



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/GVA/2010/055 (UNAT 1704)
Judgment No.:	UNDT/2011/021
Date:	25 January 2011
	English
Original:	French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

OSTERRIEDER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Jay Wormus

Counsel for Respondent:

Sergei Raskalei, UNOG

Introduction

1. On 20 June 2009, the Applicant filed an application with the former United Nations Administrative Tribunal against the decision to pay him a relocation grant (lump sum option for unaccompanied shipments) of USD1,200 instead of the USD10,000 grant to which he believed he was entitled.

2. The Applicant requests the Tribunal:

a. To rescind the decision to pay him a relocation grant of only USD1,200;

b. To order the Respondent to pay him USD8,800, the difference between the USD10,000 to which he was entitled and the USD1,200 he was paid;

c. To order the Respondent to pay him the aforementioned amount in euros at the exchange rate applicable in May 2007.

Facts

3. On 31 October 2006, having worked for the United Nations Development Programme since 2004, the Applicant was transferred to the Economic Commission for Europe in Geneva as Associate Population Affairs Officer at level P-2, on a two-year probationary appointment under the 100 series of the Staff Rules in force at the time.

4. Prior to that, for his transfer to Geneva, the Applicant had on 14 September 2006 opted for the non-removal element of the mobility and hardship allowance and for unaccompanied shipment of his personal effects up to 1,000 kg pursuant to staff rules 103.22 and 107.21 in force at the time, instead of payment of his removal costs for 4,890 kg pursuant to staff rule 107.27, which he could also have claimed.

5. By email dated 9 March 2007, the Applicant asked the Human Resources Management Service (“HRMS”) of the United Nations Office at Geneva what his entitlements would be if he resigned, and in particular what would be the amount of his relocation grant (the lump sum option for unaccompanied shipments). On the same day, a Human Resources Assistant replied, among other things, that because he had less than one year’s service in Geneva, he would be entitled either to an unaccompanied shipment of 100 kg or to USD1,200 if he opted for the relocation grant.

6. On 30 March 2007, the Applicant submitted his resignation and he left the Organization on 1 May 2007, after six months’ service.

7. On 27 April 2007, the Applicant signed an attestation whereby he opted, pursuant to administrative instruction ST/AI/2006/5 entitled “Excess baggage, shipments and insurance”, to be paid a relocation grant instead of payment by the Organization for the unaccompanied shipment of his personal effects.

8. By email of 31 July 2007, HRMS informed the Applicant that all amounts to which he was entitled had been paid, and forwarded his last salary slip. It showed a credit of USD1,200 under the heading “Payment of claim for reimbursement of travel expenses (TVCV 100455)”.

9. By email of 9 September 2007 to HRMS, the Applicant requested clarification of several of the amounts paid. He contested, in particular, the amount of USD1,200 paid as “Relocation grant – lump sum”, pointing out that, according to administrative instruction ST/AI/2006/5 he was entitled to receive USD10,000. He “officially” requested review of the decision to pay him only USD1,200, and asked instead to be paid the lump sum of USD10,000.

10. According to the Applicant, he was informed orally by HRMS on 25 October 2007 of the decision not to pay him a relocation grant of USD10,000.

11. By letter of 12 December 2007, the Applicant requested the Secretary-General to review the decision of HRMS not to pay him a relocation grant of USD10,000.

12. By letter of 21 January 2008, the Administrative Law Unit, United Nations Secretariat rejected the Applicant's request for review on behalf of the Secretary-General, and on 21 February 2008, the Applicant filed an appeal with the Joint Appeals Board ("JAB") in Geneva.

13. On 7 November 2008, the JAB submitted its report to the Secretary-General. While it considered that the appeal had been filed within the permitted time limit, the JAB nonetheless recommended that the Secretary-General reject it on the merits. A copy of that report was sent to the Applicant on 18 December 2008.

14. By letter of 8 January 2009, the Deputy Secretary-General notified the Applicant of the Secretary-General's decision to accept the recommendation of the JAB and reject his appeal.

15. On 20 June 2009, having requested and been granted two extensions of time, the Applicant filed an application to the former UN Administrative Tribunal. On 22 December 2009, having requested and been granted two extensions of time, the Respondent submitted his answer to the application. This was forwarded to the Applicant on 23 December 2009.

