

UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/028

Order No.: 051 (NBI/2015)

Date: 10 February 2015

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BERNATEAU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON AN APPLICATION 421.28 Tf 0 0 0 rg 0.9981 0 0 1 3FF.36 411.36 546.

Introduction

1. The Applicant is a Transport Assistant at the United Nations Disengagement Observer Force (UNDOF) based at Camp Ziouani, Amret Al-Faouar, Syrian Arab Republic. He serves at the FS-5 level on a fixed-term appointment. The Applicant is also the Chairman of the UNDOF Field Staff Union.

2. On 3 February 2015, he filed an Application for Suspension of Action, pending management evaluation, seeking the suspension of the decision of the International Civil Service Commission (ICSC) not to approve a four-week rest and recuperation (R&R) cycle for staff members serving west of the “Alpha Line” in the “Area of Limitation” of UNDOF.

3. The Respondent filed a Reply to the Application on 6 February 2015 in which it was asserted that the Application was not receivable.

Facts

4. Duty stations where danger pay is authorized by the Chairman of the ICSC are granted a six-week R&R cycle, unless the Chairman of the ICSC exceptionally approves a four-week R&R cycle.

5. By memorandum dated 19 December 2014, the ICSC exceptionally approved a four-week R&R cycle, effective 1 January 2015 for the following locations in Syria: Al Nabek, Aleppo, Ar Raqqa, Damascus (Camp Faouar), Daraa, Deir Ezzour, Hamma, Hassake (Al-Hasakah), Horns, Idlib, Latakia, Qamishli and Tartous.

6. No approval for a four-week R&R cycle was authorized for Camp Ziouani in UNDOF or locations west of the so-called Alpha Line in Syria.

7. On 9 January 2015, the Chief, Policy and Conditions of Servi11(B)7(I-282(g)31(r)-8(a)-24

2015. An updated list was issued on 14 January 2015. By facsimile dated 16

d. Contrary to the Applicant's contention, OHRM did not take the contested decision. The decision whether to approve a duty station for a four-week R&R cycle is solely within the purview of the ICSC. The Administration is obliged to implement that decision without the exercise of any discretion.

e. The Dispute Tribunal in the case of *Obino* UNDT-2013-008 found that decisions of the ICSC are not to be imputed to the Secretary-General and, therefore, the Tribunal lacks jurisdiction to review such decisions. Upholding the Dispute Tribunal judgment, the United Nations

13. The Respondent further submits that the Dispute Tribunal lacks jurisdiction to review decisions taken by the ICSC regarding hardship entitlements and that the Applicant may not contest the decision in his representational capacity as an officer of the staff association.

14. Article 2.1(a) of the Statute of the Tribunal (UNDT Statute) provides that the Tribunal shall be competent to hear and pass judgment on an application filed by an individual against the Secretary-General of the United Nations:

To appeal an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment. The terms “contract” and “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance [...].

15. The current Application purports to challenge the decision of the ICSC not

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