



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

ZAKRAT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY AND
RELIEF

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

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

9. On 17 June 2015, the Tribunal issued Order ~~204~~ (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.

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 net base salary plus post adjustment and thirty days Daily Subsistence Allowance (DSA).

17. The Applicant was also informed that he would not be eligible for 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".

19. Pursuant to staff rule 7.15, a reimbursement mechanism is provided for the shipment

duty station.⁵ The reassignment memo also confirms that the USA portion will be at the destination duty station rate.⁶

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 Classification,⁷ OHRM’s list of nonfamily duty stations as at 1 January 2014,⁸ the list of the largest duty stations that the Secretary-General has reported to the General Assembly,⁸ the categorization 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 short, it can change the law. What the Organization cannot do is ignore the law as it stands. ST/AI/2006/5 provides that a benefit must be given, it must be given

Respondent’s submissions

26. There is no merit to the Application. Intra-mission transfers in the DRC are made using United Nations Transportation. For reasons of efficiency and reliability, the Organization transports staff members’ personal effects to the location of their new assignment. Since staff members do not incur transportation costs when they

⁵ Staff rule 7.14(f)

⁶ Staff rule 7.14(c).

⁷ ICSC/CIRC/HC, January 2014.

⁸ A/68/256, 30 August 2013.

move intramission, there is no basis for payment of a lump sum in lieu of reimbursement of transportation costs.

27.

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 free of charge 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, such, no obligation to reimburse the staff member could possibly arise. Where there are no potential costs that may be reimbursed under staff rule 7.15(d), the right to reimbursement does not arise, nor does the right to opt out and receive a relocation grant in lieu of reimbursement.

34. 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, was confirmed in two communications from the Administration to the Missions (Field Personnel Division (FPD) guidance).

35. On 15 January 2007, the Personnel Management Support Service (now FPD) provided additional guidance.

by the mission, and that there is 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.

37. The Applicant's argument that the Guidelines and the FPD Guidance 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 shipments. Section 11.1 of ST/AI/2006/5 provides that a staff member may opt for lump sum payment of relocation grant in lieu of reimbursement for the costs of an unaccompanied shipment of personal effects. There is no provision that allows a staff member to claim a relocation grant where there are no costs that may be incurred and, consequently, no reimbursement that could be due. The Guidelines and FPD guidance implement this provision consistent with the Staff Rules and relevant administrative issuances.

38. The Applicant has no contractual right to opt for a lump sum relocation grant in lieu of reimbursement of costs that may be incurred, since there were no potential costs that he may have incurred. In the absence of any right to reimbursement under staff rule 7.15(d), there cannot arise any right to relocation grant in lieu of a claim for reimbursement.

Considerations

Issues

39. The only legal issue arising for consideration is whether the Applicant was

(a) A change of official duty station shall take place when a staff member is

45. Section 11.1 of ST/AI/2006/5 stated 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 107.21ff [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 to opt for the relocation grant vests in the staff member and not with the Respondent.

47. The Respondent has referred in his Reply to 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 non-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 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 Secret General’s bulletins and administrative issuances.”¹²

53. Similarly, in Verschuur¹³ 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 Mashhour¹⁴, the Appeals Tribunal held that the principle of legislative hierarchy determined in Villamorán¹⁵ 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 basis¹⁶

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 Guidelines should have been made to prevail over the Administrative Instruction

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given the principle of legislative hierarchy as held by Judge Eberhard 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