UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2012/080
Judgment No.: UNDT/2014/109
Date: 1 August 2014
Original: English

Before: Judge Goolam Meeran

Registry: New York

Registrar: Hafida Lahiouel

HARRICH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 15 October 2012, the Applicant filed an application contesting the decision made by the Office of Human Resource Management ("OHRM"), on 5 March 2012, not to grant him the repatriation grant and/or lump sum shipment which he says he was entitled to on separation from the Executive Office, Office for the Coordination of Humanitarian Affairs ("EO/OCHA"). The Applicant seeks rescission of the decision as well as compensation for moral damages.

2. On 23 November 2012, the Respondent filed a reply submitting that the application was not receivable *ratione temporis* and that if the Tribunal found that it was receivable, it should be limited to the claim made in the application and should be dismissed on its merits.

Findings of fact

3. The Applicant joined the Organization in April 2000 and was appointed in 2003 to the position of Administrative officer, at P-3 level, in the EO/OCHA, in New York. He held that position until his separation from the Organization with effect from 9 January 2012.

4. On 10 January 2011, the Applicant was seconded to the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO") for an initial period of one year, until 9 January 2012, whilst keeping a lien against his post with the EO/OCHA.

5. However, on 5 May 2011, whilst on secondment with MONUSCO, the Applicant accepted an appointment at a higher grade at the P-4 level with the Preparatory Commission for the Comprehensive Nuclear Test Ban Treaty Organization ("CTBTO") in Vienna, Austria, for the period 6 June 2011 to 5 June 2014.

6. On 13 May 2011, the Applicant indicated in an email to Ms. Tine Hatlehol, Human Resources Officer, EO/OCHA, that it would "be very helpful if [he] could join CTBTO on secondment for two years".

7. In her response of 16 May 2011, Ms. Hatlehol, informed the Applicant that OCHA intended to honor the prior commitment in relation to his secondment until 9 January 2012. Accordingly, it was agreed that he would be seconded from OCHA to CTBTO from 3 June 2011 to 9 January 2012 with a lien being maintained against his post in the EO/OCHA. OCHA stressed that it would not accommodate any further secondment beyond 9 January 2012.

8. In an email dated 17 May 2011, the Applicant replied that he was in full agreement with OCHA's proposal.

9. By letter dated 2 June 2011, Mr. Tibor Tóth, the Executive Secretary of CTBTO, requested that OCHA consider extending the Applicant's secondment until 3 June 2013, pursuant to Article X of the Agreement to regulate the relationship between the United Nations and the PC/CTBTO.

10. On 3 June 2011, the Applicant resigned from MONUSCO but remained with OCHA, first until 26 June 2011 on a special leave without pay status and subsequently on secondment to CTBTO until 9 January 2012.

11. In its response to CTBTO dated 17 June 2011, OHRM reiterated that the Applicant's secondment could not be extended beyond 9 January 2012 and that, should the Applicant wish to remain with CTBTO beyond this date, he would have to request a transfer.

12. On 27 June 2011, the Applicant took up his duties at CTBTO. His travel from Kinshasa to Vienna, as well as shipment cost of his personal items from within Austria to Vienna, was covered by CTBTO.

13. On 6 December 2011, following the Applicant's inquiry as to the payment of accrued annual leave while serving in MONUSCO, the Applicant was informed by

Ms. Hatlehol that his resignation from MONUSCO did not include a resignation from the Secretariat. She reminded him that it was his decision to go on secondment. The Applicant was further advised that should he opt to resign from the Secretariat at the end of the period of his secondment (namely by 9 January 2012), he may receive payment for the accrued annual leave as his current agency was not part of the United Nations common system, although this would need to be confirmed and would also depend on the Applicant's status.

14. On 12 December 2011, Ms. Olivera Mitreski-Poillucci, EO/OCHA, requested that the Applicant indicate to OCHA whether he intended to return to his post on 10 January 2012 or, alternatively, to indicate if he wished to resign.

15. On 19 December 2011, the Applicant informed OCHA that following the confirmation of his fixed-term contract with CTBTO for a period of three years upon completion of the first six months probationary period, he was resigning from his position in OCHA with effect from 9 January 2012.

16. On 27 March 2012, OHRM confirmed that, as indicated in the Personnel Action ("PA") of 5 March 2012, the Applicant was not eligible for the payment of travel or repatriation grant since he was on secondment to CTBTO in Vienna and was reappointed the next day (namely on 10 January 2012) to the same organization in Vienna.

17. On 24 and 27 April 2012, the Applicant requested management evaluation of OHRM's decision of 5 March 2012 not to grant him repatriation grant, shipment and travel upon separating from the Organization.

18. On 26 June 2012, the Management Evaluation Unit ("MEU") informed the Applicant that the Secretary-General decided to uphold the contested decision. In relation to the outstanding payment for his accrued annual leave, MEU considered that it had been rendered moot following advice by OHRM that "the necessary steps have been taken to pay [the Applicant] for forty one (41) days of accrued annual leave".

19. On 15 September 2012, the Applicant emailed his application to the Registry of the Dispute Tribunal in New York. The Registry informed the Applicant that he had to file his application through the e-filing portal. He did so on 15 October 2012. Since the filing by email contained all the required information, the application was registered as being filed on 15 September 2012, as confirmed by the Registry via email of 15 October 2012, copied to the Respondent.

20. On 23 November 2012, the Respondent filed his reply.

21. On 29 April 2014, in response to Order No. 86 (NY/2014), the Respondent maintained that this case was not receivable as the application was filed on 15 October 2012, namely six days after the deadline, and was consequently time-barred.

22. The case was assigned to the undersigned judge in April 2014.

The claim

23. The Applicant raised a number of issues in the course of the proceedings, not all of which were relevant to the principal claim identified in his application. The claim raised in the application was only in relation to OHRM's decision not to grant him the repatriation grant and/or lump sum shipment.

24. The additional issues raised without leave of the Tribunal are the following: the ongoing delays in paying some of his separation entitlements, particularly for accrued annual leave and for an educational grant; the length of the secondment; the irregularities with respect to recruitment carried out against the Applicant's post whilst he was on mission; the lack of feedback from the Administration with regard to the possible conversion to permanent status; the non-payment of an assignment grant upon taking his duties in Vienna in June 2012 pursuant to Staff rule 7.14; and the refusal of the Office of Staff Legal Assistance to represent him.

25. By Order No. 169 (NY/2014) dated 27 June 2014, the Tribunal convened an urgent Case Management Discussion ("CMD") in order to identify the claim(s) arising in this case as well the factual and legal issues, if any remained in contention.

26. During the CMD held on 2 July 2014, the Applicant confirmed that his claim was limited to the alleged entitlement of repatriation grant and/or lump sum in lieu of shipment, having received confirmation by the Respondent that outstanding amounts in the region of USD30,000 which were due to him were either paid or about to be paid.

The issues

27. There are two issues to be determined in order to decide the claim:

a. Was the Applicant eligible to receive a repatriation grant?

b. Was the Applicant eligible to receive a lump sum in lieu of shipment?

Applicable law

28. Staff regulation 9.4 states:

> The Secretary-General shall establish a scheme for the payment of repatriation grants in accordance with the maximum rates and under the conditions specified in annex IV of these Regulations.

29. Staff Rule 3.18 of ST/SGB/2011/1 (Repatriation grant), applicable at the time of the Applicant's resignation from the Organization, states in so far as it is material (emphasis added):

> **Purpose**
>
> (a) The purpose of the repatriation grant provided by staff regulation 9.4 is to facilitate the relocation of expatriate staff members to a country other than the country of the last duty station, provided that they meet the conditions contained in annex IV to the Staff Regulations and in this rule.

Definitions

(b) The following definitions shall be used in ascertaining whether the conditions contained in annex IV to the Staff Regulations and this rule are met:

(i) "Country of nationality" shall mean the country of nationality recognized by the Secretary-General;

…

(iii) "Home country" shall mean the country of home leave entitlement under staff rule 5.2 or such other country as the Secretary-General may determine;

(iv) "Obligation to repatriate" shall mean the obligation to return a staff member and his or her spouse and dependent children, upon separation, at the expense of the United Nations, *to a place outside the country of the last duty station*;

…

Eligibility

(c) Staff members who are considered internationally recruited pursuant to staff rule 4.5 shall be eligible for payment of the repatriation grant in accordance with annex IV to the Staff Regulations provided that they meet the following conditions:

(i) The Organization had the obligation to repatriate the staff member upon separation after qualifying service of one year or longer;

(ii) The staff member *resided outside his or her recognized country of nationality while serving at the last duty station*;

(iii) The staff member has not been dismissed or separated from service on grounds of abandonment of post;

(iv) The staff member has not been locally recruited under staff rule 4.4;

(v) The staff member *does not have permanent resident status in the country of the duty station at the time of separation*.

…

Evidence of relocation

(e) Payment of the repatriation grant after separation of an eligible staff member shall require *submission of documentary evidence satisfactory to the Secretary-General that the former staff member has relocated away from the country of the last duty station*.

30. Annex IV of the Staff Regulations (Repatriation grant) provides that (emphasis added):

> In principle, the repatriation grant shall be payable to staff members whom the Organization *is obligated to repatriate* and *who at the time of separation are residing, by virtue of their service with the United Nations, outside their country of nationality*. The repatriation grant shall not, however, be paid to a staff member who is dismissed. Eligible staff members shall be entitled to a repatriation grant *only upon relocation outside the country of the duty station*. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General.

31. ST/AI/2000/5 (Repatriation Grant), implementing annex IV to the Staff Regulations and staff rules 109.5 and 209.6 provides that (emphasis added):

> **Section 2**
>
> **Eligibility**
>
> 2.1 Pursuant to annex IV to the Staff Regulations and staff rules 109.5 and 209.6, former staff members who were internationally recruited shall be eligible for payment of the repatriation grant when the *following conditions are met at the time of separation of the staff member*:
>
> …
>
> (b) The staff member resides *outside his or her home country and country of nationality*, as defined by staff rules 109.5 and 209.6, *while serving at the last duty station*;
>
> …
>
> 2.2 No repatriation grant shall be paid to:
>
> (a) A staff member locally recruited under staff rule 104.6;
>
> (b) A staff member who *has permanent residence status in the country of the duty station at the time of separation* [emphasis added]

32. Failure to meet the requirement of either Annex IV of the Staff Regulations or staff rule 3.18 will preclude a staff member from being eligible for a repatriation grant. Of particular relevance to this case is the condition that, to be eligible, the staff member must have relocated upon separation from service (*Servas* 2013-UNAT-325).

33. Staff rule 7.15(h) (Excess baggage and unaccompanied shipment) states, with regard to unaccompanied shipments for staff holding a fixed-term appointment appointed for one year or longer, that:

> (i) On travel on appointment or assignment for one year or longer or when an assignment is extended for a total period of one year or longer, on transfer to another duty station or on separation from service of a staff member, charges for the shipment of personal effects and household goods by the most economical means may be reimbursed up to a maximum amount established by the Secretary-General.

34. Relocation grant (lump-sum option for unaccompanied shipments) is also dealt with in ST/AI/2006/5 which provides, in relevant part, that:

> 11.1 On travel on appointment or assignment for one year or longer, transfer or separation from service of a staff member appointed for one year or longer, internationally recruited staff members entitled to unaccompanied shipment under staff rules 107.21, 207.20 or 307.6, as detailed above, may opt for a lump-sum payment in lieu of the entitlement. This lump-sum option shall be known as a "relocation grant".
>
> …
>
> 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.

35. Article X of the Agreement to regulate the relationship between the United Nations and the CTBTO states that:

> *Personnel arrangements*
>
> 1. The United Nations and the Commission agree to consult whenever necessary concerning matters of common interest relating to the terms and conditions of employment of staff.
>
> 2. The United Nations and the Commission agree to cooperate regarding the exchange of personnel, bearing in mind the nationality of States signatories of the Treaty, and to determine conditions of such cooperation in supplementary arrangements to be concluded for that purpose in accordance with article XV of the present Agreement.

Considerations

On receivability

36. The Respondent submitted that the application was not receivable as it was filed more than 90 days after notification of the decision from the MEU.

37. The Applicant was notified of the contested decision on 26 March 2012 and requested management evaluation in a timely manner on 24 and 27 April 2012. The Applicant, being officially stationed in Vienna at the time of the contested decision, the expiry of the 45-day deadline for the Secretary-General to communicate its response fell, pursuant to article 7.1 (b) of the Tribunal's Rules of Procedure, on 9 June 2012.

38. Pursuant to article 8(d)(i)a. and article 7.1 of the Tribunal's Rules of Procedure, the 90 days' time limit for filing an application before the Dispute Tribunal therefore fell on 8 September 2012, subject to the ruling of the United Nations Appeals Tribunal ("UNAT") in *Faraj* 2013-UNAT-331 and *Neault* 2013-UNAT-345, that the receipt of the management evaluation will result in setting a new deadline for seeking judicial review before the Tribunal if that receipt occurs prior to the expiration of the 90 days' time limit to file an appeal.

39. The MEU response, dated 26 June 2012 and received by the Applicant on 9 July 2012, was rendered prior to the expiration of the 90 days' time limit for filing an application before the Dispute Tribunal. In accordance with UNAT's ruling, the expiration of the new 90 days' time limit to file an appeal before the Tribunal consequently fell on 8 October 2012.

40. By email dated 15 October 2012 copied to the Respondent, the Registry of the Dispute Tribunal confirmed receipt of the application to its email account on 15 September 2012, which was subsequently submitted through the e-filing portal on 15 October 2012. By Order No. 86 (NY/2014), the Respondent was requested to state whether he still continued to maintain that the application was not receivable

notwithstanding the above-mentioned judgments of UNAT in *Neault* and *Faraj*. It appeared to the Tribunal, given paras. 1 and 2 of the Reply, that the 90-day time limit was the sole issue in relation to which the Respondent was pleading that the claim was not receivable.

41. The Respondent's response to Order No. 86 (NY/2014) indicated that the Respondent's plea of non-receivability was based on the date of the filing through the Tribunal's e-filing portal on 15 October 2012 and not the original filing through the Tribunal's email account on 15 September 2012. However, having encountered technical difficulties with filing through the e-filing portal, the Applicant attached the PDF version of the application to an email to the Tribunal's account on 15 September 2012, copied to OHRM and EO/OCHA. The application was communicated within the newly set deadline pursuant to UNAT's ruling in *Neault* and *Faraj* and met the requirements of art. 8 of the Rules of Procedure of the Dispute Tribunal. It was moreover identical to the application filed through the e-filing portal on 15 October 2012.

42. The Respondent's reliance on *Cooke* 2012-UNAT-275 is misplaced given that this is not a case of waiver of the time limit for the filing of the application absent a formal request from the Applicant. The Respondent's contention that the claim is not receivable, notwithstanding his receipt of notification by emails of 15 September 2012 and 15 October 2012 is devoid of merit and is dismissed as being frivolous. The filing of 15 September 2012 to the UNDT email account was a valid application as would have been apparent to the Respondent upon an examination of the communications of 15 September 2012 and 15 October 2012.

On the merits

43. The purpose of a repatriation entitlement, including relocation grant, is to facilitate the relocation of expatriate staff members upon their separation from the Organization. Eligibility is contingent upon specific conditions being satisfied, in particular, the Applicant must have relocated upon separation from service and be

resident outside his recognized home country or country of nationality while serving at the last duty station.

44. It is not in dispute that the Applicant is a national of Austria and that he resigned from his position with the Executive Office at OCHA with effect from 9 January 2012. At the time of his resignation from OCHA, he was still serving with the CTBTO under secondment in Vienna since, at least, 27 June 2011 when he took up his new post at the CTBTO. Accordingly, it is clear that the Applicant had *not relocated* upon separation from the Organization. Furthermore, he was already working in his home country during his last tour of duty. The Administration therefore correctly concluded that since the requirement of relocation was not met, the Applicant was not eligible for a repatriation grant.

45. The Applicant contends that no secondment had taken place from OCHA to CTBTO and that given the status of the latter, which is not part of the United Nations common system, his last duty station was in New York. This contention is inconsistent with the facts and is misguided in law.

46. The Applicant expressly requested that the Organization facilitated his secondment and fully agreed with its terms. He took up his duties with CTBTO well aware that the secondment he requested had been agreed upon between the Organization and CTBTO. Exchange of emails in December 2011 with the Executive Office in OCHA illustrate that the only administrative matter raised by the Applicant prior to the termination of his contractual relationship with the Organization was in relation to the payment of his accrued annual leave.

47. The Tribunal finds that the Applicant was fully aware of the nature of his contractual relationship with the Organization between June 2011 and December 2011. When the Applicant submitted his notice of resignation, on 19 December 2011, he was still residing in Vienna as he was serving as a human resources officer in CTBTO under secondment, in accordance with Article X of the Agreement to regulate the relationship between the United Nations and the CTBTO.

Further, the Applicant's contention regarding the determination of his last duty station disregards the prerequisite for eligibility in staff rule 3.18 that while serving at the last duty station, the staff member must have *resided outside his recognized country of nationality*.

48. The Applicant does not identify any legal basis in support of his contention that the Administration failed properly to advise him at the time of his resignation from MONUSCO. This claim is misconceived and is dismissed.

49. The record shows that since the Applicant joined OCHA in 2003, he had served with the United Nations Relief and Works Agency for Palestine Refugees in the near East on secondment for two years from 2005 to 2007 and with OCHA in Geneva for over a year from May 2008 to September 2009. By virtue of his position as Administrative Officer and extensive professional experience within the Organization, as well as having served with various entities on secondment from the Organization in his 8 years of service, the Applicant is presumed to have been fully acquainted with the rules and regulations relating to secondment as well as various entitlements of a staff member upon separation (*Rahman* 2012-UNAT-260).

50. Prior to the Applicant taking up his functions with CTBTO at the end of June 2011, the Administration had made it abundantly clear to him that the only way in which he could remain with CTBTO beyond 9 January 2012 would be to resign from his post at OCHA. Further, the Applicant accepted the offer of CTBTO perfectly aware that the length of his contract would take him beyond the term of his secondment.

51. With respect to the Applicant's claim for the payment of a lump sum in lieu of shipment or relocation grant, the Applicant confirmed on 2 July 2014, during the CMD, that upon joining MONUSCO on secondment in January 2011, the Organization made a payment of a relocation grant for the purpose of his relocation from New York to Kinshasa. CTBTO subsequently made a payment for the purpose of the Applicant's relocation to Vienna. The Administration considered

that upon his separation on 9 January 2012, there was no travel involved between New York and Vienna. Accordingly, the Applicant was not entitled to receive another relocation grant since he had already benefited from payment of a lump-sum in lieu of shipment upon taking up his duties in Kinshasa.

52. The Applicant further benefitted from shipment allowance which he chose to use for the shipment of his personal items from within Austria. The Applicant has therefore received relocation assistance when relocating to Vienna, which in view of the record before the Tribunal, disentitle him from claiming further payments pursuant to staff rule 7.15(h) in relation to his return to his country of nationality.

53. The Tribunal finds that in the absence of relocation from New York to Vienna, the Administration was correct in concluding that the Applicant was not entitled to relocation grant upon separation from his position in OCHA.

On abuse of process

54. The Applicant was an Administrative Officer at the P-3 level, step 10, in OCHA, prior to joining the CTBTO at the P-4 level as a Human Resources Officer. Bearing in mind the Applicant's lengthy experience in dealing with human resources matters, the Tribunal would have reasonably expected a more careful preparation and prosecution of his claim before the Tribunal. Instead, the manner in which the Applicant conducted these proceedings leaves a great deal to be desired.

55. The Applicant made numerous submissions without seeking leave of the Tribunal first via email, on 13 October 2012 and 16 October 2012 as well as in various subsequent filings on 17 October 2012, 19 October, 7 November 2012 and on 11 December 2012.

56. By Order No. 156 (NY/2014), dated 24 June 2014, the Applicant was ordered to show cause why his additional filings should not be struck out on the grounds that they were not raised in his original claim and/or are not relevant to a determination of

the issues raised therein. The Applicant failed to comply fully and properly with the order. Instead, he introduced additional unsolicited submissions.

57. By Order No. 169 (NY/2014), dated 27 June 2014, the Applicant was reminded that further submissions shall be introduced only by leave of the Tribunal. However, in spite of this warning, the Applicant filed a submission on 17 July 2014 without seeking, and obtaining, leave from the Tribunal.

58. On 2 July 2014, the Applicant was strongly advised, during the CMD, against persisting in making any claims that were unsubstantiated and/or manifestly unmeritorious. The Applicant was further advised on the relevant legal principles and provisions, including article 10.6 of the Statute on the Tribunal's power to order costs against a party, should he persist in submitting unmeritorious claims.

59. By Order No. 178 (NY/2014), dated 2 July 2014, the Applicant was to state, in a concise submission, what claims raised in his application, and which are within the Tribunal's jurisdiction, are still outstanding and to identify the applicable regulations and rules relied upon. In response, the Applicant repeated previous arguments and submissions, reiterated claims which are outside the Tribunal's jurisdiction and failed to identify the applicable regulations and rules relied upon.

60. Article 10.6 of the Tribunal's Statute states:

> Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.

61. The Applicant not only failed to comply fully with Order No. 156 (NY/2014) and Order No. 178 (NY/2014) but he also blatantly contravened Order No. 169 (NY/2014). The Tribunal finds that the Applicant has made improper use of the proceedings before the court, taking up time and resources which could have been expended in dealing with the cumulative backlog of cases. Being fully aware of the staff regulations, the staff rules and administrative issuance applicable, the Applicant repeatedly failed to substantiate his claim.

62. The Tribunal finds that the Applicant has manifestly abused the proceedings before it. The repeated failure of the Applicant to fully comply with the Tribunal's orders and the filing of unauthorized additional and largely irrelevant submissions, amounts to an abuse of process.

Conclusion

63. The application is dismissed in its entirety.

64. The Applicant is ordered to pay costs in the sum of USD2,000 for abuse of process.

(*Signed*)

Judge Goolam Meeran

Dated this 1st day of August 2014

Entered in the Register on this 1st day of August 2014

(*Signed*)

Hafida Lahiouel, Registrar, New York