Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

GORDON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Miles Hastie, OSLA

Counsel for Respondent:
Stephen Margetts, ALS/OHRM, UN Secretariat
Sarahi Lim Baró, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant, a Senior Policy Officer at the P-5 level in the Policy, Planning and Application Branch ("PPAB") in the Peacebuilding Support Office ("PBSO), filed an application on 20 March 2014 contesting the decision by the Office of Human Resources Management ("OHRM") that she was not eligible for the benefit of mobility allowance. The Applicant seeks (a) rescission of the contested decision and approval of her application for the mobility allowance, (b) retroactive payment of the allowance on the basis of a mobility count of four from the date of the original request in January 2012, (c) prejudgment interest upon the foregoing pecuniary damages, with interest at the United States of America ("US") Prime Rate, accruing from the date each salary payment would have been made, compounded semi-annually, and (d) post judgment interest upon all of the foregoing amounts accruing at the US Prime Rate from the date of judgment, and US Prime Rate plus 5 percent, including through any period of unsuccessful appeal, compounded semi-annually, with accrued interest.

2. The Respondent's reply was filed on 21 April 2014. The Respondent contends that the application is without merit and it should be rejected because the Applicant does not meet the eligibility requirements for payment of a mobility allowance.

Procedural background

3. On 19 August 2013, the Field Personnel Division ("FPD") in the Department of Field Support ("DFS") informed the Applicant that her five consecutive years of service, for the purpose of mobility allowance, began with her reappointment with the United Nations Mission in the Republic of South Sudan ("UNMISS") in Juba on 30 November 2011. In this regard, FPD considered this her first assignment and did not count her previous assignments because she had a break in service from 28 September to 29 November 2011. The Applicant was informed that she could qualify for payment of benefit of mobility allowance as of 30 November 2016.

4. On 18 October 2013, the Applicant requested management evaluation of the decision denying her mobility allowance and, on 24 December 2013, the Under-Secretary-General for Management upheld the decision denying her payment of mobility allowance.

5. The case was assigned to the undersigned judge in August 2014.

6. Pursuant to Order No. 299 (NY/2014) dated 4 November 2014, the parties attended a Case Management Discussion ("CMD") on 17 December 2014 to discuss whether any further information or clarification was required from either party, if any further evidence was necessary, including the testimony of witnesses, and if the parties were amenable to refer the case to the United Nations Ombudsman and Mediation Services.

7. At the CMD, the parties informed the Tribunal that there were only two factual circumstances on which they did not agree and that they believed that the discrepancy with regard to these two facts could be clarified via *inter partes* discussions following which they would file a joint submission.

8. By Order No. 346 (NY/2014) dated 18 December 2014, the Tribunal ordered the parties to file and serve a joint submission identifying the agreed facts indicating whether they required the production of additional documents and providing their view on whether the case could be resolved on the papers before the Tribunal.

9. In response to Order No. 346 (NY/2014), on 20 February 2015, the parties filed a joint submission in which they stated that they had no objection to a determination of the case on the papers. The Respondent required no further documents but produced some additional documentation concerning the Administration's consideration of the Applicant for mobility allowance in 2012. The Respondent requested that the facts set out in the joint submission be included in the record of the case. The Applicant did not oppose the Respondent's request but sought leave to make further submissions. Both parties had no objection to the case being disposed of on the papers.

10. By Order No. 37 (NY/2015) dated 5 March 2015, the Tribunal granted leave to the Applicant's request and ordered that any additional legal submissions in relation to the

documents filed on 20 February 2015 be submitted by 10 March 2015. The parties were also instructed to file their closing submissions by 20 March 2015.

11. On 5 March 2015, the Applicant's Counsel filed a response to Order No. 37 (NY/2014) and submitted that the Respondent's additional document was irrelevant. On 20 March 2015, each party filed their respective closing submissions.

