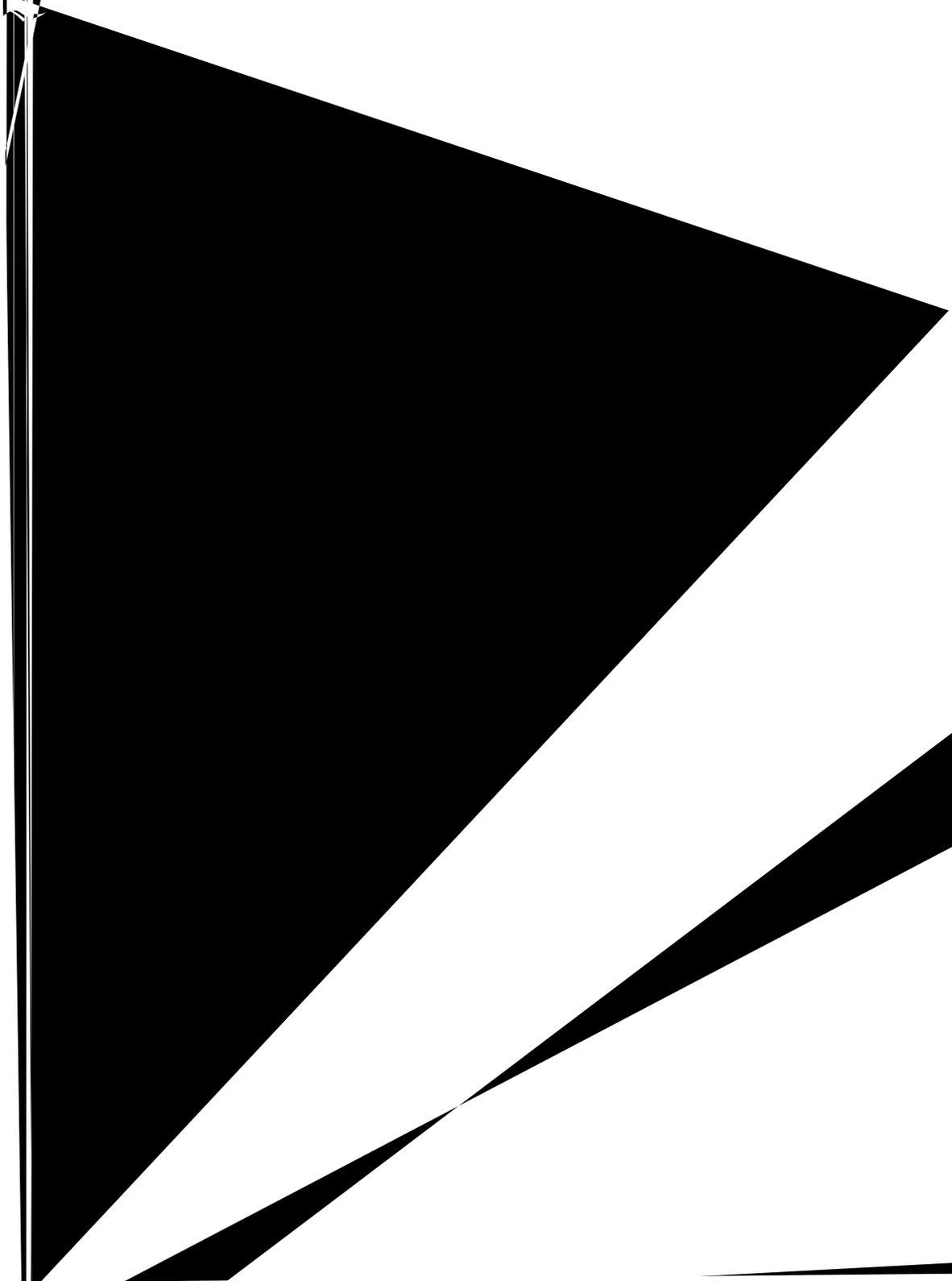




UNITED NATIONS D



## **Introduction and Procedural History**

1. The Applicant holds a fixed-term appointment with the United Nations. He is currently an Air Operations Assistant at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He serves at the FS-4 level and is based in Kinshasa, Democratic Republic of the Congo.

2. On 8

9. On 17 June 2015, the Tribunal issued Order No. 202 (NBI/2015) granted the

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 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"<sup>1</sup>.

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

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/0.62m<sup>3</sup> for shorter-term appointments and moves, or a full relocation.

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

22. As the reassignment memo indicates, it i3( )-70(rF[(i)37(t)-2290(m)un3(r)-7( )-10(t)-22(h)19(e)3(

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move intra-mission, 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 Kinshasa. 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 the 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 to reimbursement for the costs of shipment of personal effects under the Staff Rules. The staff member agrees to accept full responsibility for arrangements relating to the shipment of personal effects as well as for the costs related to and resulting from the shipment of personal effects including, but not limited to, customs charges, insurance claims and damage to personal effects.

30. In circumstances where the Organization ships the unaccompanied personal effects of staff members, the right to reimbursement under staff rule 7.15(d) does not arise because the staff member does not incur any costs. Since the right to reimbursement does not arise, a staff member cannot elect to receive a relocation grant *in lieu* of this right.

31. On 7 January 2007, OHRM issued the OHRM Guidelines on Relocation Grant (OHRM Guidelines). The Guidelines state in paragraph 5 as follows:

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 a 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 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

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 entitled to a relocation grant for his assignment from Uvira to Kinshasa within MONUSCO.

40. Staff rule 4.8 provides:

Change of official duty station

(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 Uvira to Kinshasa

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 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 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 on 15 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.

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

52.

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 reg-2(1)37(o)-20(we)3(d)-m [(o)-41(f)32( )-250(t)-22(he)-16( )] TJ ET