
Case No.: UNDT/GVA/2009/45
UNDT/GVA/2009/46
UNDT/GVA/2009/52

Judgment No.: UNDT/2009/077

Application

1. On 19 September 2008, 7 November 2008 and 30 March 2009 respectively, applicants 1, 2 and 3, all Australian and all staff members at the International Criminal Tribunal for the former Yugoslavia (ICTY), in The Hague, the Netherlands, submitted appeals to the Joint Appeals Board in New York, contesting the amount of the lump sums paid to them to cover the cost of their most recent home leave travel and seeking payment of the difference between what they actually received and what they should have received according to the rules.

Applicants' submissions

2. The applicants consider that in calculating the lump sum for certain

challenge the amount proposed or the validity of th

10. The respondent emphasizes that staff members have no right to payment of a lump sum when they undertake official travel but are entitled to opt for a lump-sum payment on the express condition that they are satisfied with the payment offered.

11. The respondent cites Judgement No. 1025, Walton, of the United Nations

19. On 29 April 2008, applicant 1 countersigned the memorandum of agreement on the lump-sum option, thus accepting payment of an amount calculated by the Administration on the terms specified in that memorandum. However, he made the following reservation concerning the memorandum: "I sign this because I have been instructed to do so. But I stand by my memo of 12/3/08 and do this without prejudice to my appeal rights".

20. In May 2008, applicant 2 also asked the ICTY Administration to calculate the amount she would receive if she exercised the lump-sum option for her travel on home leave. On 28 May 2008, the Administration informed her unofficially of that amount.

21. By a letter dated 20 June 2008, applicant 1 wrote to the Secretary-General to request review of the ICTY decision on the lump-sum payment in respect of his home-leave travel.

22. Between the end of June and 18 July 2008, applicant 2 exchanged a series of e-mails with the Administration over the fact that the lump-sum payment proposed would not enable her to cover her travel expenses, while also exploring the possibility of asking the Administration to make the travel arrangements for her.

23. By an e-mail dated 18 July 2008, applicant 2 informed the Administration that she had decided to exercise the lump-sum option, not because the amount offered seemed fair or reasonable, "but to preserve [her] right to reimbursement" if the appeal of applicant 1 was successful and "to preserve [her] own right to appeal the unfairness of the lump-sum [she would] receive". On the same day, the Chief of Administration replied to applicant 2, stating inter alia that she would be reimbursed if New York decided that ICTY should use a different fare basis to calculate the lump sum from the one used thus far.

24. By a standard memorandum dated 22 July 2008, similar to the one sent to applicant 1 on 5 March 2008, applicant 2 was informed officially of the lump-sum amount calculated by the Travel Unit. On the same day, she countersigned the memorandum of agreement on the lump-sum option, just as applicant 1 had done previously.

25. By a letter dated 21 August 2008, applicant 2 wrote to the Secretary-General to request review of the ICTY decision on the lump-sum payment in respect of her home-leave travel.

26. By a letter dated 26 August 2008, the Administrative Law Unit of the United Nations Secretariat, writing on behalf of the Secretary-General, rejected applicant 1's request for review, a decision which applicant 1 appealed to the JAB on 19 September 2008.

27. By a letter dated 9 October 2008, the Administrative Law Unit of the United Nations Secretariat, writing on behalf of the Secretary-General, rejected applicant 2's request for review, a decision which applicant 2 appealed to the JAB on 7 November 2008.

28. In November 2008, applicant 3 also asked the ICTY Administration to calculate the amount she would receive if she exercised the lump-sum option for her home-leave travel.

29. By a standard memorandum dated 10 November 2008, similar to the memorandums sent to applicant 1 on 5 March 2008 and applicant 2 on 22 July 2008, applicant 3 was informed of the lump-sum amount calculated by the Travel Unit.

30. On 4 December 2008, applicant 3, as applicants 1 and 2 had done previously, countersigned the memorandum of agreement on the lump-sum option. However, she made the following reservation concerning the memorandum: "I sign and accept this lump sum to preserve my right to challenge the calculation through the appeal procedures of the United Nations".

31. By an e-mail dated 5 December 2008, the ICTY Human Resources Section acknowledged receipt of the aforementioned memorandum by which applicant 3 opted for the lump sum. In connection with the applicant's reservation, the e-mail reproduced a ruling by the Office of Human Resources Management in the United Nations Secretariat, New York:

"This is not a monetary entitlement to the staff member. The entitlement is that the Organization will cover the cost of roundtrip travel to the place of home leave. The staff member can either opt for the Organization to provide the tickets for the travel or opt for the travel lumpsum. If the lumpsum option is not satisfactory to the staff member, then he or she should opt for the Organization to purchase the tickets."

32. On 17 December 2008, applicant 3 wrote to the Secretary-General to request review of the ICTY decision on the lump-sum payment in respect of her home-leave travel.

33. By a letter dated 17 February 2009, the Administrative Law Unit of the United Nations Secretariat, writing on behalf of the Secretary-General, rejected applicant 3's request for review, a decision which applicant 3 appealed to the JAB on 30 March 2009.

34. Pursuant to the transitional measures laid down in United Nations General Assembly resolution 63/253, the three appeals were transferred to the United Nations Dispute Tribunal as of 1 July 2009.

35. By orders dated 31 July and 5 August 2009 changing the venue for adjudication of the case, the Tribunal ordered the transfer of the three appeals from the New York Registry to the Geneva Registry.

Judgment

36. By their appeals registered under the symbols UNDT/GVA/2009/45, UNDT/GVA/2009/46 and UNDT/GVA/2009/52 respectively, the applicants contest similar decisions and raise the same questions of law. Thus the Tribunal considers that there are grounds for joining the three appeals and having one ruling.

37. Provision 105.3 of the Staff Rules in force at the time of the contested decisions stipulates:

"Subject to the conditions specified in chapter VII of these Rules, a staff member shall be entitled to claim, in respect of authorized travel on home leave, travel time and expenses for himself or herself and eligible family members for the outward and return journeys between the official duty station and the place of home leave".

38. Chapter VII of the Staff Rules describes the various benefits and allowances to which staff members are entitled in connection with their home leave.

39. Administrative instruction ST/AI/2006/4, on official travel, lays down the conditions for the implementation of some of the provisions of chapter VII. In section 10, it introduces the possibility for staff members to opt for a lump-sum payment to cover travel costs, including for home-leave travel.

40. Paragraph 10.4 of the administrative instruction states:

“By selecting the lump-sum option, a staff member agrees to waive all

