



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/027

Judgment No.: UNDT/2010/057

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

IANELLI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Background

1. The Applicant was employed by the United Nations Office for Project Services (UNOPS) Middle East Office (MEO) as Head of Operations from October 2004, initially on the terms of a Special Services Agreement (SSA) and later on a Consultancy Agreement (CA). On 23 November 2007, the Applicant commenced on a 100-Series Fixed-Term appointment at the same duty station and with the same organisation.

2. By way of the present Application, the Applicant challenges UNOPS' decision not to pay him the assignment grant and other entitlements afforded to internationally recruited staff members under the former 100-Series of the Staff Rules.

Procedural History and Legal Issues

3. The present Application was filed before the Joint Appeals Board (JAB) on 15 September 2008. The Respondent's Reply was filed on 24 November 2008, following which the Applicant filed Observati

fundamentally documentary. On 22 July 2009, a Change of Venue Order was issued transferring this case from New York to Nairobi.

6. On 1 December 2009, the UNDT sitting in Nairobi wrote to the Parties in the present case advising them that a Status Conference had been scheduled for 21 December 2009 for case management purposes. Parties were also asked to file their list of legal issues for determination by 15 December 2009.

7. On 15 December 2009, the Applicant submitted:

that the outstanding legal issue in the instant case concerns the determination whether or not Applicant, when recruited under the (former) 100 Series of the Staff Rules on 23 November 2007, was eligible to the entitlements payable upon initial appointment for internationally recruited staff members, i.e. relocation grant and assignment grant, considering that he was recruited from the area within commuting distance of the duty-station having been serving with the same United Nations Office (UNOPS), internationally recruited, under a Special Service Agreement and Consultant Agreement consecutively for a period of three years.

8. On the same day, Counsel for the Respondent informed the Tribunal of their agreement that the legal issue in the instant matter is as formulated by the Applicant.

9. At the status conference of 21 December 2009, the Tribunal decided that this case is capable of being decided on the basis of the written submissions alone. The Applicant and the Respondent concurred with the position taken by the Tribunal, and the proceedings were adjourned for Judgment.

10. On 29 January 2010, the Tribunal issued an order for further and better particulars in accordance with the provision of Article 18 (2) of the UNDT Rules of Procedure.¹ The Parties were directed to provide the Tribunal with clear schedule of :

- i. start and end-dates for each of the Applicant's appointments (SSA and CA) between October 2004 and November 2007;
- ii. whether travel entitlements ~~to~~ attached for each of the appointments;
- iii. whether the travel entitlements were exercised or waived with dates for the same; and
- iv. The amount(s) paid to the Applicant by way of assignment and/or relocation grants at each appointment

Submissions

11. I have reviewed the submissions of the Parties carefully. The filings before the court, particularly on the part of the Respondent, are voluminous and largely repetitive. I will therefore concentrate on the submissions of the Parties only in so far as it relates to the legal issues before me.

The Applicant's Case

12. The Applicant's case is that when the CA position was abolished by UNOPS,

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18. The Applicant believes that UNOPS is intent on “artificially deprive[ing him]” of these entitlements. UNOPS had in October 2007, attempted to have his fixed-term appointment commence retroactively on 1 October 2007, which is before the Applicant had enquired into his eligibility for these entitlements if he travelled home at the end of his CA.

19. The Applicant contends that the Respondent’s claim that he was “settled” at the duty station neglects the fact that his presence at the duty station was solely for the purposes of his employment by UNOPS as a “consultant”.

i) On International Recruitment (Staff Rule 104.7):

- x (a) Staff members other than those regarded under rule 104.6 as having been locally recruited shall be considered as having been internationally recruited. The allowances and benefits in general available to internationally recruited staff members include: payment of travel expenses upon initial appointment and on separation for themselves and their spouse and dependent children, removal of household effects, non-residents allowance, home leave, education grant and repatriation grant.
- x (b) Members of the Field Service and staff members: payment

and benefits from the date on which he or she acquires non immigrant status.

x (ii) (Cancelled)

ii) On the Assignment Grant:

x The assignment grant shall not be paid to a staff member recruited from the area within commuting distance of the duty station unless he or she demonstrates that it was necessary to change accommodation as a direct consequence of the appointment, for instance after moving out of a house formerly provided by his or her Government. Other accommodation changes within the area of commuting distance, and promotion or conversion to the ProTw 10.98 07 181 T

staff members whose appointment, reassignment/transfer/separation necessitates the relocation of household of an extended period of time, which is normally at least one year.⁵

- x The relocation grant option applies to movements involving a change in country upon: a) initial appointment; b) reassignment/transfer; and c) separation from service.⁶
- x The relocation grant option does not apply to movements within countries. In these cases, staff members retain their rights to unaccompanied shipments⁷
- x The normal costs of packing, crating and lift vans, cartage, unpacking and uncrating shall be reimbursed for the unaccompanied shipments authorized under this rule, except for shipments under subparagraph (g) (i) below, for which the cost of cartage only shall be paid. Costs for the servicing, dismantling, installing or special packing of personal effects and household goods shall not be reimbursed. Storage and demurrage charges shall not be reimbursed unless, in the opinion of the Secretary-General, they are directly incidental to the transportation of the consignment⁸

On travel on appointment or assignment for one year or longer, on transfer to another duty station or on separation from service of a staff member appointed for one year or longer charges for the shipment of personal effects and household goods by the most economical means may be reimbursed up to a maximum of:

- (i) 1,000 kilograms or 6.23 cubic metres for the staff member;
- (ii) 500 kilograms or 3.11 cubic metres for the first family member; and
- (iii) 300 kilograms or 1.87 cubic metres for each additional family member

authorized to travel at the expense of the Organization⁹

⁵ Paragraph 6 of UNOPS/AI/2003/4 dated 30 May 2003.

⁶ Paragraph 9 of UNOPS/AI/2003/4 dated 30 May 2003.

⁷ Paragraph 10 of UNOPS/AI/2003/4 dated 30 May 2003.

⁸ UN Staff Rule 107.21(e).

⁹ UN Staff Rule 107.21(i). See also ST/IC/2006/60.

22. The Respondent further submits that it is clear from Staff Rule 107.20 that not all such newly-appointed staff members are automatically paid assignment grants, since Staff Rule 107.20(i) specifically contemplates some staff “regarded as internationally recruited” who do not automatically receive assignment grant.

23. In respect of the relocation grant, the Respondent takes the position that a person who has been living in the duty station for three years has no need to transport 1,000 kilograms of personal effects and household goods from his home country. It is contended that the UNOPS Relocation Grant policy is the only instrument conferring relocation grant entitlements on UNOPS staff so that unless the Appellant demonstrates that one of the provisions of the UNOPS Relocation Grant policy confers upon him/her the right to a relocation grant, the Appellant has no right to a relocation grant.¹⁰

24. The Respondent argues that the fact of the Applicant having lived and worked in Dubai for the three years immediately prior to his appointment under the 100 series Staff Rules for a post at the said duty station can only mean that:

- (i) the Applicant was “recruited from” Dubai (for the purposes of the 100 series appointment that came into effect on 23 November 2007);
- (ii) the Applicant must have had a “household” in Dubai at the time of his appointment under the 100 series of the Staff Rules so that the relocation of his household to Dubai was unnecessary. The Respondent submits that indeed the Applicant has been in the duty station for one whole year without having been paid a relocation grant (November 2007-November 2008); the foregoing is further supported by the fact that the Appellant has been working as a 100 series staff member for a year now (i.e. November nt57949e Tf/Artif598 BM)

- the Appellant, and it is difficult to “imagine that a person can work full time for three years in Dubai without establishing a household there;
- (iii) there has been no “movement involving a change in country” and, instead, the movement (if any at all) would be a “movement within a country.”

25. In response to the Applicant’s contention that he was not properly advised of his entitlements (in that, his travel to and from Rome was not the major issue; rather it was his “settled” nature in Dubai), the Respondent directs the Tribunal to the following correspondence:

Given that your place of recruitment for this appointment is Dubai and as such there is no travel to duty station held at the organization’s expense (for this appointment), you are, however, not entitled to pre-departure, shipment and settling expenses such as monetized appointment travel, relocation grant, assignment grant lump sum and DSA.

If you, for instance, refer to the rules of these entitlements such as that of assignment grant 107.20, you will find that this entitlement is only granted in connection with appointment related travel to the duty station upon recruitment paid at the organization’s expense.¹¹

And in a subsequent email:

The entitlements are applied to internationally recruited staff members, who are recruited from outside of the duty station of the post that they had been appointed to and who undertake authorized official travel involving relocation. As such these entitlements are not applicable to your current recruitment since you had already been residing at the duty station for a number of years as per our understanding and you had been recruited from Dubai (note also that your P.11 indicates your present address as Dubai).¹²

Deliberations

26. I now come to review the documentary evidence, relevant legislation and the written submissions of the Parties. I will do so by posing questions which I consider critical to arriving at a just determination of the issues raised and argued.

¹¹ See e-mail from BES’ Ms. Bocardo to the Appellant dated 13 November 2007.

¹² See e-mail from BES’ Ms. Bocardo to the Appellant dated 22 November 2007.

27. The Applicant contests UNOPS' decision not to pay him certain emoluments
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assignment or transfer or upon separation from service.¹⁵ The use of this grant is left

one has taken up permanent residence status in the country of the duty station. The Rules go so far as to provide that the benefits of international recruitment will attach if one renounces permanent residence for a 'non-immigrant status.'

38. It is not difficult to understand why contracts for less than a year carry a distinctly different set of entitlements from those of a year or longer. The arrangements one is likely to make when undertaking a move for a period of twelve

staff members who are adjudged to be entitled to the relocation grant and who indeed receive the said grant are not calle

43. I note that in responding to the Respondent's submissions, the Applicant goes into some detail alleging retaliation against his wife. The Applicant's pleadings and the Respondent's reply to the same, touch on the issue in a manner best described as cursory. When I directed the Parties to file their list of legal issues, the instant dispute was framed on the assignment and relocation grants. I therefore do not consider the issue of retaliation to be properly before me and therefore make no finding on it.

44. There is one final issue that I feel I must touch upon, and I do this with some regret. This is the issue of the unfortunate tone and tenor of the Respondent's submissions. While I appreciate that the Respondent's pleadings were made in the format of the old system of internal justice, I take this opportunity to remind Parties, and in this case, the Respondent particularly, to conduct themselves in a manner befitting their respective roles. Personalised accusations, casting aspersions on character and emotive language have no place within the realm of judicial proceedings and Parties are encouraged to ensure that their submissions to the court are careful, considered and tempered.

45. Having carefully considered the issues at hand, as set out by the Parties in this case, I find in favour of the Applicant. The Respondent is ordered to pay the Applicant his assignment and relocation grants, at the rate established for a staff member who is at the duty station with his spouse, including interest at the rate of eight (8) percent per annum from the date the payments fell due.

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