
UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1347



Counsel for Appellant: George G. Irving

Counsel for Respondent: Yongsheng Cai

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Ms. Van Nguyen (Appellant), a former Finance Officer of the International Seabed Authority (ISA), contests the decision of the ISA Office of Administration (OAS) to deny payments to her of various entitlements, including repatriation grant, accrued leave, repatriation travel, relocation grant, outstanding education grant, and retroactive payment of the non

Kingston to Hanoi for her and her dependents plus three-days of accrued leave in compensation for travel time, v) USD 18,000 as relocation grant, and vi) the NRL at a monthly rate of USD 225 for 18.5 months (the duration of her shortened secondment to ISA).

22. On 16 April 2020, the JAB issued its Report of the Panel of the Joint Appeals Board in Case No. ISBA/JAB/Nguyen/2019/II (JAB Report)⁴. The JAB Report rejected each and every claim made by Appellant as either without merit or time-barred, after having reviewed her claims against the relevant provisions of the IOA and the Staff Regulations and Rules of the International Seabed Authority (ISA Staff Rules). The JAB declined to recommend that the ISA Secretary-General review his decision of 16 September 2019.

23. On 6 July 2020, Appellant appealed the JAB Report to the Appeals Tribunal.

24. On 19 March 2021, the Appeals Tribunal issued Judgment No. 2021-UNAT-1089, in which it held that the JAB was not a neutral first instance process as required by both Article 2(10) of the Appeals Tribunal Statute and Article 2(5) of the Special Agreement between ISA and the Secretary-General of the United Nations.⁵

25. The Appeals Tribunal remanded Appellant's appeal to the JAB so that her case could be "reconsidered and decided by a neutral first instance process that produces a written decision and

to UNRWA (the receiving organization from 1 September 2019). The JAB also decided that Appellant's claims were covered by a number of documents, including the ISA Staff Rules, the staff rules applicable to UNFPA and UNRWA, and the contractual arrangements between Appellant, ISA and UNFPA, including the MIOE. In turn, the MIOE was concluded within the framework of the IOA.⁷

28. The JAB reviewed seven specific entitlement demands of Appellant ((a)-(g)) and a general claim to compensation in the amount of USD 20,000 for the time, effort and costs associated with her pursuit of her claims against ISA. Appellant's specific claims for payment were for:⁸

- (a) Repatriation Grant, prorated at the rate of 4 weeks of salary per year of service in accordance with Appendix II of the ISA Staff Rules
- (b) Accrued annual leave balance (leave earned minus leave taken) during my employment period with the ISA, equal to 28.5 days
- (c) Outstanding Education Grant of USD 1,069.42
- (d) Lump sum amount for one-way travel tickets from Kingston, Jamaica to Hanoi, Vietnam for me and my eligible dependents, based on appropriate quotations.
- (e) Compensation for travel time equivalent to 3 days of accrued leave.
- (f) Relocation grant on separation of USD 18,000
- (g) Non-removal allowance of USD 225 per month for 18.5 months

29. The JAB noted that its predecessor panel had exhaustively considered Appellant's complaints and had dismissed each one in the initial JAB Report. The JAB stated that it had carefully considered its predecessor's conclusions and, in the impugned JAB Decision, was adopting for its own the JAB Report's conclusions with respect to complaints (a), (b), (c), (e), (f), and (g), as further elaborated below.

30. With respect to (a) *the repatriation grant*, Appellant had argued that ISA was responsible for this payment based on ISA Staff Rule 9.5; whereas, Respondent had argued that the IOA provided that if a staff member on secondment resigns from the receiving organization but not from the releasing organization, the staff member is not entitled to repatriation travel.⁹ The JAB

⁷ Impugned JAB Decision, paras. 26-27.

⁸ *Ibid.*, para. 28.

⁹ JAB Report, paras. 24-25.

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Staff Rule 7.1(c), Appellant had an appointment of two years with ISA, and such individuals are entitled to travel expenses to their place of home leave.

52. Appellant submits that while UNRWA paid for her travel from Hanoi to Amman, ISA was responsible for payment of her repatriation travel from Kingston to Hanoi. Appellant disputes the JAB's conclusion that ISA was not under any obligation to pay for her travel to Hanoi because it was her choice to travel to Hanoi and that she did not actually travel to New York. Appellant

reimbursed USD 39,530.58 and thus requests the difference between this amount and the threshold for the special education grant (USD 40,600.00), which is USD 1,069.42.

58. In particular, Appellant argues that she should receive reimbursement for the highest value item, an

64. With regard to all of Appellant's entitlement claims, Appellant argues that Respondent's decision was unfair and unlawful and violated her contractual entitlement rights.

65. Appellant seeks from the Appeals Tribunal a finding that the impugned JAB Decision fulfils the jurisdictional requirements set forth in Judgment No. 2021-UNAT-1130, such that the Appeals Tribunal may now render a decision on her claims.

66. Appellant requests that the Appeals Tribunal order ISA to pay her:

- (a) A repatriation grant for 18.5 months, prorated at the rate of four weeks of salary per year of service;
- (b) For 28.5 days of accrued annual leave;
- (c) Repatriation travel entitlements for her and her dependents from Kingston to Hanoi;
- (d) A relocation grant on separation of USD 18,000
- (e) Outstanding education grant claims;
- (f) NRL for 18.5 months
- (g) USD 20,000 as "compensation in damages and interest for the time, efforts, and associated costs spent to enforce the regulations and rules concerning her entitlements as well as financial loss due to delay in receiving the payments for such entitlements".

ISA Secretary-General's Answer

67. Respondent submits that the instant appeal should be dismissed in its entirety because the JAB correctly established that ISA was not responsible for paying for any of the entitlements or the compensation for damages demanded by Appellant.

68. Respondent draws the Appeals Tribunal's attention to the fact that ISA amended its Staff Rules in 2022, in accordance with the directive of this Tribunal in Judgment No. 2021-UNAT-1089.

69. The newly amended ISA Staff Rule 11 provides, in relevant part:²⁴

Rule 11.1(a)

There is hereby established a Joint Appeals Board to consider and advise the Secretary-General and decide appeals filed under the terms of staff regulation 11.1

²⁴ Secretary-General's Bulletin, ISBA/ST/SGB/2020/1/Amend. 1 (Amendments to the Staff Rules of the International Seabed Authority).

...

Rule 11.2(n)

Within 14 days of the date on which the consideration of an appeal has been completed, the panel shall, by majority vote, adopt and issue a written decision on the appeal which shall include a record of the proceedings in the appeal and a summary of the reasons, fact and law as well as all considerations that the panel deems appropriate. Votes on the decision shall be recorded and the dissenting opinion of any member of the panel may be included in the report, at the request of the panel member.

70. Respondent advises that Rule 11.2(o), which previously granted the ISA Secretary-General the final say on a decision has been expressly repealed.

71. Respondent also highlights that in accordance with ISBA/ST/SGB/2020/Amend. 1, the newly amended rules “shall also apply to all appeals which have been remanded from the United Nations Appeals Tribunal from 27 March 2020 to date”.

72. Respondent notes that the reconstituted JAB carefully considered the prior JAB Report and saw “no reason to depart from the conclusions which its predecessor reached” and adopted the conclusions of the prior panel “as its own”.

73. Respondent

76. Respondent reasserts that Appellant was and remains a UNFPA staff member, as found by the JAB Decision. This is also in accordance with UNAT's finding in *Skoda* that "in cases of secondment, staff members do not lose their service lien with their parent organization".²⁵

77. Respondent asserts that Appellant was seconded from UNFPA to ISA under the terms and conditions of the IOA and MIOE. Respondent draws the Appeals Tribunal's attention to Article 1.2(d) of the IOA, which defines a secondment as: "the movement of a staff member from one organization to another for a fixed period (...) during which the staff member (...) will retain his or her rights of employment in the releasing organization". In addition, Respondent points to Article 9 of the IOA which establishes that a staff member's resignation in the receiving organization does not affect their right to resume employment in the releasing organization.

78. Based on the foregoing, Respondent submits that upon her resignation from ISA, Appellant was not separated or terminated from UNFPA and thus remained within the United Nations Common System.

79. Respondent argues that the ISA Staff Rules and Regulations must be governed, read, construed and applied in light of the IOA. ISA Staff Rule 1.5(b) expressly provides that "[i]nter-agency loans, secondments and transfers are defined in and shall be governed by the inter organization agreement concerning the transfer, secondment or loan among the organizations applying the United Nations common system of salaries and allowances". The MIOE of 19 December 2017 also referenced that the IOA would be applied to the instant case.

80. With regard to the specific entitlements, Respondent first submits that the JAB correctly established that ISA was not responsible for the payment of the *repatriation grant*. Respondent points out that in response to this finding of the JAB, Appellant "merely insists" that ISA was responsible for paying her a repatriation grant.

81. Respondent avers that, as found by the JAB, Appellant was seconded from UNFPA to ISA under the framework of the IOA. In particular, Respondent submits that Article 28 of the IOA governs this case, and that no repatriation travel is due when a staff member resigns from

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an admissible educational expense pursuant to either Section 12 of ISBA/ST/AI/2012/01, or Section 5 of ST/AI/2018/2 (Special education grant).

87. Moreover, Respondent submits that it has fully granted and settled Appellant's special education grant as established by three different proofs of special education grant payments in the record of this case. Respondent thus asserts that the JAB was correct to find that ISA was not responsible for any outstanding education expenses.

88. With regard to certain *travel entitlements*, Respondent submits that the JAB correctly established that ISA was not responsible for paying for Appellant's and her dependents' travel expenses from Kingston to Hanoi. Respondent argues that this travel is governed by Article 28(b) of the IOA, which excludes repatriation travel for staff members who return to the releasing organization. Accordingly, Appellant would only have been entitled to travel from Kingston to New York, the home of UNFPA headquarters where she was recruited from.

89. Respondent further asserts that ISA was not responsible for paying for Appellant's and her dependents' travel expenses from Kingston to Hanoi. Respondent argues that this travel is governed by Article 28(b) of the IOA, which excludes repatriation travel for staff members who return to the releasing organization. Accordingly, Appellant would only have been entitled to travel from Kingston to New York, the home of UNFPA headquarters where she was recruited from.

92. Respondent submits that UNRWA's payment of the relocation grant was in accordance with Article 40(a) of the IOA, which provides that "[i]n the case of transfer, secondment or loan the receiving organization will bear the travel costs of the staff member and of any dependents authorized to travel, for the journey to the duty station of the receiving organization".

93. With respect to the *NRL*, Respondent submits that the JAB correctly established that Appellant's claim was not receivable, because, as found by the JAB: "The fact that, had [the *NRL*] been payable it would have been paid each month does not alter the conclusion that the decision not to pay it should have been challenged within two months of receiving the memorandum of March 15, 2018 [denying the *NRL* because it had been discontinued]."

94. In addition, Respondent points out that the International Civil Service Commission (ICSC) had discontinued the *NRL* from 1 October 2017, before Appellant joined ISA in February 2018, and the *NRL* was not listed as one of the emoluments in her job offer from ISA.

95. Lastly, Respondent submits that the impugned

Ms. Nguyen's legal relationship with ISA

Legal framework

99. The IOA provides, in relevant parts, as follows:

I. General

1. (a) The Organizations listed in Annex I have reached the following agreement concerning the rights of a staff member of one organization who is transferred, seconded or loaned to another organization, and the rights and liabilities of the two organizations concerned.

...

2. For the purposes of this Agreement:

(a) "Releasing organization" is an organization which transfers, seconds or loans a staff member to another organization pursuant to this Agreement;

(b) "Receiving organization" is an organization which accepts a staff member on transfer, secondment or loan from another organization pursuant to this Agreement;

...

(d) "Secondment" is the movement of a staff member from one organization to another for a fixed period, normally not exceeding two years, during which the staff member will normally be paid by and, except as otherwise provided hereafter, be subject to the staff regulations and rules of the receiving organization, but will retain his or her rights of employment in the releasing organization. The period of secondment may be extended for a further fixed period by agreement among all the parties concerned.

...

III. Contractual Relationships between the Staff Member and by (en)4.7 (r)2.1 (a)

(iv) “Obligation to repatriate” shall mean the obligation to return a staff member and his or her spouse and dependent children, upon separation, at the expense of the Authority, to a place outside the country of his or her duty station; (...)

...

Eligibility

(c) Staff members who are internationally recruited shall be eligible for payment of the repatriation grant in accordance with Appendix II to the Staff Regulations if they meet the following conditions:

(i) The Authority had the obligation to repatriate the staff member upon

IV. Entitlements of the Staff Member

...

I. Travel and Removal Costs on Separation from the Receiving Organization

28. (a) If during a period of secondment the services of a staff member are terminated by the receiving organization but not by the releasing organization, or if the staff member resigns from (er)4.8 (il) (h)i4 (g)]7 (51 (e r (h)i4 ((m)2.7 3 th)3.) (h)i4 Ses)2.e (n)]TJ 1 T

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(b) Or the child, while attending a normal educational institution, requires special teaching or training to assist him or her in overcoming the disability.

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Section 12

Admissible educational expenses

The following educational expenses shall be admissible:

(a) Expenses required to provide an educational programme designed to meet the needs of the disabled child so that he or she may attend the highest level of functional ability. These expenses may include:

(i) Charges for teaching or training services;

(ii) Other costs or fees directly related to the educational programmes that are not optional or related to extracurricular activities, except for expenses for school supplies, uniforms, insurance, donations and contributions or similar charges;

(iii) Expenses for special equipment for educational purposes if not covered under health insurance;

(iv) Expenses for full board (food and lodging) in the case of a child attending an educational institution at the duty station when such boarding is an integral part of the educational programme;

(b) Expenses incurred for local transportation required for the disabled child.

116. In the present case, Ms. Nguyen submits that, pursuant to the foregoing instruction which was applicable for school-year 2018-2019, she was eligible for reimbursement of additional education grant claims submitted on 25 July 2019 for the expenses related to her child's education at AISK. Ms. Nguyen's child attended full time at AISK for school year 2018-2019. AISK is a regular school which also provided special arrangements for the special educational needs of Ms. Nguyen's child. Specifically, Ms. Nguyen's claim refers to an iPad (and its shipping cost) being cited as special needs.

117. However, the evidence on file, including the certification Ms. Nguyen obtained from AISK Director of Student Support, that the iPad is required for both normal education and special education for children at AISK, which she sub (ng c)-0.6 (i)-3.1 (1 (f)-3.9 1c6(v)-1K)-1 (D)e0 1c62[(w)-1.7

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staff member shall be paid, on separation, an additional amount for days of authorized travel estimated on the basis of uninterrupted travel by an approved route and mode from the duty station to the place of entitlement to return travel. Such amount shall be calculated as is done for commutation of accrued annual leave under staff rule 9.7.

124. In the case at hand, it is not in dispute that, following Ms. Nguyen's resignation from ISA, but not from the releasing organization, UNFPA, she and her recognized dependents were entitled to travel expenses to the duty station to which she was assigned by the releasing organization, *i.e.*, New York, where UNFPA headquarters are located, and is the place where

relevant documents, *i.e.*, the e-ticket receipt, boarding passes and copies of passport stamps, have been submitted to ISA by Ms. Nguyen.

128. Under these legal and factual circumstances, and bearing in mind that the Administration has an obligation to act in good faith vis-à-vis its staff members,³⁰ the Appeals Tribunal holds that Ms. Nguyen was entitled to the payment of the expenses of the trip from Kingston to New York, per ISA Staff Rule 7.1, as well as to compensation for travel time analogous to the day(s) of accrued annual leave, per ISA Staff Rule 9.9.

129. Contrary to ISAg-0.0023 md,aal 1.9 (7)-8002,on fo8to 80..6 (th)-3.7 (e)-0.002thatipme,.tafth.usu4

is the new receiving organization, UNRWA, which bears the obligation to pay any relocation grant in lieu of shipment of personal effects to Ms. Nguyen.

Legal framework

133. With respect to the relocation grant, the relevant ISA Staff Rules are as follows:

Chapter VII Travel and Removal Expenses

Rule 7.18 Excess baggage and unaccompanied shipment

...

General provisions on unaccompanied shipments

(c) For the purpose of these rules, “personal effects and household goods” shall mean 20 (F)2.(o)2.7 [80 Tt (9

Maximum entitlements

(b) Payment by the Authority of removal costs shall be on the basis of the following:

(i) 4,890 kilograms or 30.58 cubic metres, including packing but excluding crating and lift vans, for a staff member without a spouse or dependent child, and 8,150 kilograms or 50.97 cubic metres for a staff member with a spouse or dependent child residing at the official duty station. Higher maxima may be authorized if the staff member presents convincing evidence that his or her normal and necessary personal effects and household goods to be removed exceed those limits; (...)

Rule 7.25 Loss of entitlement to unaccompanied shipment or removal expenses

(a) A staff member who resigns before completing two years of service shall not normally be entitled to payment of removal expenses under rule 7.24 above.

134. With regard to this specific claim, the JAB found that in the circumstances of this case it was for UNWRA to pay the relocation grant, and UNWRA has done so, from Hanoi to Amman, which was Ms. Nguyen’s choice.

135. The JAB’s conclusion is incorrect on both prongs of its underpinning reasoning. It is a matter of the record that Ms. Nguyen’s Statement of Emoluments (for Appointments of One Year or More), dated 12 December 2017, stated in part E, under the title “Shipment of Personal Effects and Household Goods”, that:³¹

In addition, the Organization will pay expenses incurred to transport personal effects and household goods by the most economical means, as determined by the Secretary-General, up to a maximum, including packing weight or volume, but not excluding crating and lift vans, of: (i) 1,000 kilograms or 6.23 cubic meters for yourself; (ii) 500 kilograms or 3.11 cubic meters for first family member; (iii) And 300 kilograms or 1.87 cubic meters for each additional family member.

In lieu of the above, you can opt for the lump sum amount of \$18,000.00.

136. As the Appeals Tribunal has consistently held, the issuance of a letter of appointment (LoA) signed by the appropriate United Nations official or someone acting on his or her behalf is more than a mere formality.³² Rather, the LoA governs the conditions of the employment

³¹ Emphasis added.

³² *Deema Jarallah, op. cit.*, para. 44; *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 28; *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120; *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029.

relationship, along with the Regulations and Rules of the Organization which are incorporated into the contract.³³

137. In these circumstances, a valid contract of employment existed between Ms. Nguyen and ISA which was the controlling document. In any event, as Ms. Nguyen rightly argues, the provisions of ISA Staff Rule 7.18(j) entitle her to shipment of her personal effects and household goods. Furthermore, the language of her statement of emoluments established in a clear and unambiguous way that Ms. Nguyen, inter alia, was entitled to a lump sum of USD 18,000 in lieu for the shipment of personal effects and household goods.

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