



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/091

Judgment No.: UNDT/2011/077

Date: 2 May 2011

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

WILSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Linda Starodub, UNOV/UNODC

Introduction

1. By application filed with the Dispute Tribunal on 21 June 2010, the Applicant contests the decision dated 14 April 2010 whereby the Officer-in-Charge, Human Resources Management Service (“HRMS”), United Nations Office at Vienna (“UNOV”) required him to charge to annual leave the day of Friday 12 March 2010, on which he travelled from Vienna to New York to take part in a training programme.

2. He requests that the day of 12 March 2010 not be charged to annual leave.

Facts

3. The Applicant is the holder of a fixed-term appointment at level P-5 as Chief of Operations, Investigations Division, Office of Internal Oversight Services (“OIOS”) in Vienna.

4. In early 2010, the Applicant was selected to take part in an OIOS Sexual Harassment Investigations Training of Trainers Programme in New York. That training programme was scheduled to start on Monday 15 March 2010 at 8.30 a.m. and end on Friday 19 March 2010 at 5.30 p.m.

5. The official travel approved for the Applicant, as notified to him on 17 February 2010, was for a departure from Vienna on Sunday 14 March 2010, arriving in New York the same day, with a return departing New York on Saturday 20 March and arriving in Vienna the following day, Sunday 21 March.

6. For reasons of personal convenience, the Applicant asked for his departure date to be brought forward to Friday 12 March 2010, which was approved by the Administration and confirmed on 18 February 2010.

7. On 4 March 2010, the Applicant’s participation in the abovementioned training programme was confirmed. He was absent from 12 to 21 March 2010.

8. Following a request by the Applicant, he was informed on 14 April 2010 by the Officer-in-Charge, HRMS UNOV that, according to the applicable Staff Rules and administrative instruction ST/AI/2006/4, he was required to charge the day of Friday 12 March 2010, on which he had travelled from Vienna to New York, to annual leave.

9. On 26 April 2010, the Applicant submitted a request to the Secretary-General for management evaluation of the abovementioned decision.

10. By letter of 10 June 2010, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had decided to uphold the contested decision.

11. On 21 June 2010, the Applicant filed his application with the Tribunal. On 21 July, the Respondent filed his answer, and on the same day, the Applicant submitted his observations on that answer.

12. By letter of 26 April 2011, the Tribunal informed the parties that the case would be decided without a hearing, on the basis of the written submissions, to which the parties replied that they had no objection.

Parties' contentions

13. The Applicant's contentions are:

a. Staff regulation 1.3(b) provides that the Secretary-General shall establish the normal working week for each duty station and may make exceptions as the needs of the service may require. The contested decision implies that Sunday 14 March 2010, the day on which he should have travelled, is regarded as an exception to the above rule, whereas in fact there were no needs of the service requiring him to travel on a Sunday;

b. Staff rule 7.6(e) stipulates that the official departure date is normally the day on which travel must start to allow the traveller to arrive at the place of official business before the commencement of duties. The use of the term "normally" shows that this rule is not legally binding, and

that it is subject to exceptions. In addition, staff rule 7.6(b) and section 7.1 of administrative instruction ST/AI/2006/4 on official travel allowed him, for reasons of personal convenience, to make arrangements for his travel other than the ones approved;

c. Section 5.1 of administrative instruction ST/AI/2006/4 provides that when taking the most direct and economical route, actual travel time spent during a working day shall not be charged to annual leave. He therefore satisfies all the conditions for his outward journey not to be charged to annual leave;

d. Contrary to what the Secretary-General maintains in his reply to the request for management evaluation, neither the Staff Regulations, nor the Staff Rules, nor administrative instruction ST/AI/2006/4 provide that section 5.1 of administrative instruction ST/AI/2006/4 applies only to the authorised travel on Sunday 14 March 2010.

14. The Respondent's contentions are:

a. Staff rule 7.6(e) states that the official departure date is normally the day on which travel must start to allow the traveller to arrive at the official place of business before the commencement of duties. Officially, therefore, the Applicant was to travel on Sunday 14 March 2010;

b. Staff rule 7.6(b) and section 7.1 of administrative instruction ST/AI/2006/4 on official travel show that, while the Applicant obtained permission to travel on Friday 12 March 2010 and to be absent on that day, his official departure date was still 14 March;

c. The Organization has always required its staff members to travel during non-working days where their official functions begin immediately after or finish immediately before a non-working day;

d. The granting of permission to a staff member to travel, for reasons of personal convenience, on a date other than the official date should not

lead to the generation of any entitlements in addition to those he would have had if he had left on the official departure date.

Consideration

15. With the agreement of the parties, this case was decided without a hearing.

16. The Applicant contests the decision whereby the Administration required him to charge to annual leave Friday 12 March 2010, the day on which he travelled from Vienna to New York to take part in an OIOS training programme starting on the morning of Monday 15 March.

17. Staff rule 7.6(e), “Official dates of travel”, states:

The official departure date is normally the day on which travel must start to allow the traveller to arrive at the place of official business before the commencement of duties. The official return date is normally the day after duties on official business have ended.

18. It is not disputed that, in the present case, if the Applicant had left Vienna on Sunday 14 March 2010, as requested by the Administration, he would have arrived at his destination on the afternoon of the same day, thus before the start of his mission on the morning of Monday 15 March. The date of 14 March must, therefore, be regarded as the official departure date within the meaning of the rule cited above, and the date of Friday 12 March, on which the Applicant actually left, as a date chosen for reasons of personal convenience.

19. Administrative instruction ST/AI/2006/4, entitled “Official Travel”, states, in section 5.2 under “Travel time by direct route and normal mode”:

A staff member shall not be entitled to additional days of annual leave to compensate for official travel on days considered non-working days at the staff member’s duty station.

20. The very clear meaning of the text cited above is that a staff member undertaking official travel on a day considered a non-working day has no entitlement to an additional day of annual leave.

21. Since the Applicant's official departure date from Vienna was Sunday 14 March 2010, a non-working day in Vienna, he would not, if he had left on that date, have been entitled to claim an additional day of annual leave. The fact that, for reasons of personal convenience, the Applicant was granted an exception by the Administration enabling him to leave on Friday 12 March, a working day, cannot operate to confer on him a benefit he would not have had if he had travelled on the official date laid down in the applicable instruments.

22. In applying the instruments cited above, the Administration was bound to charge Friday 12 March 2010 to the Applicant's annual leave, and his application must therefore be dismissed.

Conclusion

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

The application is dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 2nd day of May 2011

Entered in the Register on this 2nd day of May 2011

(Signed)

Víctor Rodríguez, Registrar, Geneva