Facts

12. The parties presented the following agreed facts in their 20 February 2015 joint submission:

> … From 18 July 2004 to 31 July 2006, the Applicant served as Adviser at the P-4 level with the United Nations Mission in East Timor/United Nations Office in Timor-Leste … under an appointment of limited duration ["ALD"] of the 300 series of the former Staff Rules until her separation from service following completion of her ALD.
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> … From August 2006 to March 2007 (8 months and 7 days), the Applicant was employed with the Organization for Security and Co-operation in Europe ["OSCE"], a non-UN entity.
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> … On 8 April 2007, the Applicant was re-employed as Programme Management Officer with the [United Nations] Project Office on Governance in the Department of Economic and Social Affairs ["DESA"], based in Seoul, Republic of Korea, on a project personnel appointment under the 200 series of the former Staff Rules.
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> … On 5 December 2007, the Applicant was reassigned from DESA Seoul to DESA New York. The Respondent contends that the Applicant's assignment from Seoul to New York was at the Applicant's request. The Applicant contends that her assignment from Seoul to New York were at the Organization's request. Nonetheless, the Applicant withdraws her claim to count her Seoul service as a qualifying assignment, for mobility purposes.
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> … On 8 April 2008, Applicant's 200 series contract expired.
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> … From 15 April 2008 through 31 December 2008, the Applicant was re-employed as Programme Officer at the P-4 level with DESA in New York, under a fixed-term appointment ["FTA"]. This FTA was extended to 14 March 2009.

… On 23 March 2009, the Applicant was re-employed as Programme Officer at the P-4 level with DESA in New York for a two-month period on a FTA through 22 May 2009, pending selection of a candidate through the circulation of a Temporary Vacancy Announcement ["TVA"]. After being selected for the TVA position in DESA, the Applicant's appointment was extended through 31 December 2009. The Applicant resigned from this position with effect from 23 September 2009 for the express purpose … of effecting a new appointment to the Department of Peacekeeping Operation ["DPKO"] at [United Nations] Headquarters.

… The Applicant was re-employed on 28 September 2009 as Justice/Corrections Planning Officer at the P-4 level in the Office of Operations [DPKO], in New York, under a Temporary Appointment ["TA"] limited to service with DPKO for an initial period of 3 months and 3 days through 31 December 2009. This TA was successively extended until the Applicant's TA expired on 27 September 2011.

… On 30 November 2011, the Applicant was re-employed as Programme Officer at the P-4 level under an FTA with [UNMISS].

… On 19 August 2013, FPD notified the Applicant that she may qualify for payment of the mobility allowance as of 30 November 2016, provided that she has a second assignment to another duty station for a period of one year or longer. The Applicant was also informed that her current reappointment to UNMISS in Juba, which started on 30 November 2011, is considered to be her first assignment and, in line with Staff Rule 4.17(b), her previous assignments before 30 November 2011 did not count for mobility allowance purposes because she incurred a break in service from 28 September 2011 to 29 November 2011 (2 months and 2 days). Furthermore, the Applicant's assignments from 8 April 2007 to 27 September 2011 did not count regardless of ST/AI/2011/16 [(Mobility and hardship scheme)] and Staff Rule 4.17(b), because they do not amount to one year and her temporary appointment from 29 September 2009 to 27 September 2011 could not be counted because staff on TAs are not eligible to receive the mobility allowance regardless of any exceptional extension of their appointment beyond 364 days.

… On 18 October 2013, the Applicant requested management evaluation of the decision to deny her application for a mobility allowance as of 30 November 2011.

> … The Applicant has moved since the management evaluation request has been filed. On 1 December 2013, [the Applicant] moved within UNMISS on promotion and change in function/office. On 14 February 2014, [the Applicant] moved to ["PBSO"] in New York.

13. In the 20 February 2015 joint submission, the Respondent further presented the following additional facts:

> … On 28 November 2012, the Chief of Human Resources Centre in the Regional Service Centre in Entebbe forwarded to [FPD] the list of UNMISS staff members, including the Applicant, who reported that payments for the mobility allowance were outstanding (List).
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> … On 1 December 2012, the Applicant was selected to the position of Senior Political Affairs Officer at the P-5 level, with [UNMISS].
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> … On 3 December 2012, FPD provided UNMISS with an updated List, with remarks on the status of the mobility allowance issues of the UNMISS staff members, e.g., indicating "granted", "pending" or "no MHA worksheet". In the Applicant's case, the remarks indicated "no MHA worksheet".
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> … On 31 December 2012, during the course of the mission's review of mobility allowance cases, FPD's advice was sought by UNMISS on whether the mobility allowance count is reset in the Applicant's case given her resignation effective 23 September 2009.
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> … On 9 January 2013, in response to UNMISS's review of her application for a mobility allowance, the Applicant advised UNMISS that she separated from her FTA with DESA in 2009 for the express purpose of taking up a TA in DPKO and after being informed by the Executive Office of DPKO that she was administratively unable to carry her FTA with DESA over to DPKO on TA.
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> … On 12 March 2013, the Applicant requested an update from UNMISS on her application for the mobility entitlement. UNMISS replied that the mission "still do not have any updated information from FPD."

14. The Respondent requested that these additional facts be included in the record of the case and the Applicant did not oppose this request.

15. In the Applicant's 5 March 2015 response to Order No. 37 (NY/2015), Counsel for the Applicant indicated that (emphasis in the original):

> … The Applicant submits that the additional documentation is irrelevant. Indeed, it is submitted that the only factual controversy—whether the Applicant's "assignment from Seoul to New York was at the Applicant's request" or "at the Organization's request" (Joint Submission, para. 5) is irrelevant.
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> … The only matter to which these matters are relevant is whether, in computing the mobility count, [the Applicant] was "assigned to a duty station for a period of one year or longer which is subsequently reduced at the initiative of the Organization to less than one year" (ST/AI/2007/1, s. 2.5; ST/AI/2011/6, s. 2.5(b)).
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> … With respect to the Seoul assignment, [the Applicant] has specifically made that matter irrelevant because she "withdraws her claim to count her Seoul service as a qualifying assignment, for mobility purposes". Thus, whether it was at her initiative or that of the Organization is now irrelevant.
>
> … [The Applicant] has withdrawn this claim—which was of potential financial benefit to her—because she is seeking to avoid the administrative effort and expense to herself and the Organization of contesting this factual matter. As paragraph 5 of the joint statement reflects, she is not prepared to make a factual admission that this move was at her initiative, because she firmly maintains that it was not. She would submit that the documents that the Respondent has submitted are an incomplete record. As [the Applicant] no longer has access to the full record of 2007 correspondence, a number of witnesses, including [the Applicant], would be required to describe the very sensitive context in which the move occurred. Instead of risking disruption of her mission travel, and seeking to compel the attendance of witnesses to attest to a highly sensitive matter, she has withdrawn this claim. Given the withdrawal of the claim, it is not known to [the Applicant] why the documents were submitted by the Respondent.

Applicant's submissions

16. The Applicant's principal contentions may be summarized as follows:

a. The Respondent's interpretation of "prior consecutive service" for the purpose of mobility allowance, pursuant to ST/AI/2007/1 (Mobility and hardship allowance) or ST/AI/2011/6 worded in similar terms, is erroneous given that eligibility to mobility allowance is contingent upon a staff member having served the Organization for five years with consecutive movements, without regard to breaks in service;

b. "Prior consecutive service" means sequential, but not necessarily uninterrupted, qualifying periods of service, which is confirmed by the provision of sec. 2.3 of ST/AI/2007/1 according to which "separate periods of service shall be considered as consecutive for the purpose of section 2.1 when their cumulative duration reaches five years within the prior six-year period";

c. The removal of this provision in the administrative instruction adopted in 2011 does not have the effect of changing the definition of "consecutive service" as there is no explicit provision restricting implicitly or explicitly the well-established definition of what is considered as "prior consecutive service", which was confirmed in an article published on the Organization intranet in 2012;

d. There is no requirement in ST/AI/2011/6 that the entire period of service must be uninterrupted. Changes made by the Administration to previous provisions were clearly indicated and subject of recorded debate, noted in the General Assembly resolution 62/248 referred to in the administrative instruction;

e. Administrative issuances are required to establish new rules with clarity, particularly when they seek to reduce entitlements (reference is made to ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances), secs. 5-6), in order to permit staff consultation which seems to have been eluded in this case if the Respondent's interpretation is upheld considering that the changes to mobility entitlement, unlike other provisions, has not been highlighted in the administrative instruction;

f. Either the definition of "prior consecutive service" remained unchanged or the Administration "attempted to effect a change in an extremely oblique and opaque fashion that would have compromised any required consultation";

g. The impact to this *de facto* change in the interpretation of "prior consecutive service" is not negligible as it could amount to an annual financial loss in pay of up to USD15,700 and lead to the elimination of the entire mobility allowance should one day break in service occurs;

h. The Respondent's interpretation does not accord with the Organization policy encouraging staff mobility;

i. The Respondent's additional filing regarding the Seoul assignment is irrelevant in view of the Applicant's withdrawal of her claim in that respect.

