



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

CABLE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY AND
RELIEF

Counsel for Applicant:
Daniel Trup, OSLA
Robbie Leighton, OSLA

Counsel for Respondent:
Steven Dietrich, ALS/OHRM
Nicole Wynn, ALS/OHRM

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. (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. Applicant submitted that the matter could be decided on 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.

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

United Nations expense to a duty station for an assignment from a change of official duty station.⁵ The reassignment memo also confirms that DSA portion will be at the destination duty station rate.⁶

23. “Duty station” is uniformly considered to be a city, not a country, province, area or a Mission. This is apparent from the International Civil Service Commission (ICSC) Hardship Classification,⁷ OHRM’s list of nonfamily duty stations⁸ as at 1 January 2014, the list of the largest duty stations that the Secretary-General has reported to the General Assembly,⁹ the categorisation by the United Nations Department of Safety and Security and the Applicant’s letters of appointment and personnel action forms

24. Pursuant to section 11.1 of ST/AI/2006/5, a staff member who is eligible may opt for a lumpsum payment in lieu of the entitlement to shipping. No discretion is conferred upon the Administration to take a decision in specific cases. There is nothing in ST/AI/2006/5 that could be plausibly read as creating an exception for “Mission area” or “within country” travel

25. The Organization, subject to certain constraints, can amend administrative issuances to change benefits. It can grant Respondent discretion to provide benefits. It can even abolish benefits outright. In sh

new assignment. Since staff members do not incur transportation costs when they move intramission, there is no basis for payment of a lump sum in lieu of reimbursement of transportation costs.

27. The mission offered the Applicant the opportunity to transport his personal effects at no cost to him by United Nations Transport to Entebbe. He declined the offer. He cannot claim a relocation grant in lieu of reimbursement of costs when he did not have to incur any costs. At all times, MONUSCO undertook to transport the Applicant's personal effects to his new duty station.

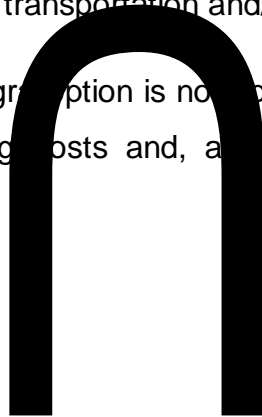
28. ST/AI/2006/5 implements staff rule 7.15. Section 11 of ST/AI/2006/5 provides staff members with the right to opt between their right to reimbursement of costs under staff rule 7.15(d) and a lump sum in lieu of reimbursement of the actual costs incurred.

29. The relocation grant option is a lump sum payment in lieu of the entitlement to reimbursement for costs incurred in shipment of personal effects. Where a staff member opts for payment of a lump sum relocation grant, the staff member waives his/her normal entitlement

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

32. 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 ~~off the~~ using United Nations air transportation and/or United Nations vehicle.

33. The relocation grant option is not applicable where there is no prospect of the staff member incurring costs and, as such, no obligation to ~~rei~~2(f)12wusoET Qgr-291(i)17(r)



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 and the FPD Guidance unlawfully supplement the policy regarding relocation grant and the determination of how it is to be implemented is

(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

41. The Applicant was being assigned from Bunia in the Democratic Republic of the Congo to Entebbe, Uganda, both duty stations being within the MONUSCO mission area. Since both duty stations are in MONUSCO, that assignment can be interpreted to mean that the Applicant was not entitled to a long-term relocation grant on grounds, as the Respondent informed the Applicant on 17 May 2014, that his reassignment "was in the same mission".

42. 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 the DRC which is within MONUSCO, Bunia is classified as a separate duty station. It is not DRC that is classified as one duty station. Additionally, the report of the Secretary-General to the General Assembly¹⁰ also refers to Entebbe as a separate duty station within MONUSCO.¹⁰

43. The Tribunal finds that the ICSC's list and classification of duty stations has informed, and formed the basis of, the Secretary-General and OHRM's own lists and reports. DRC is clearly the Mission Area, within which Kinshasa and Goma exist as distinct duty stations.

44. At the time when the Applicant was informed he was being assigned to Entebbe from Bunia, the relevant applicable law was ST/AI/2006/5.¹¹

45. Section 11.1 of ST/AI/2006/5 provided that:

⁹ ICSC/CIRC/HC, January 2014

¹⁰ A/68/256, 30 August 2013

¹¹

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 (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"

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

47. The Respondent has referred in Reply to 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 and as confirmed in two communications from the Administration to the Missions (FPD guidance).

48. The Respondent also submitted that in 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.

49. Reference was also made to a fax of 24 June 2009 from FPD that provided guidance on the movement of staff within a family mission as of 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 was no option for payment of relocation grant in lieu of shipment of personal effects for within-mission transfers, even if the within-mission transfer is to a different country within the mission area.

50. It is perfectly permissible for the Respondent to issue Guidelines or manuals that may explain the implementation of a Staff Rule or 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

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