



**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

HAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT ON LIABILITY AND  
RELIEF**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Stephen Margetts, ALS/OHRM  
Sarahi Lim Baro, ALS/OHRM

## **Introduction**

1. The Applicant is an Auditor with the Audit Unit of the United Nations Assistance Mission for Iraq (UNAMI) at the P-3 level. He filed the current Application on 4 November 2013 to contest “the memo dated June 16, 2013 reversing the decision made on February 14, 2013 to change [his] duty station to Kuwait from Baghdad, effectively on March 1, 2013” (Contested Decision).

## **Procedural history**

2. The Application was filed on 4 November and served on the Respondent on 5 November 2013.

3. The Respondent filed a Reply on 4 December 2013 in which he asserted that the Application was not receivable *ratione temporis* because the Applicant had failed to request management evaluation within the deadline prescribed under staff rule 11.2(c).

4. Pursuant to Order No. 262 (NBI/2013), the Applicant filed his comments on the Respondent’s Reply on 19 December 2013.

5. On 23 January 2014, the Applicant filed a Motion for the “Production of Documents of the original SRSG’s decision”.

## **Oral hearing**

6. The United Nations Appeals Tribunal (UNAT) has previously ruled that<sup>1</sup>:

[T]he UNDT has broad discretion in all matters relating to case handling and that, in order to ensure that the case is fairly and expeditiously adjudicated and that justice is served, the Appeals Tribunal should not intervene hastily in the exercise of the jurisdictional power conferred on the Tribunal of first instance.

7. After a careful review of the record, this Tribunal concluded that the issues for decision were clearly defined in the Parties’ submissions and that the documentary evidence provided adequately addressed the issues raised.

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<sup>1</sup> *Hersh* 2012-UNAT-243. See also *Bertucci* 2010-UNAT-062 and *Calvani* 2012-UNAT-257.

8. Consequently, the Tribunal, in accordance with art. 19 of the Tribunal's Rules of Procedure, has determined that an oral hearing is not required in this case and will rely on the Parties' pleadings, written submissions and the documentary evidence.

### **Facts**

9. By a letter dated 29 May 2012, from the Field Personnel Division of the Department of Field Support (FPD/DFS), the Applicant was offered a one year fixed-term appointment as an Auditor at the P-3 level with UNAMI (Offer of Appointment). The Statement of Emoluments (Annex 1) attached to the Offer of Appointment stipulated that the Applicant's duty station was Baghdad.

10. The UNAMI Audit Unit reports to the Special Representative of the Secretary-General (SRSG) of UNAMI and the Chief of Peacekeeping Audit Services, Internal Audit Division of the Office of Internal Oversight Services (Chief/PAS/OIOS).

11. The Applicant joined UNAMI on 3 November 2012. He initially attended civilian pre-deployment training in Brindisi, Italy, from 5 – 9 November 2012 and additional training in Amman, Jordan, from 11 – 14 November 2012.

12. On 12 November 2012, the Applicant's Movement of Personnel form was approved by the Chief of Administrative Services for him to travel to Baghdad on 15 November. This trip was subsequently cancelled.

13. On 13 November 2012, the Applicant signed a Letter of Appointment stipulating that his duty station was Kuwait. A personnel action form was generated the same day indicating his organizational unit as "unami Kuwait" and his duty station as Kuwait.

14. By a letter dated 14 November 2012, the Chief of Staff of UNAMI informed the Chief/PAS/OIOS that due to the impact the crisis in Syria was having on UNAMI's Baghdad operations, the UNAMI SRSG had decided to reassign and/or relocate staff that did not have to be permanently based in

Baghdad to accomplish their work, including the Auditing Unit, to Kuwait. The Applicant was not copied on this communication but his supervisor was copied.

15. On 15 November 2012, the Chief of Administrative Services sent an email to a number of UNAMI officials regarding the relocation of the Auditors to Kuwait. The Applicant was not copied on this communication but his supervisor was copied.

16. On 17 November 2012, the Chief of Administrative Services instructed the Chief of the UNAMI Human Resources Section (Chief/HRS) to request FPD/DFS to redeploy the posts in the Audit Unit and adjust the relocation entitlements accordingly. By a memorandum dated 20 November 2012, the Chief/HRS requested that the Officer-in-Charge (OIC) of the UNAMI Finance Section effect payment of the Applicant's relocation and assignment grants with Kuwait as his duty station.

17. The Applicant relocated from Amman to Kuwait on 6 December 2012.

18. By a memorandum dated 14 February 2013, the OiC of the Office of the Chief of Staff, directed the Acting Chief of Mission Support to change the Applicant's duty station from Baghdad to Kuwait with effect from 1 March 2013 and requested that the necessary Personnel action "to formalize the transfer" of the Applicant be taken. This memorandum was copied to the Chief/HRS.

19. On 17 February 2013, the Chief/HRS informed the UNAMI Human Resources Officer handling the transfer that the Applicant was on "travel status in Kuwait. In fact it is a reassignment with change of DS".

20. On 8 April 2013, HRS issued a Personnel Action form to indicate the Applicant's "within-mission reassignment from Baghdad to Kuwait effective 01/03/2013" in accordance with the memorandum of 14 February 2013.

21. By a memorandum dated 21 April 2013, the Human Resources Operations Manager informed the Chief Finance Officer that the Applicant's duty station was Baghdad for the period 3 November 2012 to 28 February 2013 and that he had been reassigned to Kuwait effective 1 March 2013. Thus the Human Resources

Operations Manager requested that the Chief Finance Officer make the necessary adjustments on the lump sum portion of the assignment grant previously disbursed on the basis of the 20 November 2012 from the Chief/HRS. Lastly, the Human Resources Operations Manager informed the Chief Finance Officer that “this memo supersedes our memo dated 20 November 2013 [sic]. Kindly effect the payments accordingly”.

22. In March 2013, the Applicant submitted a claim for payment of his Daily Subsistence Allowance (DSA) from 6 December 2012 to 28 February 2013. He followed up with the Payroll Section on this claim on 1 and 26 May 2013 without success. According to the Applicant, he called the Chief Finance Officer in early June 2013 about his claim but was told that some clarifications were being sought from the Chief of Administrative Services.

23. On 19 June 2013, the Applicant received an inter-office memorandum dated 16 June 2013 from the Chief of Staff requesting that the Chief of Mission Support formalize the transfer of the Applicant from Baghdad to Kuwait with effect from 19 November 2012.

24. The Applicant requested management evaluation of the decision to retroactively change his duty station on 14 July 2013.

25. The Management Evaluation Unit (MEU) informed the Applicant by a letter dated 19 August 2013, that his request for management evaluation was not receivable because the issues he had raised in his request were time-barred.

26. The Applicant filed an Application with the Dispute Tribunal on 4 November 2013.

### **Issues**

27. The first issue for determination in this judgment is whether the Applicant’s Application of 4 November 2013 is receivable.

28. If the Application is receivable, then the Tribunal will consider whether the reversal of the decision made on 14 February 2013 to change the Applicant’s

duty station from Baghdad to Kuwait, effective 1 March 2013, violated the Applicant's rights.

**Is the Applicant's Application of 4 November 2013 receivable?**

***Respondent's submissions***

29. The Respondent submits that the Application is not receivable *ratione temporis* because the Applicant failed to request management evaluation of the contested decision within the 60-day statutory deadline provided under staff rule 11.2(c). To this end, the Respondent submits that:

a. The Applicant's Letter of Appointment, which was signed and dated 13 November 2012, and the Personnel Action form, approved and finalized on 13 November 2012, clearly conveyed to the Applicant that Kuwait was his duty station. He travelled to Kuwait and took up his duties on 6 December 2012. Thus, at the very latest he was aware of the decision by 6 December 2012.

b. The Applicant had 60-days to file a request for management evaluation of the contested decision, that is, by 12 January 2013 if the 13 November 2012 date is used, or by 4 February 2013 if the 6 December 2012 date is used. Since he submitted his request on 14 July 2013, approximately five to six months after the deadline prescribed in staff rule 11.2(c), his Application is time-barred and not receivable.

c. The Applicant seeks to re-characterize the contested decision in his Application by seeking to appeal "[t]he memo dated June 16 2013" allegedly reversing "the decision made on 14 February 2013 to change [his] duty station to Kuwait from Baghdad". Contrary to the Applicant's claims, there was no decision on 16 June 2013 to change the location of his duty station. This decision was made and communicated to him in November 2012 in his Letter of Appointment.

d. Additionally, the alleged decision of 16 June 2013 was not the decision contested in the Applicant's request for management evaluation.

He cannot seek to contest a new decision before the Dispute Tribunal that he has not previously subjected to management evaluation.

e. Further, the 16 June 2013 memorandum was not a decision to change the Applicant's duty station. Instead, the memorandum was issued to confirm that the Applicant's duty station was Kuwait, in response to the Applicant's request to be paid DSA for the period he was in Kuwait. The memorandum expressly refers to the 14 November 2012 communication of the decision that the Applicant would be stationed in Kuwait. Reference to, and application of, an earlier decision is not an appealable administrative decision.

### *Applicant's submissions*

30. The Applicant submits that the Respondent's allegation that the contested decision in his Application was not the same decision contested in his request for management evaluation is incorrect. Further, both MEU and the Respondent wrongly interpreted the challenge contained in his management evaluation request as a challenge against the Letter of Appointment of 13 November 2012.

31. The decision to "retroactively change his duty station" that he referred to in his request for management is in relation to the 16 June 2013 memorandum, which retroactively changed the effective date of his duty station to Kuwait from 1 March 2013 as communicated in the 14 February 2013 memorandum. In effect the 16 June 2013 memorandum, which made the effective date 19 November 2012, reversed the decision contained in the 14 February 2013 memorandum.

32. The Applicant submits that he was unaware of the Letter of Appointment until he received the MEU response and since he was not copied on the 14 November 2012 email from the Chief of Staff to the Chief/PAS/OIOS, he did not receive any written communication from management regarding his duty station until the 14 February 2013 memorandum was issued. Thus, his Offer of Appointment remained valid until it was amended by the 14 February 2013 memorandum.

33. The 14 February 2013 memorandum clarified, amended and superseded any previous decision by stating that his duty station should be changed from Baghdad to Kuwait effective on 1 March 2013. Since he had already accepted the decision contained in the 13 February 2013 memorandum prior to the 16 June 2013 memorandum, it was only reasonable and fair for him to seek a remedy based on that memorandum, which had now been reversed.

### *Considerations*

34. Pursuant to art. 8.1(c) of the Statute of the Dispute Tribunal, the jurisdiction of the Dispute Tribunal can only be invoked in certain cases if a contested administrative decision has been previously submitted for management evaluation. Thus, a mandatory first step for an applicant prior to the submission of an application to the Dispute Tribunal is to request a management evaluation of the contested administrative decision.

35. Staff rule 11.2(a) provides in relevant part that a staff member wishing to formally contest an administrative decision shall, as a first step, submit a request for management evaluation to the Secretary-General.

36. Staff rule 11.2(c) stipulates that a request for management evaluation shall not be receivable unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

37. An important aspect of the receivability issue in this matter is the precise decision that the Applicant is contesting. On one hand, the Respondent is contending that the Applicant is in fact contesting the decisions contained in the Letter of Appointment and Personnel Action form of 13 November 2012 and that the Applicant is mischaracterizing his claim in his Application by referring to the 16 June 2013 memorandum.

38. The Applicant on the other hand is asserting that he has never sought to challenge the Letter of Appointment but that he is challenging the 16 June 2013



memorandum that purported to change the contractual scheme that was introduced in the 14 February 2013 memorandum.

39. Under these circumstances, it is incumbent on the Tribunal to examine the totality of the circumstances outlined in the Applicant's submissions to ensure that there is no misinterpretation of his pleadings.

40. In his request for management evaluation, the Applicant specifies the decision he is requesting MEU to evaluate as the "[d]ecision to retroactively change his duty station in violation of his contract of employment, and without compliance with proper procedures". He indicates that the date he became aware of this decision was 19 June 2013, which corresponds to the date on which the 16 June memorandum from the Chief of Staff was communicated to him by the Chief/HRMS. The Applicant, in a supplementary document attached to his request for management evaluation, provided the following insight on his request:

**Relevant facts omitted in the June 16 memo**

1. An earlier correspondence on the same issue which is materially different had been issued three months ago; was signed by the officers in charge at the same offices where this new correspondence is coming from. The signatories of this later correspondence cannot claim to be unaware of the earlier correspondence and have offered no explanation as to the basis for this new memo. In fact the CMS a.i. (Mr Raja) who signed the earlier memo was the reporting officer of the CAS, who is now attempting to set aside a decision of her former boss. The CAS was in a position to raise any objections she had when Mr Raja was still in the Mission but had chosen to do so after Mr. Raja left.
2. The earlier communication had indicated that the effective change in Duty Station would be from March 1, 2013, formed the basis for personal action and adjustments made to my payroll by UNHQ.
3. An e-mail communication had indicated that the effective change in Duty Station would be from March 1, 2013 was issued by the same person, Ms. JM, the Chief Personnel Officer, who is also informing me again about new dates of November 2012.
4. I was never copied on and till now have not seen the e-mail communication to my Service Chief and which is now considered to be my notification of a change in my duty station.

41. In his 4 November 2013 Application to the Dispute Tribunal, the Applicant described the contested decision as “[t]he memo dated June 16, 2013 reversed the decision made on February 14, 2013 to change my duty station to Kuwait from Baghdad, effectively on March 1, 2013”. He indicates in the Application that the date of the decision is 16 June 2013 and that it was communicated to him on 19 June 2013.

42. Taking into consideration the Applicant’s specification of the date he became aware of the decision as 19 June 2013 and the extensive explanation he provided in the supplementary document to his management evaluation request regarding the 16 June memorandum, the Tribunal finds that the Respondent misinterpreted the decision that the Applicant seeks to contest as the decision contained in the Letter of Appointment and the Personnel Action form of 13 November 2012.

43. Noting that the Applicant is not a lawyer and that he is not represented by a lawyer, the Tribunal can understand the variances in the language he utilized in his request for management evaluation and his Application. Although the Applicant did not use the exact same wording in the two documents challenging the Contested Decision, it is reasonable to conclude that the decision is the same in both the management evaluation request and the Application.

44. The Tribunal concludes that the decision the Applicant is contesting now and sought management evaluation of was the decision contained in the 16 June 2013 memorandum, which was communicated to him on 19 June 2013. Accordingly, he complied with staff rule 11.2(a) and 11.2(c).

45. The question now is whether the decision of 16 June 2013 is receivable. The Respondent asserted irreceivability on two limbs. Firstly, he asserted that the Application is time-barred because the Applicant failed to request management evaluation by 12 January 2013, if the 13 November 2012 Letter of Appointment date is used, or by 4 February 2013, if his 6 December 2012 relocation date to Kuwait, is used. Since the Tribunal has already decided that the decision the Applicant is challenging is the one contained in the 16 June 2013 memorandum, neither the 13 November 2012 or 6 December 2012 dates used by the Respondent

for his computation of time is correct. The record shows that the Applicant received the contested decision on 19 June 2013 and that he submitted his request for management evaluation on 14 July 2013, which was well within the delay prescribed by staff rule 11.2(c). Accordingly, the Tribunal rejects the Respondent's submission that the Application is not receivable because it is time-barred.

46. The second limb upon which the Respondent relied was that the 16 June 2013 memorandum was not an appealable administrative decision because it was in fact a mere confirmation of the 14 November 2012 email from the Chief of Staff to the Chief/PAS/OIOS regarding the decision to transfer the Applicant from Baghdad to Kuwait. The Respondent submitted that reference to, and application of, an earlier decision is not an appealable administrative decision. The Tribunal wishes to point out at this juncture that the 14 November 2012 email referred to by the Respondent was in fact not communicated to the Applicant. A careful review of the list of recipients reveals that while the Applicant's immediate supervisor was copied, the Applicant was not. Additionally, the Chief Administrative Services reiterated the decision to relocate the auditors to Kuwait in an email dated 15 November 2012 but this communication was sent to the Applicant's supervisor and one T. Han. The Applicant was not copied on this communication either.

47. Was the 16 June 2013 memorandum an appealable administrative decision or merely a restatement of an earlier decision?

48. Article 2.1 of the Tribunal's Statute states:

**Article 2**

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all

relevant administrative issuances in force at the time of alleged non-compliance.

49. In Judgment No. 1157, *Andronov* (2003), the former United Nations Administrative Tribunal defined an administrative decision as follows:

A unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules and regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences [...]

50. MEU informed the Applicant that the 14 February 2013 memorandum requesting a change in duty station from Baghdad to Kuwait effective 1 March 2013 was clearly an error since the documentation reflects a previous memorandum from the Chief/HRMS dated 20 November 2012 to the OIC of the Finance Section reflecting payment of assignment and relocation grants at the Kuwait rate.

51. Whether the 14 February 2013 memorandum was an error or not is a substantive issue that will not be delved into at this stage. However, the record shows that the memorandum of 14 February 2013 produced direct legal consequences for the Applicant because on 8 April 2013, the Human Resources Section issued a Personnel Action form to indicate his “within-mission reassignment from Baghdad to Kuwait effective 01/03/2013”. This action was taken in accordance with the memorandum of 14 February 2013.

52. Additionally, the 14 February 2013 memorandum prompted the Human Resources Operation Manager to write to the Chief Finance Officer on 21 April 2013, to request adjustments on the lump sum portion of the assignment grant that had previously been disbursed as a result of the 20 November 2012 memorandum. The requested adjustment took into account the fact that the Applicant’s duty station was Baghdad for the period 3 November 2012 to 28 February 2013 and that he had been reassigned to Kuwait effective 1 March 2013. The most notable

part of the 21 April 2013 memorandum was that the Human Resources Operation Manager informed the CFO that “this memo supersedes our memo dated 20 November 2013<sup>2</sup> [sic]. Kindly effect the payments accordingly”.

53. On 29 April 2013, the Applicant received his Statement of Earnings and Deductions for the period ending 30 April 2013, which retroactively adjusted his emoluments to reflect that his duty station was Baghdad until 1 March 2013.

54. The 14 February memorandum clearly triggered important Human Resources actions, which in turn triggered changes to the Applicant’s contract of employment. The Administration then decided to reverse the decision contained in the 14 February 2013 memorandum by issuing the 16 June 2013 memorandum.

55. Wittingly or unwittingly, the 16 June 2013 memorandum had the effect of once again changing the Applicant’s contract of employment by retroactively changing the effective date of the Applicant’s transfer from Baghdad to Kuwait from 1 March 2013 to 19 November 2012. Consequently, the Tribunal concludes that this memorandum constitutes an administrative decision pursuant to art. 2.1 of the UNDT Statute as it was a unilateral act of the Administration of individual application carrying direct legal consequences for the Applicant.

### ***Conclusion***

56. In light of the foregoing, the Tribunal finds the Application to be receivable.

**Did the reversal of the decision made on 14 February 2013 to change the Applicant’s duty station from Baghdad to Kuwait, effective 1 March 2013, violate the Applicant’s rights?**

### ***Relevant facts***

57. These are the facts relevant to the substantive aspect of the Application.

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<sup>2</sup> Should read as 2012.

- a. When the Applicant joined UNAMI as a resident auditor on 3 November 2012, his duty station was Baghdad, Iraq.
- b. While he was attending mandatory training in Amman, Jordan, for Baghdad-based staff, a Movement of Personnel form was prepared and approved on 12 November 2012 for him to take up his job in Baghdad on 15 November.
- c. On the evening of 14 November 2012, he received a phone call from the Movement Control Assistant in Amman informing him that he would not be travelling to Baghdad and that he would be briefed further by his supervisor, the Chief Resident Auditor.
- d. On the same night, the Chief Resident Auditor, who was already in Baghdad, informed the Applicant that both he and the Applicant were being temporarily relocated to Kuwait “because there were accommodation challenges” in Baghdad.
- e. The Applicant joined the Audit Team in Kuwait on 6 December 2012 after remaining in Jordan for over three weeks.
- f. Whilst the Applicant was in Amman waiting for his visa to travel to Kuwait, he signed a Letter of Appointment dated 13 November 2012 in which it was indicated that his duty station was Kuwait effective 3 November 2012.
- g. The Applicant agreed to a modification of his duty station “recognizing the SG’s discretion to effect such changes”. He expected however that the proper procedures would follow in regard to his new entitlements and reassignment costs.
- h. On 29 April 2013, the Applicant received a Statement of Earnings and Deductions for the period ending 30 April 2013 which retroactively adjusted his salary to reflect the decision that his duty station was Baghdad until 1 March 2013.

- i. On 19 June 2013, the Applicant received a memorandum dated 16 June 2013 from the Chief/HRS informing him that the change in his duty station from Baghdad to Kuwait was effective as from 19 November 2012.

***Applicant's submissions***

58. The Applicant avers that the memorandum of 14 February 2013 in which it was indicated that his duty station should be changed from Baghdad to Kuwait effective 1 March 2013 was ignored.

59. The Applicant now prays that the Respondent be restrained from carrying out the decision to change his duty station effective 19 November 2012 and to reinstate the 14 February memorandum that indicated that the effective date of the change of his duty station should be 1 March 2013. He is also claiming DSA for the period 6 December 2012 to 28 February 2013 on the basis that his duty station was Kuwait effective 1 March 2013. He also prays that the Respondent be directed not to recover any amounts paid to him in April 2013 on the basis of the 14 February 2013 memorandum.

***Respondent's submissions***

60. The Respondent avers that the Applicant's claims are without merit because payment of hazard pay, mobility allowance and other such additional entitlements are not meant to profit staff members of the Organization. These payments are made in recognition of the difficult and stressful work and living conditions encountered by staff while working in hardship duty stations such as Baghdad. Since the Applicant did not serve in Baghdad, he is not entitled to the payment of the additional entitlements.

61. The Respondent further submits that the Applicant's contract of employment with the Organization is detailed in his Letter of Appointment. Both his Letter of Appointment and his Personnel Action form demonstrate that his assigned duty station is, and has always been, Kuwait.

62. The Respondent also submits that staff regulation 1.2(c) provides that staff members are subject to the authority of the Secretary-General, and to assignment by him, to any of the activities or offices of the Organization.

63. Lastly, the Respondent avers that the decision to locate the mission Audit team, including the Applicant's position, to Kuwait was made due to limited secure accommodation in Iraq and the need to ensure the safety and security of staff stationed in Baghdad.

### ***Considerations***

*Was the decision to relocate the Applicant to Kuwait lawful?*

64. Staff regulation 1.2(c) provides that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations”.

65. It is for the Administration to determine whether a measure relating to assignment of a staff member is in its interest or not<sup>3</sup>.

66. In *Hepworth* 2015-UNAT-503, the United Nations Appeals Tribunal (UNAT) held that “[t]raditionally, the reassignment of staff members’ functions comes within the broad discretion of the Organization to use its resources and personnel as it deems appropriate”.

67. However, the decision to assign or to reassign a staff member must be properly motivated, and not tainted by improper motive, or taken in violation of mandatory procedures<sup>4</sup>.

68. The exercise of the discretion is reviewable according to the test laid down in *Sanwidi* 2010-UNAT-084:

When judging the validity of the Secretary-General’s exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant

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<sup>3</sup> *Rees* 2012-UNAT 266.

<sup>4</sup> *Ibid.*



matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.

69. The Tribunal finds that the relocation of the Applicant to Kuwait was prompted by administrative and humanitarian reasons based on space constraints in UNAMI in order to accommodate more humanitarian staff. The Tribunal takes the view that the reassignment was a proper exercise of the discretion of the Secretary-General in the organisation of the work in UNAMI. The Secretary-General had the delicate and difficult task of balancing priorities namely the influx of refugees from Syria that required more focus on humanitarian work and the reassignment of the audit team to Kuwait. The exercise of his discretion by the Secretary-General was not tainted by any improper motives. Nor was it perverse or absurd. It is not for the Tribunal to substitute its judgment for that of the Secretary-General regarding organisation of work which remains his sole province. The Tribunal's role is limited to verifying whether a decision was taken for unlawful reasons and in the present case, it was not.

*Is the Applicant entitled to the hardship allowance?*

70. Section 1.6 of ST/AI/2011/6 (Mobility and hardship scheme) sets out the category and designation of duty stations. It reads:

All duty stations are placed by the International Civil Service Commission in one of six categories: H, and A to E. Duty stations in category H are headquarters and similarly designated locations where the United Nations has no development or humanitarian assistance programme, or locations in countries that are members of the European Union. The A to E categories comprise all other duty stations, classified by order of difficulty of conditions of life and work. Staff are informed of the category of their duty station on an annual basis or more frequently if there is a change in classification.

71. Section 3 of ST/AI/2011/6 stipulates:

3.1 The hardship allowance shall be payable to eligible staff members who are assigned to duty stations classified in categories

B, C, D and E from the beginning of their first assignment to any of those duty stations for the duration of their assignment to those locations.

3.2 Eligible staff members who meet the requirement in section 3.1 above shall be eligible for the hardship allowance upon taking up their first assignment, irrespective of whether they receive an assignment grant.

3.3 If there is a change in the category of the duty station to which a staff member is assigned during the course of an assignment, an appropriate adjustment shall be made in the amount to which the staff member is entitled or the allowance shall be discontinued if no amount is payable, as of the effective date of the implementation of the hardship classification.

72. Lastly, section 7 of ST/AI/2011/6/Amend. 1 states:

Adjustments or discontinuation of payments shall be made when applicable as a result of change of duty station, change of dependency status, change of designation or classification of duty station, promotion, completion of five or six years' consecutive service at the duty station, as applicable, period on special leave or separation. An adjustment shall also be made if a staff member receives a special post allowance to a higher level which would bring the staff member's entitlement into another range (this normally would apply for special post allowances at the P-4, D-1 or FS-7 level), thus giving rise to a higher amount of the allowances in accordance with the amounts specified in the tables in the annex.

73. The principles governing mobility and hardship allowance are the following from a reading of ST/AI/2011/6:

- a. It is the responsibility of the International Civil Service Commission to classify duty stations for the purposes of hardship and mobility entitlements.
- b. Duty stations are classified in six categories H and A to E.
- c. The H duty stations refer to headquarters and similarly designed locations.

- d. The H duty stations cover New York and similarly designated duty stations where the United Nations has no development or humanitarian assistance programme or locations in the European Union countries.
- e. The A to E categories comprise all other duty stations and are classified by order of difficulty of conditions of life and work.
- f. Only eligible staff members are entitled to hardship allowance.
- g. Eligibility and the amount a staff member is entitled to depend on the category of the duty station where the staff member is physically deployed and located.
- h. Eligible staff members are entitled to hardship allowance upon taking their first assignment.
- i. Adjustments or discontinuation of payments are made as a result of a change of duty station or change of designation or classification of a duty station.
- j. Adjustments are also made as a result of a change of dependency status, promotion, completion of five to six years' consecutive service at a duty station.

74. The purpose of a hardship allowance is “to compensate for the varying degrees of hardship at different duty stations” (section 1, 1.1(a) of ST/AI/2011/6). In the Applicant’s case the eligibility requirement would have been met if he had been physically located in Iraq. But he was never physically posted in Iraq though a decision had been initially taken for him to be deployed there. This never materialized as there was a change in his duty station in view of the accommodation conditions prevailing in Iraq and he was deployed immediately to Kuwait from Amman after his mandatory training.

75. Kuwait is a category A duty station where hardship is not payable. The Applicant therefore did not meet the eligibility requirement of being in a duty station in categories B, C, D or E to be entitled to any hardship allowance.

76. There is no doubt that the Administration of UNAMI got bogged down in confusion, negligence or oversight by sending the 14 February 2013 memorandum.

77. The Special Representative of the Secretary-General had determined in November 2012 that the audit team should be relocated in Kuwait. The Applicant signed a Letter of Appointment dated 13 November 2012 in which it was indicated that his duty station would be Kuwait.

78. Notwithstanding that sequence of events the UNAMI Administration deemed it fit and proper to issue a memorandum on 14 February 2013 under the hands of Mr. Jen Kristensen, Officer in Charge, Chief of Staff, addressed to Mr. Raja Arumugham, acting Chief of Mission Support, through Ms. Padma Nandkumar, Chief Administrative Services, and copied to Ms. Jacinta Muhoho, Chief Human Resources Unit, indicating that the duty station of the Applicant should be changed from Baghdad to Kuwait effective 1 March 2013.

79. That memorandum conveys the fact that the duty station of the Applicant was Baghdad until 1 March 2013 when he had effectively left Amman, Jordan, for Kuwait on 6 December 2012. The memorandum of 14 February 2013 states that “[The] Chief Resident Auditor arrived in Baghdad on 10 November while [the Applicant] arrived on 15 November 2013”. The year 2013 is patently a mistake and should read 2012. The Applicant in fact left Jordan on 6 December 2012 and never went to Baghdad.

80. The confusion, mistake, negligence or oversight of top officials of UNAMI referred to above should not however unjustly benefit the Applicant. The Applicant is neither entitled to any DSA or hardship allowances as he was never in Baghdad, which is classified as category E for purposes of hardship allowances and other entitlements as provided by ST/IC/2013/23 (Classification of duty stations and special entitlements for staff members serving at designated duty

stations)<sup>5</sup>. Kuwait is classified as a category A duty station and like category H duty stations does not entitle a staff member to any hardship allowance or DSA. The Applicant cannot be entitled to what is not due to him in law.

81. The Tribunal finds that the reversal of the 14 February 2013 decision to change the Applicant's duty station from Baghdad to Kuwait, effective 1 March 2013 did not violate the Applicant's rights.

### **Judgment**

82. The Application is dismissed in its entirety.

*(Signed)*

Judge Vinod Boolell

Dated this 22<sup>nd</sup> day of October 2015

Entered in the Register on this 22<sup>nd</sup> day of October 2015

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi

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<sup>5</sup> Replaced in succession by ST/IC/2014; ST/IC/2014/17 and ST/IC/2015/3.