Respondent's submissions

17. The Respondent's principal contentions may be summarized as follows:

a. Pursuant to sec. 2.1 of ST/AI/2011/6, the Applicant's periods of service on temporary appointments cannot be counted toward eligibility to mobility allowance;

b. There is no provision in the applicable administrative instruction, such as sec. 2.3 of ST/AI/2007/1 which was superseded by ST/AI/2011/6, granting an exception to the requirement of five years consecutive service and allowing for an aggregation of separate periods of service;

c. The Applicant's interpretation of "prior consecutive service" on the basis of the exception that was set out in sec. 2.3 of ST/AI/2007/1 is untenable: ST/AI/2007/1 was superseded by ST/AI/2011/6 and sec. 2.3 of ST/AI/2007/1 was abolished in ST/AI/2011/6, so that the five years' consecutive service must be served in the preceding five years without interruption;

d. In any event, the Applicant would not have been eligible under the old scheme since the requirements of secs 2.1 and 2.2 of ST/AI/2011/6 were not met: the Applicant served on a series of temporary appointments, which do not count toward the five years consecutive service for eligibility to mobility allowance assignment prior to 30 November 2011 upon her re-employment on a fixed-term appointment, or served on fixed-term appointment for less than one year;

e. Pursuant to staff rule 4.17(b), new appointments are fully applicable upon re-employment without regard to any period of prior service;

f. The term consecutive and continuous are used interchangeably in staff rules 3.13(a) and (b) because they are synonymous.

Consideration

Applicable law

18. Staff rule 3.13 (Mobility allowance) of ST/SGB/2011/1 dated 1 January 2011 and applicable at the time of the Applicant's request for mobility allowance states, in relevant parts (emphasis added):

> (a) A non-pensionable mobility allowance may be paid under conditions established by the Secretary-General to staff members in the Professional and higher categories, in the Field Service category, and to internationally recruited staff in the General Service category pursuant to staff rule 4.5 (c), provided that they:
>
> (i) Hold a *fixed-term or continuing appointment*;
>
> (ii) Are on *an assignment of one year or more* and are installed at the new duty station; and
>
> (iii) Have served for *five consecutive years* in the United Nations common system of salaries and allowances.
>
> The mobility allowance shall be discontinued upon receipt of such allowance for five consecutive years at the same duty station.
>
> (b) The amount of the mobility allowance, if any, and *the conditions under which it will be paid, shall be determined by the Secretary-General* taking into account the length of the staff member's *continuous* service in the United Nations common system of salaries and allowances, the *number and the category of duty stations at which he or*

she has previously served and the length of time served at each duty station.

21. Staff rule 4.17(a) and (b) (Re-employment**)** and Staff Rule 4.18 (Reinstatement) of ST/SGB/2011/1 state:

> **Rule 4.17**
> **Re-employment**
>
> (a) A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18.
>
> (b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.
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> **Rule 4.18**
> **Reinstatement**
>
> (a) A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within twelve months of separation from service may be reinstated in accordance with conditions established by the Secretary-General.
>
> (b) On reinstatement the staff member's services shall be considered as having been continuous, and the staff member shall return any monies he or she received on account of separation, including termination indemnity under staff rule 9.8, repatriation grant under staff rule 3.18 and payment for accrued annual leave under staff rule 9.9. The interval between separation and reinstatement shall be charged, to the extent possible, to annual leave, with any further period charged to special leave without pay. The staff member's sick leave credit under staff rule 6.2 at the time of separation shall be re-established; the staff member's participation, if any, in the United Nations Joint Staff Pension Fund shall be governed by the Regulations of the Fund.
>
> (c) If the former staff member is reinstated, it shall be so stipulated in his or her letter of appointment.

22. Sections 2.1 to 2.4 (Mobility Allowance) of ST/AI/2007/1, which was abolished on 1 July 2011, provided that (emphasis added):

Qualifying service

2.1 To qualify for payment of the mobility allowance, a staff member must have five years' prior consecutive service as a staff member in the United Nations or another organization of the common system. Service credited towards the five-year requirement may include service as a staff member in one of the categories eligible for payment of the allowance under section 1.4, as well as prior service in a non-eligible category when allowed under section 2.6.

2.2 At all duty stations classified in categories A to E, the mobility allowance is payable from the second assignment, provided the requirement of five years' continuing service has been met. At duty stations classified in category H, the mobility allowance is payable from the fourth assignment and only if the staff member has had two or more assignments, each for a period of one year or longer, at duty stations classified in categories A to E.

2.3 *Separate periods of service shall be considered as consecutive for the purpose of section 2.1 when their cumulative duration reaches five years within the prior six-year period*, unless broken by one of the following occurrences: resignation, abandonment of post, summary dismissal or dismissal for misconduct, agreed termination, termination for unsatisfactory service and separation from service under staff rule 104.14 (i) (i) of staff on probationary appointment. *Separation due to other occurrences, such as non-renewal of fixed-term appointment, or separation to take up another appointment within the United Nations common system, shall not break the period of service for the purposes of this section.*

2.4 Service shall not be considered as broken by periods of special leave, but full months of special leave without pay shall not be credited towards the five-year service requirement.

23. Sections 1.2 and 1.3 (Eligibility) of ST/AI/2011/6, which entered into force on 1 July 2011 and was applicable at the time of the Applicant's request for payment of mobility allowance, provides that:

1.2 Staff in the Professional and higher categories (i.e., international Professional staff), staff in the Field Service category and internationally recruited General Service staff shall be eligible for payment of the allowances under this scheme, provided they meet the requirements set out in section 1.3 and the particular conditions governing each allowance, as set out in sections 2, 3, 4 and 5 below.

1.3 Eligibility for the mobility and non-removal allowances under this scheme shall require an appointment to a duty station, or a reassignment to a new duty station, for a period of one year or longer,

normally giving rise to an assignment grant under staff rule 7.14. However, some of the allowances may also be paid when an appointment or assignment with payment of a daily subsistence allowance is subsequently extended to one year or longer, in which case the allowances may be paid as of the first day following discontinuation of the subsistence allowance.

24. Sections 2.1 to 2.4 of ST/AI/2011/6 states, in relevant part (emphasis added):

Qualifying service

2.1 To qualify for payment of the mobility allowance, a staff member *must have five years' prior consecutive service* as a staff member in the United Nations or another organization of the common system. Service credited towards the five-year requirement may include service as a staff member in one of the categories eligible for payment of the allowance under section 1.2, as well as prior service in a non-eligible category when allowed under section 2.6.

2.2 At all duty stations classified in categories A to E, the mobility allowance is payable from the second assignment, provided the requirement of five years' consecutive service has been met. At duty stations classified in category H, the mobility allowance is payable from the fourth assignment and only if the staff member has had two or more assignments, each for a period of one year or longer, at duty stations classified in categories A to E.

2.3 *Service shall not be considered as broken by periods of special leave*, but full months of special leave without pay shall not be credited towards the five-year service requirement.

2.4 Staff members holding temporary appointments are not eligible to receive the mobility allowance regardless of any exceptional extension of their appointment beyond 364 days.

25. ST/SGB/2009/4 states, in relevant parts:

2.1 Administrative issuances shall enter into force upon the date specified therein and shall remain in force until superseded or amended by another administrative issuance of the same or higher level and promulgated in accordance with the provisions of the present bulletin.

…

8.3 Administrative issuances promulgated in accordance with previous Secretary-General's bulletins concerning administrative

> issuances shall remain in force until superseded by an administrative issuance promulgated in accordance with the provisions of the present bulletin.

Findings

26. The Applicant indicated in her request for management evaluation that her application for mobility allowance was pending since January 2012. The Tribunal notes that no document was filed by the parties in this regard but the Respondent did not contest this assertion. It appears that the Applicant filed an application for mobility allowance in January 2012 and the applicable law at that date was ST/AI/2011/6. The Tribunal underlines that following the adoption of sec. 9 of ST/AI/2011/6 (which entered into force on 1 July 2011), ST/AI/2007/1 was abolished and no transitional provisions were included in ST/AI/2011/6. Consequently, in January 2012, when the Applicant requested mobility allowance, the applicable provisions were the ones from ST/AI/2011/6, sec. 2 (Mobility allowance).

27. After comparing the provisions applicable to mobility allowance before and after 1 July 2011 in ST/AI/2007/1 and ST/AI/2011/6, respectively, it results that sec. 2.3 from ST/AI/2007/1, which stated that, "[s]eparate periods of service shall be considered as consecutive for the purpose of section 2.1 when their cumulative duration reaches five years within the prior six-year period, unless broken by one of the following occurrences: resignation, abandonment of post, summary dismissal or dismissal for misconduct, agreed termination, termination for unsatisfactory service and separation from service under staff rule 104.149i)(i) of staff on probationary appointment. Separation due to other occurrences, such as non-renewal of fixed term appointment, or separation to take up another appointment within the United Nations common system shall not break the period of service for the purposes of this section" was abolished by ST/AI/2011/6. Sections 2.1 and 2.2 of ST/AI/2007/1 remained identical in ST/AI/2011/6. As a result of the abolition of sec. 2.3, former section 2.4 with the same content was renumbered sect. 2.3 and a new section 2.4 was included in ST/AI/2011/6 stating that: "[s]taff members holding temporary appointments are

not eligible to receive the mobility allowance regardless of any exceptional extension of their appointment beyond 364 days".

28. An abolished administrative instruction, recognizing the five years of cumulative separate periods of service reached within the prior six-year period (sec. 2.3 of ST/AI/2007/1) cannot apply to a request for mobility allowance submitted six months after a new administrative instruction with an application effective 1 July 2011 was adopted. The article published on the United Nations intranet (iSeek) on 2 July 2012 clearly contained comments to the abolished provision (sec. 2.3) in ST/AI/2007/1, which was no longer applicable at that date.

29. The Tribunal notes that the Applicant, as any staff member, has the obligation to know the staff regulations and rules and she cannot invoke abolished rules.

30. The Tribunal concludes that the correct Administrative Instruction (ST/AI/2011/6) was properly applied by DFS to review the Applicant's request for mobility allowance submitted in January 2012 and determine whether she was eligible based on qualifying service as a professional staff member.

31. As results from sec. 1.2 of ST/AI/2011/6, a staff member is eligible for payment of the mobility allowance if he or she meets the mandatory cumulative requirements set out in sec. 1.3 of ST/AI/2011/6 and the particular conditions governing mobility allowance as set out in sec. of ST/AI/2011/6 and reproduced below:

> a. The staff member must have an appointment to a duty station or a reassignment to a new duty station, for a period of one year or longer, normally giving rise to an assignment grant under staff rule 7.14 (sec. 1.3);
>
> b. The staff member must have five years prior consecutive service as a staff member in the United Nations or another organization of the common system (sec. 2.1);

> c. At all duty stations classified in categories A to E, the staff member must have a second assignment, provided that the requirement of five years consecutive service has been meet (sec. 2.2);
>
> d. At duty stations classified in category H, the staff member who has had previously two or more assignments, each for a period of one year or longer, at duty stations classified in categories A to E, must have a fourth assignment (sec. 2.2).

32. In January 2012, the Applicant was Applicant was appointed on an FTA for one year and the first requirement was fulfilled.

33. Regarding the second requirement, the Tribunal finds that, in the present case, the five years prior to the request for mobility allowance are to be calculated from 1 January 2006 until 31 December 2011.

34. These prior five years must be consecutive. The definition of "consecutive" as per the Webster's New World dictionary is "following in order, without interruption". The English dictionary defines "consecutive" as "following continuously". It results that, during the period mentioned above, the service must (shall) not be broken. In accordance with sec. 2.3 of ST/AI/2011/6, continuous service is not broken by periods of special leave, but full months of special leave without pay are (shall) not to be credited towards the five–year service requirement.

