



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

GERMAN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Steven Dietrich, ALD/OHR, UN Secretariat

## **Introduction**

1. This judgment follows the reasoned decision of 17 December 2018 in Judgment No. UNDT/2018/133, wherein the Dispute Tribunal held that the present application is receivable. The instant Judgment therefore concerns the merits of the case only.

2. On 7 November 2018, the Applicant, an Associate Economic Affairs Officer, on continuing appointment, at the P-2 level with the United Nations Economic Commission for Latin America and the Caribbean (“ECLAC”) in Santiago, Chile, filed an application contesting a decision regarding his relocation grant following his temporary assignment to Bogotá with the United Nations Verification Mission in Columbia (“UNVMC”). More specifically, the Applicant challenges UNVMC’s decision to pay him USD1,500, instead of USD18,000, as relocation grant for his assignment with UNVMC. As relief, he seeks the balance of the relocation grant in the amount of USD16,500.

3. On 7 December 2018, the Respondent, together with the submissions on receivability, filed the reply on the merits, contending *inter alia*, that in terms of the applicable law, the Applicant did not qualify for any reimbursements as he was paid the correct relocation grant in accordance with ST/AI/2016/4 (Excess baggage, shipments and insurance). Having found the matter receivable, the Tribunal will therefore now address the merits of the case.

## **Factual background**

4. On 12 May 2017, the Applicant was offered a temporary assignment as a Procurement Officer at the P-3 level at UNVMC in Bogotá, Columbia for a period of 364 days.

5. The offer letter provided that the Applicant's mission assignment may be extended up to a maximum of two years only, and pertinent to matters herein, had two relocation options for the Applicant to choose, namely, the shipment of personal effects or relocation shipment payment. The accompanying document explained the difference between these two options: the Applicant could choose an entitlement to 100 kg of unaccompanied shipment of personal effects or payment of USD1,200 (which was subsequently apparently increased to USD1,500) in lieu of having the Organization arrange for the shipment. By accepting the offer, the Applicant indicated that he chose the relocation shipment payment option.

6. It is common cause that since the Applicant was to reach the mandatory retirement age of 62 on 30 June 2018, the Applicant's temporary assignment was therefore set for only the duration of 11 months from 30 July 2017 through 30 June 2018.

7. In April 2018, following the change in the mandatory retirement age from 62 to 65 effective 1 January 2018, which was globally announced on iSeek (the official United Nations Intranet) on 16 January 2018, which latter information the Tribunal has ascertained by its own search and taken judicial notice of, the Applicant requested an extension of the temporary assignment for the full duration of 364 days up to 30 July 2018. As a result, in May 2018, the temporary assignment was extended until 30 July 2018.

8. On 1 August 2018, the Applicant returned from his assignment with UNVMC to service with ECLAC.

9. On 6 August 2018, ECLAC requested UNVMC to retroactively extend the temporary assignment until 31 July 2018 (i.e. one additional day) as the Applicant travelled on 1 August 2018 and ECLAC needed to process his return assignment Personnel Action form as of 1 August 2018. The Respondent concedes that "this retroactive extension was necessary as the Applicant was unable to return to ECLAC prior to 1 August 2018 since the post he encumbered in ECLAC was encumbered by

another staff member until 31 July 2018”. UNVMC agreed and extended the assignment until 31 July 2018.

10. On 8 August 2018, the Applicant requested payment of the relocation grant reserved for a staff member whose assignment is for a total period of one year or longer on the basis that his assignment with UNVMC exceeded 365 days. By the email response on the same day, UNVMC denied the Applicant’s request, relying on sec. 17.4 of ST/AI/2016/4, which provides, *inter alia*, that where an assignment of less than one year is subsequently extended to one year or longer, payment of the balance of the relocation grant can only be made when the extension of the assignment occurs at least six months prior to the expected end of the assignment at the duty station.

11. On 15 August 2018, the Applicant requested a management evaluation of UNVMC’s decision rejecting payment of the balance of relocation grant.

12. On 28 September 2018, the Applicant was informed that the Secretary-General had decided to uphold the contested decision as recommended by the Management Evaluation Unit (“MEU”).

### **Applicant’s submissions**

13. The Applicant’s principal contentions may be summarized as follows:

a. The Applicant’s assignment lasted more than 365 days and thus he should have received USD18,000 in accordance with ST/IC/2017/35 (Relocation grant (lump-sum option for unaccompanied shipments or relocation shipments): rates);

b. However, the Organization denied payment of USD18,000 based on sec. 17.4 of ST/AI/2016/4, which provides that “[t]he payment of the balance of the relocation grant shall be made only when the extension of the

assignment occurs at least six months prior to the expected end of the assignment at the duty station”;

c. It is true that the extension of the assignment did not occur six months prior to the expected end of the assignment on 31 July 2018, but nobody advised the Applicant of this condition in January 2018, six months prior to the extension of his assignment. Should he have been advised of this condition in a timely manner, he would have decided to continue the assignment for one more year considering that his supervisor previously told him that he would agree to an extension of the assignment for one more year.

### **Respondent’s submissions**

14. The Respondent’s principal contentions may be summarized as follows:

a. Under staff rules 7.1, 7.15 and 7.16, staff members are entitled to be reimbursed for the costs they incur in shipping their personal effects to the duty station to which they are assigned;

b. ST/AI/2016/4 implements staff rule 7.15 and includes the provision regarding the payment of a relocation grant to staff members who opt for a lump-sum amount in lieu of their entitlement to relocation shipment of personal effects and household goods on appointment or assignment to a new duty station. The purpose of a relocation grant is to cover costs associated with excess baggage and unaccompanied shipments;

c. Section 17.4 of ST/AI/2016/4 provides that “[w]hen an assignment of less than one year is subsequently extended so that the total period reaches one year or longer ... the staff member may be entitled to payment of the difference ... [t]he payment of the balance of the relocation grant shall be made only when the extension of the assignment occurs at least six months prior to the expected end of the assignment at the duty station”;

d. The Applicant was paid the correct relocation grant in accordance with ST/AI/2016/4. The Applicant's temporary assignment was extended beyond one year or longer on 2 May 2018. This extension occurred less than six months prior to the expected end of the Applicant's temporary assignment to UNVMC. Accordingly, sec. 17.4 of ST/AI/2016/4 excluded the Applicant from being paid the balance of the relocation grant.

## **Consideration**

### *Applicable legal framework*

15. Staff rule 7.15(h)(ii) provides:

#### **Unaccompanied shipments for staff holding a temporary appointment or staff assigned for less than one year**

...

(ii) A staff member holding a fixed-term or continuing appointment may be reimbursed for the shipment of personal effects and household goods, up to a maximum of 100 kilograms or 0.62 cubic metres, by the most economical means when on assignment for less than one year. Where the assignment is extended for a total period of one year or longer, the staff member shall be paid expenses for an additional shipment of personal effects and household goods up to the maximum entitlement established in paragraph (i) below on the condition that staff member's services are expected to continue for more than six months beyond the proposed date of arrival of the personal effects and household goods in line with staff rule 7.17 (b).

16. Staff rule 7.15(i) in turn reads:

#### **Unaccompanied shipments for staff holding a fixed-term or continuing appointment appointed or assigned for one year or longer**

(i) On travel or 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.

17. ST/AI/2016/4 was promulgated to implement General Assembly resolution 70/244 (United Nations common system: report of the International Civil Service Commission) and staff rules 7.15, 7.16, 7.17 and 7.19, and in particular, part V of ST/AI/2016/4 provides the terms and conditions of the relocation grant, which is a lump-sum payment option in lieu of the entitlement to unaccompanied or relocation shipment (emphasis added):

#### **Part V**

##### **Terms and conditions that govern the application of relocation grant**

...

16.1 On travel on appointment, assignment, transfer or separation from service, internationally recruited staff members entitled to unaccompanied shipment or relocation shipment may opt for a lump-sum payment in lieu of the entitlement provided in sections 8.1, 9.1, 9.3 and 10.2 above. This lump-sum option shall be known as a “relocation grant”.

...

16.5 Except as provided under section 18.1, the relocation grant shall not be available on a partial basis and shall not be combined with the unaccompanied shipment or relocation shipment entitlements. By opting for the relocation grant, a staff member agrees to waive the entitlement to unaccompanied shipment or relocation shipment that would otherwise apply.

...

*Staff holding an appointment other than a temporary appointment on assignment of less than one year*

17.4 For an assignment of less than one year, a staff member holding an appointment other than a temporary appointment, who is entitled to unaccompanied shipment, may opt for the relocation grant in lieu of the shipment entitlement provided in section 9.1 above. *When an assignment of less than one year is subsequently extended so that the total period reaches one year or longer, inclusive of the period of payment of a daily subsistence allowance, the staff member may be entitled to payment of the difference between the amount payable in lieu of unaccompanied shipment entitlements under section*

9.3 above *and the amount paid in lieu of shipment of personal effects* under section 9.1. *The payment of the balance of the relocation grant shall be made only when the extension of the assignment occurs at least six months prior to the expected end of the assignment at the duty station.*

*The merits*

18. In the present case, the Applicant's assignment was initially set from 30 July 2017 through 30 June 2018 for the duration of 11 months to coincide with him reaching the then mandatory retirement age of 62.. In May 2018, the assignment was extended up to 30 July 2018, and in August 2018, the assignment was further extended one more day retroactively, up to 31 July 2018. The Respondent concedes that the assignment was extended for a period of one year or longer.

19. Under sec. 17.4 of ST/AI/2016/4, a staff member may be entitled to an additional relocation grant “[w]hen an assignment of less than one year is subsequently extended so that the total period reaches one year or longer”. There is no dispute that the Applicant's assignment was subsequently extended so that the total period was “one year or longer”. However, there is a condition attached to this entitlement: “The payment of the balance of the relocation grant shall be made only when an extension of the assignment occurs at least six months prior to the expected end of the assignment at the duty station”. It is not disputed that the extension of the assignment until 30 July 2018, which made the assignment longer than one year, only occurred in May 2018, which is approximately three months before the end of the assignment. Therefore, the Applicant is clearly not entitled to additional payment of the relocation grant in the amount of USD16,500 under ST/AI/2016/4.

20. The Applicant submits that nobody advised him of this condition in January 2018, six months prior to the extension of his assignment, and if he had been advised of this condition in a timely manner, he would have decided to continue the



assignment for one more year considering that his supervisor previously told him that he would agree to an extension of the assignment for one more year. The Tribunal notes that the Applicant's offer letter provided that his mission assignment may be extended up to a maximum of two years. The Tribunal also notes that the MEU letter dated 28 September 2018 confirms that the Officer-in-Charge of UNVMC had requested not only that the Applicant's contract be extended initially, but also discussed the possibility of further extension of the Applicant's contract beyond 12 months.

21. However, it is well established that "it is a staff member's responsibility to ensure that he or she is aware of the provisions of the rules and regulations governing her employment and ignorance of the law is no excuse" (*Fox* 2018-UNAT-834, para. 47), although there is a qualification or exception to this general principle, as discussed below.

22. In the United Nations Administrative Tribunal ("UNAdT") Judgment No. 1185, *Van Leeuwen* (2004), UNAdT stated that:

III. The Tribunal wishes to reiterate that ignorance of the law is no excuse, and that each staff member is bound to know the laws which are applicable to him. To that effect, the administration has a duty to, and indeed does, regularly inform its employees concerning the various rules and regulations. It is not disputed that it had done so in the present case, as the annual tax circulars were sent to the applicant regularly. Therefore, the Tribunal cannot but reaffirm the principle of assumption of knowledge of the law.

Nevertheless, the Tribunal believes that in complex matters such as those concerning social security, pensions, taxes or other issues of a similar nature, the Administration has to be especially careful. To this end, the Organization should make every effort to promulgate issuances on these issues, ensuring that they are informative and comprehensive, yet simple and easy to understand. ...

23. In the aforementioned case, UNAdT found that a "Guide" circulated by the Administration did not contain the necessary amendments and was misleading, that the Administration provided the applicant with erroneous information on which he

relied to his detriment, but also that the applicant should have known the law. Finding that the applicant became a victim, partially of his own imprudence and partially of mistakes made by the administration, the Tribunal awarded the applicant compensation in the sum of USD25,000.

24. The Tribunal observes that the maxim “ignorance of the law is no excuse” has its foundations and is highly relevant in the area of criminal law, and also extends to matters of civil (as distinct from criminal) liability. The rationale of the doctrine is that, if ignorance of the law were an excuse, an individual charged with a criminal offence or who is the subject of a civil lawsuit could simply claim ignorance of the law to avoid liability. The law in question must of course be properly promulgated and in its application, the doctrine pertains more to culpability and liability. Its applicability in an employment relationship, where there is unequal bargaining power, and where there ought to be strong corporate and organisational responsibility for appropriate and adequate dissemination of relevant contractual promulgations, should always be exercised with constraint and subject to exceptions in all the particular circumstances of each individual case.

25. In this particular instance, the Applicant does not allege any error but an omission in the notification of the applicable law. However, the Tribunal notes that the condition that “staff member’s services are expected to continue for more than six months beyond the proposed date of arrival of the personal effects” to be entitled to additional shipment benefit has existed in the Staff Regulations and Rules since 2010. Furthermore, the relevant administrative issuance, ST/AI/2016/4, more particularly sec. 17.4 requiring that the extension must precede the end of the assignment by six months, has been in existence since 2016. Under these circumstances, the Applicant should have been acquainted with the relevant rules and regulations governing the terms and conditions of his employment.

26. The Appeals Tribunal further allowed a limited exception to the principle that it is a staff member's responsibility to ensure that he or she is aware of the provisions of the rules and regulations in *Fox, supra*:

49. However, in accordance with the general principles of law accepted and recognized by the international community of states, contracts should be executed or performed in good faith. Courts internationally have sought to ameliorate contractual unfairness through specific applications of the implied principle of good faith and the requirement that contracts should not be enforced contrary to public policy or the prevailing convictions of the community (the *boni mores*). Good faith, as a value or principle, underlies and informs the technical rules of the law of contract and may be given added, albeit limited, concrete content in the operation of a contract in specific circumstances.

50. Pension funds by their nature involve an arrangement through which assets are held and controlled for the benefit of the membership and thus legitimately may be expected to observe quasi-fiduciary standards of care and diligence in relation to their participants who are compelled by the terms and conditions of their employment to belong to the fund. An implied duty to act in good faith thus arises not from the express rules of the fund but from the structural arrangements, international doctrine and, in the present context, from the ethos of the United Nations Organization requiring proportionality in decisions affecting in one way or another those subject to the jurisdiction of its organs. A pension fund rule which is necessary and suitably tailored, as in this instance, should not be enforced as to place an excessive or harsh burden on individual participants which is disproportionate in relation to the collective interest. The principle of good faith and the concomitant duty of care demand due consideration of the interests of individual participants to avoid causing them disproportionate harm or prejudice.

...

52. The scope of the principle of good faith in contract, therefore, is restricted and applies exceptionally to ensuring fairness or proportionality in the performance and enforcement of a contract; and more so where the contract has been concluded as a compulsory requirement of employment. In such instances, courts may intervene in a limited fashion on the grounds of public policy where the enforcement of the contract (the Regulations) is unreasonable, unconscionable or oppressive because strict enforcement will be contrary to the *boni mores*. Public policy, in the form of a general

sense of justice of the community, is a flexible instrument for judicial control of contractual performance and enforcement.

27. Under ST/AI/2016/4, a lump-sum option called “relocation grant” was made available to staff members in lieu of their entitlement to shipment. Staff rule 7.15 does not provide a lump-sum option but provides only unaccompanied shipment entitlement, in which it provides (emphasis added):

Where the assignment is extended for a total period of one year or longer, the staff member shall be paid expenses for an additional shipment of personal effects and household goods up to the maximum entitlement established in paragraph (i) below *on the condition that staff member’s services are expected to continue for more than six months beyond the proposed date of arrival of the personal effects and household goods.*

28. In the report of the International Civil Service Commission for the year 2015 (A/70/30), the subject report of the General Assembly resolution 70/244, the Commission stated that “the purpose of all payments related to relocation, such as ... relocation grant ... was to cover the costs borne by staff members when moving to a new duty station ... The Commission wished to differentiate between measures and allowances aimed at cost recovery, and monetary incentives, which already existed in the hardship allowance through both hardship and mobility incentives” (para. 387).

29. Considering the language of staff rule 7.15, which provides additional shipment entitlement only when a staff member’s services are expected to continue for more than six months “beyond the proposed date of arrival of the personal effects and household goods” and the above report’s explanation that relocation grant is aimed at cost recovery, not monetary incentives, it becomes clear that the relocation grant offered in lieu of unaccompanied shipment entitlement is to cover costs associated with shipment of a staff member’s personal effects and household goods needed for an extended assignment.

30. The Applicant’s initial assignment offer was for 364 days but was limited to 11 months (as he would have reached mandatory retirement at age 62 on 30 June

2018), and it was only extended for an additional 31 days. While the Applicant claims that he would have chosen a longer extension of the assignment had he known this condition, he does not claim that he incurred loss by way of additional shipment of personal effects and household goods. Considering the intent and design of unaccompanied shipment entitlement and relocation grant, the Tribunal does not consider that the relevant rules and regulations discussed above caused the Applicant disproportionate harm or prejudice to the extent, as the Appeals Tribunal stated, that “the enforcement of the contract (the Regulations) is unreasonable, unconscionable or oppressive because strict enforcement will be contrary to the *boni mores*”.

31. Further, the Tribunal notes that the Applicant in April 2018 only requested an extension of his assignment up to 364 days although the total duration exceeded one year, apparently due to a miscalculation initially, and later due to an administrative reason (i.e. his post in ECLAC was encumbered until the end of July 2018). When the mandatory retirement age was actually increased from 62 to 65 in January 2018, he could have requested an extension that would have exceeded one year, but he chose not to do so. Considering that the initial assignment offer was for 364 days and he also only intended to extend his assignment up to 364 days, the Tribunal cannot see why the Administration would have been obligated to give him information on additional benefits or entitlements for an assignment longer than one year. Thus, the Tribunal finds that this case does not justify exceptional judicial intervention that would release the Applicant from his responsibility to ensure that he is aware of the provisions of the rules and regulations governing his employment.

32. The Tribunal has some sympathy for the Applicant. It appears from the facts stated in his request for management evaluation that he suffered a loss of all of his personal and household effects, which were in storage in a warehouse fire in Santiago, Chile, whilst he was on assignment in Bogotá. The Tribunal notes that in the Staff Regulations and Rules, there are some provisions for storage of personal effects and household goods and for their insurance at the cost of the United Nations. Whether these provisions are applicable or not in this instance, they are unfortunately

not the subject matter of this case. Moreover, it is evident from the MEU letter that the issue regarding the loss of personal effects was the subject of a separate management evaluation which was deemed not receivable by letter dated 17 September 2018. It does not appear that the Applicant filed any claim with the Tribunal regarding that matter.

### **Conclusion**

33. In view of all of the foregoing, the application is dismissed.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 22<sup>nd</sup> day of January 2019

Entered in the Register on this 22<sup>nd</sup> day of January 2019

*(Signed)*

Nerea Suero Fontecha, Registrar, New York