



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/118

Judgment No.: UNDT/2011/203

Date: 30 November 2011

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

ALLEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Myriam Foucher, UNOG

Introduction

1. The Applicant contests the decision of the Officer-in-Charge of the Human Resources Management Section of the United Nations Conference on Trade and Development (“UNCTAD”) not to pay travel expenses for home leave in respect of one of his children.

2. He requests that the Administration should be ordered to reimburse him for the said expenses and that the Dispute Tribunal should, if necessary, order the Administration to amend the rules in force.

Facts

3. In December 2005, the Applicant, a P-3 staff member of UNCTAD, and his partner, a staff member of the Office for the Coordination of Humanitarian Affairs, both of whom were stationed in Geneva, had a child together, named E., who was recognized solely as a dependent of his mother.

4. In July 2006, when the Applicant took home leave to the United States of America, the Administration agreed to pay the travel expenses of E. to the United States, while his mother had taken her home leave in Sweden and then joined them in the United States.

5. In June 2008, the Administration had again agreed to pay the travel expenses to the United States of E., who had accompanied his father on his home leave.

6. On 19 June 2009, the Applicant, with the same partner, had a second child, named N., who was recognized solely as a dependent of the Applicant.

7. On 18 May 2010, the Applicant requested the Human Resources Management Section of UNCTAD to approve the payment of travel expenses for home leave to the United States in respect of himself and his two children.

8. On 21 May 2010, the Officer-in-Charge of the Human Resources Management Section informed the Applicant that she intended to refuse payment

of the travel expenses of E. for home leave to the United States, on the grounds that E. was not the Applicant's dependent.

9. On 23 June 2010, the Officer-in-Charge of the Human Resources Management Section informed the Applicant in writing that the Office of Human Resources Management in New York had confirmed her interpretation of the relevant provisions and that she therefore maintained the decision communicated on 21 May 2010, according to which travel expenses for home leave would not be paid in respect of the child of his who was recognized solely as a dependent of his partner.

10. On 19 August 2010, the Applicant submitted a request for management evaluation of the decision not to pay the travel expenses of his child E. The request was rejected on 2 October 2010.

11. The Applicant filed his application with the Dispute Tribunal on 21 December 2010. The Respondent submitted his reply on 27 January 2011. The Applicant then requested authorization from the Tribunal to submit comments responding to certain remarks contained in the Respondent's reply. The Tribunal refused such authorization, since it considered that the Applicant's allegations were not related to the subject of the application.

12. By letter dated 15 August 2011, the Dispute Tribunal informed the parties that a hearing was not deemed necessary and invited them to state their opinion on that matter. Both parties expressed their agreement with the Tribunal.

Parties' submissions

13. The Applicant's contentions are:

- a. The contested decision is contrary to rule 5.2(j) of the Staff Rules which specifies that: "Dependent children whose parents are staff members, each of whom is entitled to home leave, may accompany either parent. The frequency of travel shall not exceed the established periodicity of the home leave both with regard to staff members and to their dependent children, if any." The rule is clear, the Applicant's parental

relationship with E. is proven and the established periodicity of home leave travel has not been exceeded;

b. The fact that he is not married to the mother of his children cannot be an obstacle to the payment of the travel expenses of E., since it is not specified in the relevant provision. Such an interpretation would deprive separated or unmarried parents of this entitlement and discrimination on the grounds of marital status is not permitted;

c. No provision specifies that the entitlements of dependants are derived from the staff member on whom they are dependent;

d. The Administration has already taken the opposite position on two occasions;

e. The contested decision is contrary to the rights of the child as recognized by article 2 of the Convention on the Rights of the Child;

f. The fact that the mother of E. receives payment at the dependency rate of salary is not inconsistent with the Applicant's request to include his child E. under his entitlement.