16. As the case could not be decided by the Administrative Tribunal before its abolition on 31 December 2009, it was transferred to the United Nations Dispute Tribunal on 1 January 2010 pursuant to the transitional measures set forth in General Assembly resolution 63/253.

17. By letter of 19 January 2011, the Tribunal informed the parties that it did not consider a hearing necessary in this case and granted them one week in which to give their views on that question. On 24 January 2011, both the Applicant and the Respondent stated that they agreed with the Tribunal's position to the effect that no hearing was necessary.

Parties' contentions

18. The Applicant's contentions are:

a. A staff member who is entitled, pursuant to staff rule 107.21 in force at the time of the facts, to an unaccompanied shipment may, in accordance with section 11.1 of administrative instruction ST/AI/2006/5, opt for a lump sum payment (relocation grant) instead of such shipment "on appointment or assignment for one year or longer, transfer or separation from service". Where the staff member opts for payment of the relocation grant, the applicable amounts are published in an information circular, in this case information circular ST/IC/2006/60 of 28 December 2006;

b. The Respondent was wrong, in the Applicant's case, to apply staff rule 107.28(a) which provides that "[a] staff member who resigns before completing two years of service shall not normally be entitled to payment of removal expenses under rule 107.27". The rights of the Applicant in the present case are governed not by staff rule 107.27 but staff rule 107.21. Staff rule 107.28(a) applies only to removal expenses falling under staff rule 107.27, but not to those under staff rule 107.21;

c. The Respondent is also wrong to rely on paragraph 4 of information circular ST/IC/2006/60 (which provides that "[t]he rate for assignments of less than one year and an unaccompanied shipment entitlement of 100 kilos is US\$1,200") in order to refuse to pay him a relocation grant of USD10,000. In fact, the paragraph cited above derives from staff rule 107.21(h), which governs the situation of staff members appointed or assigned "for less than one year"; here, though, the Applicant's situation fell within staff rule 107.21(i) covering staff members appointed or assigned "for one year or longer". The Respondent cannot *a posteriori* and retroactively redefine his appointment as being an appointment for less than one year;

d. It must also be stressed, in this regard, that staff rule 107.21(i) stipulates that entitlement to an unaccompanied shipment of 1,000 kg arises “[o]n travel on appointment ... or on separation from service of a staff member appointed for one year or longer”. It does not state “on travel ... on separation from service after at least one year of service”. By contrast, staff rule 107.27(a)(iii), which is not applicable to the present case, stipulates that a staff member is entitled to removal expenses “[o]n separation from service ..., provided that the staff member had an appointment for a period of two years or longer or had completed not less than two years of continuous service”.

19. The Respondent’s contentions are:

a. Staff rule 107.28(a) is applicable to the Applicant’s case;

b. By opting, in September 2006, for the non-removal element of the mobility and hardship allowance and for unaccompanied shipment of his personal effects, the Applicant waived the right to payment of removal expenses under staff rules 107.27 and 107.28 and accepted the terms laid down in information circular ST/IC/2006/60, which provides for an amount of USD1,200 for assignments of less than one year;

c. The Applicant’s argument that the relevant period is the term of his appointment (two years) and not his actual period of service (six months) is unfounded;

d. The Applicant had been informed on 9 March 2007, before submitting his resignation, that he would be entitled only to an unaccompanied shipment of 100 kg or a lump sum of USD1,200. He chose to resign, therefore, in full knowledge of the facts.

Judgment

20. The Applicant entered the service of the Organization on a two-year probationary appointment, but resigned after he had served six months. He

contests the decision to grant him, upon separation from service, a relocation grant, or lump sum for unaccompanied shipment, of USD1,200 instead of the grant of USD10,000 to which he believes he is entitled.

21. It is not disputed that the Applicant's rights in this case are governed by rule 107.21, "Excess baggage and unaccompanied shipments", of the Staff Rules in force at the time, and not rule 107.27, "Removal costs", in accordance with the choice offered to him by the Organization, which he exercised in September 2006.

22. The above-mentioned staff rule 107.21 provides, *inter alia*:

Unaccompanied shipments for staff appointed or assigned for less than one year

(h) On travel on appointment or assignment for less than one year, or on separation from service of staff appointed for less than one year, charges for the shipment of personal effects and household goods ... may be reimbursed up to a maximum of 100 kilograms or 0.62 cubic metres. Where the appointment or assignment is extended for a total period of one year or longer, the staff member shall be paid expenses for an additional shipment of personal effects and household goods up to the maximum entitlement established in paragraph (i) below ...

Unaccompanied shipments for staff appointed or assigned for one year or longer

(i) On travel on appointment or assignment for one year or longer, on transfer to another duty station or on separation from service of a staff member appointed for one year or longer, charges for the shipment of personal effects and household goods by the most economical means may be reimbursed up to a maximum of: ... 1,000 kilograms or 6.23 cubic metres for the staff member ... authorized to travel at the expense of the Organization.

23. Administrative instruction ST/AI/2006/5 of 24 November 2006, entitled "Excess baggage, shipments and insurance" and issued in implementation of staff rule 107.21 cited above, provided:

Section 11

Relocation grant (lump-sum option for unaccompanied shipments)

11.1 On travel on appointment or assignment for one year or longer ... or separation from service of a staff member appointed for one year or longer, internationally recruited staff members entitled to unaccompanied shipment under staff rule 107.21 ...

may opt for a lump-sum payment in lieu of the entitlement. This lump-sum option shall be known as a “relocation grant”.

11.2 The relocation grant shall be determined at rates for staff members with or without a spouse and/or dependent children as set out in a separate information circular.

11.3 The relocation grant is paid: upon appointment; upon each assignment or transfer; or upon separation from service. It is not subject to adjustment afterwards.

24. Lastly, information circular ST/IC/2006/60 of 28 December 2006, entitled “Relocation grant (lump sum option for unaccompanied shipments) - Rates”, which gives effect to the above-mentioned administrative instruction, provides:

2. There are two global rates, single and family, for all eligible staff members under the 100 ... Series ... serving on appointments or assignments of one year or more or separating from service following appointments or assignments of one year or more. The rates are: ... Single rate: US\$ 10,000;

...

4. The rate for assignments of less than one year and an unaccompanied shipment entitlement of 100 kilos is US\$ 1,200 ...

25. To justify the contested decision, the Respondent relies, *inter alia*, on staff rule 107.28(a), entitled “Loss of entitlement to unaccompanied shipment or removal expenses”, which provides that “[a] staff member who resigns before completing two years of service shall not normally be entitled to payment of removal expenses under rule 107.27”.

26. The Applicant is right to dispute this argument by the Respondent. In fact, it is not possible to extend the scope of the paragraph cited above, which expressly refers to staff members whose rights are governed by staff rule 107.27, to those covered by staff rule 107.21.

27. Also unfounded is the Respondent’s argument that, by opting in September 2006 for an unaccompanied shipment of his personal effects, the Applicant agreed to the terms laid down in information circular ST/IC/2006/60, which provided for a relocation grant of USD1,200 for assignments of less than one year. In fact, in opting in September 2006 for unaccompanied shipment of his personal effects, the Applicant could not in any sense have agreed to the conditions laid down for payment of a relocation grant, as the possibility for staff members to opt for that grant was introduced only afterwards, by administrative

instruction ST/AI/2006/5 of 24 November 2006 which, like information circular ST/IC/2006/60 of 28 December 2006, took effect only on 1 January 2007.

28. On the other hand, since, at the time of separation from service, the Applicant opted for payment of the relocation grant, the Respondent was entitled to invoke paragraph 4 of information circular ST/IC/2006/60 to pay him a grant of only USD1,200.

29. Information circular ST/IC/2006/60, the lawfulness of which the Applicant does not dispute, is clear. It specifies that single staff members “separating from service following appointments or assignments of one year or more” are entitled to a relocation grant of USD10,000, and that “for assignments of less than one year”, the relocation grant is USD1,200. It is common ground that the Applicant, who worked in Geneva for only six months because of his resignation, falls within that latter category, and the Administration was therefore entitled to rely on the said information circular in restricting the amount of his relocation grant to USD1,200.

30. The application must therefore be dismissed on the merits, and no ruling is necessary on its receivability, including whether it complied with the applicable time limits.

Decision

31. In view of the foregoing, the Tribunal DECIDES:

The application is dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 25th day of January 2011

Translated from French

Case No. UNDT/GVA/2010/055

(UNAT 1704)

Judgment No. UNDT/2011/021

Entered in the Register on this 25th day of January 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva