



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

VATTAPALLY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Robbie Leighton

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. On 19 April 2016, the Applicant, Chief, Budget and Finance Section at the United Nations Assistance to the Khmer Rouge Trials (“UNAKRT”) filed an application contesting the decision not to pay him mobility allowance.
2. The Respondent filed his reply on 20 May 2016.

Facts

3. The Applicant was first employed by the Organization in 1993 in the General Service category. He resigned on 1 August 2014, and on the same day received a temporary appointment with the Office of the United Nations High Commissioner for Refugees (“UNHCR”). On 1 January 2015, the Applicant resigned from UNHCR and joined the Department of Management on another temporary appointment. On 12 June 2015, he joined UNAKRT, once again on a temporary appointment.
4. On 1 September 2015, the Applicant separated from his temporary appointment at UNAKRT and was re-appointed under a fixed-term appointment with the same organization. He later requested UNAKRT to pay him mobility allowance effective 1 September 2015, which was rejected.
5. After examining the file, the Tribunal considered that it was not necessary to hold a hearing to make a determination of the issues arising from the case since they are purely of a legal nature. Therefore, by Order No. 181 (GVA/2017) of 20 September 2017, the Tribunal directed the parties to file comments, if any, to the matter being determined without holding a hearing.
6. On 29 September 2017, both parties filed submissions agreeing to having the matter determined based on the pleadings on file. On the same date, the Applicant filed some additional submissions.

Issue

7. The only issue for determination is whether the Applicant is entitled to be paid mobility allowance as of 1 September 2015.

Consideration

8. The then applicable law related to mobility and hardship was ST/SGB/2014/1 (Staff Rules and Staff Regulations of the United Nations) (“former Staff Rules”) and ST/AI/2011/6 (Mobility and hardship scheme) (“former mobility AI”), both now abolished.

9. The former Staff Rules *inter alia* provided that:

Rule 3.13

Mobility allowance

(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** (emphasis added);

(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.

10. The former mobility AI *inter alia* provided that:

Section 1

General provisions

...

Eligibility

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.

...

Section 2 Mobility allowance

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.

...

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

11. The provisions of both the former Staff Rules and the former mobility AI are very clear in that, *staff members holding temporary appointments are not eligible to receive mobility allowance.*

12. Since 1 August 2014, the Applicant held successive temporary appointments until 1 September 2015, when he was granted a fixed-term appointment. In considering what amounts to qualifying service for the grant of mobility allowance, both former staff rule 3.13(i) and sec. 2.4 of ST/AI/2011/6 categorically exclude staff members holding temporary appointments from consideration. Former staff rule 3.13(i) clearly provides that the staff member must *hold a fixed-term or continuing appointment*. Therefore, the period when the Applicant held temporary appointments cannot count towards the requirement of five years' prior consecutive service.

13. Additionally, former staff rule 4.17 provides for re-employment and that when a former staff member is re-employed, he or she is given a new appointment unless he or she is reinstated as per former staff rule 4.18. It further provides that, “when a staff member is re-employed under [Staff rule 4.17,] the service shall not be considered as continuous between the prior and new appointments”.

14. The Applicant resigned in 2014 from his appointment in the General Service category, which he had held since 1993, and later received successive temporary appointments for a period of one year before being re-employed on a fixed-term appointment on 1 September 2015. Though his employment with the Organization was consecutive, part of the consecutive employment was marked by a type of contract that does not amount to qualifying service for the purposes of being granted mobility allowance.

Conclusion

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

The application is rejected in its entirety.

(Signed)

Judge Rowan Downing

Dated this 30th day of April 2018

Entered in the Register on this 30th day of April 2018

(Signed)

René M. Vargas M., Registrar, Geneva