14. The Respondent's contentions are:

a. Contrary to the Applicant's assertion, the wording of rule 5.2(j) of the Staff Rules limits the entitlement to travel expenses for home leave to those children who are considered to be dependants of the staff member. The parental link between one of the parents and a child is not sufficient to create the entitlement;

b. Rule 3.6(a)(iii) of the Staff Rules provides a definition of a dependent child and specifies the conditions for receiving the associated dependency allowances;

c. The Administration's interpretation is fully consistent with the other provisions of the Staff Rules and, as was ruled in *Kasyanov* UNDT/2009/022, the interpretation of an instrument must take into

account the instrument as a whole. While rule 7.1 of the Staff Rules defines home leave as official travel, rule 7.2(a) provides that: “Eligible family members, for the purposes of official travel, shall be deemed to comprise a spouse and those children recognized as dependants ...”. Thus, only persons recognized as dependants are eligible for official travel;

d. Staff rule 5.2(j) applies to married staff members in the Professional category, whose entitlement to dependency allowances is expressly restricted by the Staff Rules;

e. The case does not relate to the issue of marriage but to that of the status of dependent children. The Applicant must bear the consequences of his choice not to have recognized his child E. as his dependant.

Consideration

15. The Applicant contests the decision of UNCTAD not to pay the travel expenses of his child, E., who was accompanying him to the United States on home leave. The Administration based the contested decision on the fact that E. is not a dependant of his father.

16. To argue against the decision, the Applicant based himself on rule 5.2(j) of the Staff Rules, which specifies that:

... Dependent children whose parents are staff members, each of whom is entitled to home leave, may accompany either parent [on home leave] ...

17. It is not contested that the Applicant has had two children with his partner, who is also a United Nations staff member, and that he has recognized only N. as his dependant, while his partner has recognized only E. as her dependant.

18. The Dispute Tribunal must therefore consider whether the Applicant’s interpretation of the above-mentioned provision can be seriously maintained, particularly with regard to the other provisions applicable in the present case.

19. The rules on home leave are set out in rule 5.2 of the Staff Rules. However, Chapter VII of the Staff Rules, entitled “Travel and removal expenses”,

in rule 7.1, entitled “Official travel of staff members”, specifies the circumstances under which the Organization shall pay the travel expenses of a staff member. In that regard, paragraph (a)(ii)a of rule 7.1 mentions: “On home leave, in accordance with the provisions of staff rule 5.2”.

20. It is therefore very clear from the above-mentioned provisions that the interpretation of rule 5.2 must take account of rule 7.1, entitled “Official travel of staff members”, and that home leave must be regarded as official travel.

21. Paragraph (a) of rule 7.2, entitled “Official travel of eligible family members”, specifies that:

Eligible family members, for the purposes of official travel, shall be deemed to comprise a spouse and those children recognized as dependants under staff rule 3.6 (b) ...

22. It follows that the Administration is required to pay travel expenses for home leave only in respect of a child recognized as a dependant of the staff member with whom he or she is traveling.

23. The provision relied upon by the Applicant can only be interpreted as authorizing dependent children to accompany either parent on home leave, provided, however, that both parents have recognized the children in question as dependants. It is not contested that E. has not been recognized as a dependant of his father, the Applicant, but only of his mother.

24. The fact that the Administration erroneously agreed to pay the travel expenses of E. on two previous occasions, when he accompanied his father on home leave, cannot be used to establish any entitlement in respect of the contested travel, since the Administration is required to end any errors that it might have committed.

25. Lastly, contrary to the Applicant’s assertion, the interpretation of the provision in no way constitutes a violation of the Convention on the Rights of the Child, since the situation to which the Applicant objects is a result of his own choice and no discrimination exists in the present case. All children recognized as dependants of a United Nations staff member are treated in the same way, that is,

they are authorized to travel on home leave with the parent who has recognized them as a dependant.

26. It follows from the foregoing that the Applicant is not justified in requesting the payment of travel expenses for home leave in respect of his child E.

Conclusion

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

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 30th day of November 2011

Entered in the Register on this 30th day of November 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry