



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/094

Judgment No.: UNDT/2016/080

Date: 13 June 2016

Original: English

Before: Judge Vinod Boolell
Registry: Nairobi
Registrar: Abena Kwakye Berko

LASALANDRA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY AND
RELIEF

Counsel for the Applicant:
Daniel Trup, OSLA
Robbie Leighton, OSLA

Counsel for the Respondent:
Steven Dietrich, ALS/OHRM
Nicole Wynn, ALS/OHRM

Case No. UNDT/NBI/204/094

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9. On 17 June 2015, the Tribunal issued Order 205 (NBI/2015) granted the motion, and extended the deadline as requested by the Parties.

10. The Parties filed a joint statement of facts on 20 June 2015. Applicant submitted that the matter could be decided on the papers without an oral hearing because the legal issues arising for determination are technical. The Respondent sought an oral hearing in order to proffer a witness from the Office of Human Resources Management (OHRM) offer testimony regarding the rationale and basis for the policy regarding payment of the relocation grant and the application of the policy in this case.

11. The Tribunal has decided, in accordance with art. 16.1 of its Rules of Procedure, to determine this Application on the basis of the pleadings filed by both Parties.

Facts

12. By resolution 2098 (2013) of 28 March 2013, the Security Council decided, *inter alia*, that “MONUSCO shall strengthen the presence of its military, police and civilian components in eastern DRC and reduce, to the fullest extent possible for the implementation of its mandate, its presence in areas not affected by conflict in particular Kinshasa and in western DRC.”

13. As a result, MONUSCO decided to move its main activities and resources to the Eastern DRC. This involved the redeployment of a number of personnel.

14. On 25 April 2014, the Applicant was informed by memorandum that he was being reassigned to the MONUSCO offices in Uvira, DRC.

15. The Applicant was requested to contact the Movement Control Section (MOVCON) in order to make all the necessary arrangements, including the shipment 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 ~~Da~~ Subsistence Allowance (DSA).

17. The Applicant was also informed that he would not be entitled to the 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"¹.

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

20. Under staff rule 7.15(h) and (j) 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/0.62m³ for short term appointments and moves, or a full relocation.

21. Pursuant to this scheme, the Administration established lump sum equivalents of the "relocation grant"³. 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 is clear that the Applicant was being reassigned to a new duty station. Indeed, the reassignment memo confirms the Applicant's eligibility for an assignment grant, which depends upon either travel at United Nations expense to a duty station for an assignment⁴ or a change of official duty station⁵. The reassignment memo also confirms that the DSA portion will be at the destination duty station rate⁶

¹ Staff rule 7.1(a) (iii), and staff rule 4.8.

² Staff rule 7.15(h) or "transfer to another duty station", staff rule 7.15(i)(i).

³ Section 11 ST/AI/2006/5.

⁴ Staff rule 7.14(e)

⁵ Staff rule 7.14(f)

⁶ Staff rule 7.14(c).

23. “Duty station” is uniformly considered to be a city, not a country, a province, area or a Mission. This is apparent from the International Civil Service Commission (ICSC) Hardship Classification,⁷ OHRM’s list of nonfamily “duty stations” as at 1 January 2014,

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 costs and damage to personal

personal effects from the previous duty station to the new duty station of charge
using United Nations air transportation and/or United Nations vehicle.

33.

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.

Applicant was not entitled to a relocation grant on grounds that the Respondent informed the Applicant on 21 January 2014 that his reassignment was to the position of [redacted] (K) -w-110(J-270(a))m [(5.6 T

47. The Respondent has referred in his Reply to 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 ~~in~~ 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 ~~intra~~mission transfers and that, in these cases, staff members retain their right to unaccompanied shipment of personal effects.

49. Reference was also made to ~~an~~ of 24 June 2009 from FPD that provided guidance on the movement of staff within a ~~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 ~~intra~~mission transfers, even if the ~~intra~~mission transfer is to a different country within the mission area

may only be established by duly promulgated Secretary-General's bulletins and administrative issuances.¹⁴

52. In *Vershuur*¹² the Appeals Tribunal stated that Staff Selection SGu-20(i)17(sd)-16(l)12(i)17(sr)

55. The Tribunal concludes therefore that it was not lawful for the Administration to substitute ST/AI/2006/5 with its own Guidelines so as to deprive the Applicant of his right to opt for the relocation grant.

56. The circumstances surrounding this Application, however, fall squarely within the ambit of ST/AI/2006/5; which affords the Applicant with the right to a relocation grant.

Conclusion

57. The Tribunal orders rescission of the impugned decision.

(Signed)

Judge Vinod Boolell
Dated this 13th day of