35. The Tribunal notes that as results from the parties' submissions, from 18 July 2004 to 31 July 2006, the Applicant served on a 300-series contract for OSCE. Between 1 August 2006 and 7 April 2007 the Applicant continued to be employed by OSCE. It results that from 1 January 2006 to 7 April 2007 the Applicant was employed by OSCE which is a non-UN entity, and this period cannot be taken into consideration because the five year consecutive (continuous) service must be in the United Nations or another organization of the United Nations common system (sec. 2.1).

36. On 8 April 2007, the Applicant was re-employed as Programme Management Officer with the United Nations Project Office of Governance in DESA, based in Seoul, Republic of Korea, on a project personnel appointment under the 200-series rules of the former Staff

Rules. On 5 December 2007, the Applicant was reassigned from the DESA office in Seoul to the DESA office in New York. The Applicant indicated in the 20 February 2015 joint submission that she "withdraws her claim to count her Seoul service as qualifying assignment for mobility purposes." On 8 April 2008, the Applicant's 200-series contract in DESA expired.

37. From 15 April 2008 through December 2008, the Applicant was re-employed as Programme Officer at the P-4 level with DESA in New York on an FTA, which was extended to 14 March 2009.

38. On 23 March 2009, the Applicant was re-employed as a Programme Officer at the P-4 level in New York for a two-month period on an FTA through 22 May 2009, pending selection of a candidate through the circulation of a temporary vacancy announcement ("TVA").

39. After being selected for the TVA position in DESA, the Applicant's temporary appointment was extended through 31 December 2009. The Applicant resigned from this position with effect from 23 September 2009 for the purpose of effecting a new appointment with DPKO at the United Nations Headquarters.

40. On 29 September 2009 the Applicant was re-employed with DPKO on a TVA.

41. From 29 September 2009 to 27 September 2011, the Applicant served on a series of TVAs: 29 September to 31 December 2009; 1 January to 30 June 2010; 1 July to 27 September 2010; 28 September to 27 December 2010; 28 December 2010 to 31 January 2011; 1 February to 30 April 2011; 1 May to 31 July 2011 and 1 August through 27 September 2011.

42. On 27 September 2011, the Applicant separated from service and no request for mobility allowance was filed before her separation.

43. The Tribunal finds that between 1 January 2006 and 27 September 2011, the following periods cannot be considered and counted as continuous service: 1 January 2006

to 7 April 2007 (OSCE), 8 April to 5 December 2007 (DESA Seoul), which represents a total of 1 year, 11 months and 5 days.

44. On 30 November 2011, two months after her separation, the Applicant was re-employed with UNMISS on an FTA.

45. In accordance with the mandatory provisions from staff rule 4.17 in ST/SGB/2011/1 applicable to the Applicant's FTA starting on 30 September 2011, a former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18 and the terms of the new appointment shall be fully applicable without regards to any period of former service. When a staff member is re-employed under this rule, the service shall not be considered as continuous between the prior and new appointments.

46. The Applicant, who was re-employed within twelve months after her separation, was not reinstated by the Secretary-General and she did not request her reinstatement. The Applicant did not indicate any reservations regarding her previous service to be counted for being eligible for the payment of the mobility allowance when she started her new FTA on 30 November 2011, and no request for mobility allowance was filed before or on 30 November 2011. Consequently, any period of former service cannot be taken into consideration and has no legal effect to the Applicant's eligibility for payment of the mobility allowance since there is no continuity between her FTA starting on 30 November 2011 and any of the Applicant's prior periods of service.

47. The period of continuous service before January 2012, which was less than five years, is not to be taken into consideration since the Applicant's first assignment to be considered eligible for the payment of the mobility allowance is the FTA starting on 30 November 2011. The Tribunal concludes that one of the cumulative requirements for being eligible for payment of mobility allowance, namely five consecutive years of service in the United Nations common system, was not met in the Applicant's case.

Conclusion

In the light of the foregoing, the Tribunal **DECIDES**:

The application is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 31st day of July 2015

Entered in the Register on this 31st day of July 2015

(Signed)

Hafida Lahiouel, Registrar, New York