staff rule 7.15), 207.20 (can

50. 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.

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

52. In *Asariotis 2015-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 Secretary-General’s bulletins and administrative issuances.”¹¹

53. Similarly, in *Verschuur*¹² 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*¹³, the Appeals Tribunal held that the principle of legislative hierarchy determined in *Villamorán*¹⁴ 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 basis¹⁵.

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

¹¹ *Charles* 2013-UNAT-286.

¹² 2011-UNAT-149 and *Contreras* 2011-UNAT 150.

¹³ 2014-UNAT-483.

¹⁴ UNDT-2011-126, as confirmed in 2011-UNAT-160.

¹⁵ *Manco* 2013-UNAT-342; *Valimaki-Erk* 2012-UNAT-276.

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, Secretary-General's bulletins, and administrative instructions (see *Hastings* UNDT/2009/030, affirmed in *Hastings* 2011-UNAT-109; *Amar* UNDT/2011/040). Information circulars, office guidelines, manuals, and memoranda 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