



Before: Judge Eleanor Donaldson-Honeywell

Registry: New York

Registrar: Nerea Suero Fontecha

SHAH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Nicole Wynn, ALD/OHR, UN Secretariat

Nusrat Chagtai, ALD/OHR, UN Secretariat

Introduction

1. On 30 January 2018, the Applicant, a former Information Systems Assistant at the FS-5 level and serving on a continuing appointment with the United Nations Interim Force in Lebanon (“UNIFIL”), filed the instant application. He contests the decision to recover USD14,784.40 for the cost of his family’s repatriation travel to India.

2. For the reasons stated below, the Tribunal rejects the application.

Facts and procedural history

3. The Applicant was initially appointed to the Organization with the United Nations Operation in Côte d’Ivoire (“ONUCI”) on 25 October 2004. The Applicant’s family was installed with him at the duty station in Abidjan.

4. On 18 January 2017, the ONUCI Management informed the Applicant that his continuing appointment would be terminated effective 30 June 2017. The actual termination notice was dated 22 February 2017.

5. On 29 March 2017, ONUCI approved repatriation travel for the Applicant’s family from Abidjan to his home country, India, on 27 June 2017, in anticipation of his separation from the Organization. On 29 March 2017, ONUCI issued four business class flight tickets for the Applicant’s dependents to India. The departure date of the tickets was 27 June 2017. The Applicant’s family postponed their travel date so as to have one of the children complete the school term.

6. On 18 May 2017, the Department of Field Support notified UNIFIL and ONUCI that the Applicant would be laterally reassigned as an FS-5 Information Systems Assistant with UNIFIL in Naqoura, Lebanon.

7. On 24 May 2017, the Applicant visited the UNOCI Travel Office in person and spoke with a UNOCI Travel Officer about his family repatriation tickets.

8. On 25 May 2017, UNIFIL Human Resources notified the Applicant of the reassignment and informed him of the procedure for raising a travel request for travel to Lebanon. During the same week, on 30 May 2017, the ONUCI Travel Officer who the Applicant spoke with on 24 May 2017 informed him by email to revert to UNIFIL to arrange for his travel from Abidjan to Beirut, Lebanon. This email was in response to the Applicant's inquiry about issuing a ticket for his own travel.

9. On 1 June 2017, the Applicant raised a travel request for himself in the United Nations on-line system of administration and records ("Umoja"), to travel from Abidjan to Beirut. He did not raise a travel request for his family to travel to Beirut.

10. On 27 June 2017, the Applicant's family used their repatriation tickets issued by ONUCI for travel to India.

11. ONUCI closed effective 30 June 2017.

12. Effective 1 July 2017, the Applicant was reassigned to UNIFIL. The Applicant travelled from Abidjan to Beirut on 8 July 2017.

13. On 14 July 2017, the Applicant wrote to UNIFIL's Chief Human Resources Officer requesting that his family be installed in Lebanon.

14. On 18 July 2017, UNIFIL requested the Regional Support Centre Entebbe ("RSCE") to recover the cost of repatriating the Applicant's family to India, so that a new travel request could be raised for the family's travel to Lebanon.

15. After some continued communication between the parties, RSCE notified the Applicant of the contested decision on 10 August 2017. The decision was that the Administration would pay the expenses to relocate the Applicant's family to Lebanon subject to recovery of the repatriation expenses from the Applicant.

16. UNIFIL arranged for the travel of the Applicant's family from India to Lebanon on 29 August 2017. RSCE initiated recovery of the repatriation travel costs in November 2017 through eight installments.

17. The Applicant filed his application in the Nairobi Registry and the case was initially assigned to Judge Nkemdilim Izuako. On 16 November 2018, the case was transferred to the New York Registry, and on 16 December 2019, it was reassigned to the undersigned Judge.

Consideration

The parties' submissions

18. The Applicant's case can be summarized as follows:

a. The Respondent unlawfully recovered the sum of USD14,784.40 from the Applicant for the cost of his family's repatriation travel from Côte d'Ivoire to India. The ONUCI administration advised the Applicant that his family could be repatriated from Côte d'Ivoire to India despite the Applicant's lateral reassignment from ONUCI to UNIFIL. The Applicant states that he reasonably relied on this advice and therefore he should not be held liable for his family's travel to India.

b. In mid-May 2017, the Applicant received confirmation of his reassignment to UNIFIL. The Applicant then approached the ONUCI travel office to enquire about the cancellation and issuance of new tickets for his family members to UNIFIL. The Applicant spoke in person to Travel Officer Mr. DP. The Travel Officer informed the Applicant that the flight tickets to India for the Applicant's dependents were purchased as part of advance administrative actions taken due to mission liquidation and were financially committed and finalized in Umoja. The Travel Officer confirmed that the Applicant's family could travel to India with the tickets purchased by ONUCI mission. The Travel Officer also mentioned that the UNIFIL, as the hiring mission, would arrange for the Applicant's travel and upon his arrival at UNIFIL duty station and the Applicant should request the hiring mission to install his dependents. The Travel Officer also stated that as it was the final days of the ONUCI mission, no further action is required from his side.

19. The Respondent's case can be summarized as follows:

a. The contested decision was lawful. The Organization's payment for the repatriation travel of the Applicant's family to India constitutes an overpayment. Pursuant to sec. 1(a) of ST/AI/2009/1 (Recovery of overpayments made to staff members), the Organization is duty bound to correct its mistakes and put an end to the illegal situation by proceeding with recovery.

b. The Applicant was not entitled to repatriation travel for his family once the proposed separation was no longer to take place. Staff members are charged with knowledge of the rules governing their appointment. Under staff rule 3.19(c)(i), a staff member and his or her family are entitled to repatriation travel upon separation from the Organization. The Applicant did not separate from the Organization. He was reassigned from ONUCI to UNIFIL and consequently changed official duty station from Abidjan to Naqoura.

c. The Applicant knew at least two months before his family travelled from Abidjan to India that he was not separating from the Organization but that he had been reassigned to UNIFIL. The Applicant was responsible for informing UNIFIL that his family were installed in Abidjan with him, and for raising a request for their travel to Lebanon. Yet he did not do so prior to the commencement of his new assignment.

d. The Applicant's claim that the Administration is responsible for his decision to proceed with the repatriation of his family is without merit. The Applicant's allegation that UNIFIL should have known that his family resided with him is without merit. Under staff rule 1.5(a), the Applicant was responsible for supplying UNIFIL with relevant information regarding his dependents for the purpose of determining his status and completing travel arrangements. In addition, UNIFIL Human Resources advised the Applicant that the onus was on him to raise a travel request through Umoja for travel to Lebanon. In respect of the Applicant's claim that he was advised by ONUCI Travel Office that his family could proceed to travel to India despite his

reassignment to UNIFIL, the Respondent notes that the Applicant has produced no evidence that he consulted ONUCI Human Resources as to whether he was entitled to repatriate his family once he knew he was no longer going to be separated. Furthermore, even if the Travel Office informed the Applicant that dependents could be repatriated before a staff member's separation, the Applicant was not separated. He knew that he had been reassigned to UNIFIL and that he was not going to separate when he allowed his family to travel to India.

Was the contested decision lawful?

20. The issues relevant to deciding whether the decision was lawful are as follows:

- a. Was the Applicant entitled to the travel expense benefits used to repatriate his family from UNOCI duty station, Abidjan, to his home country, India, on 27 June 2017, such that the Administration ought not to have recovered same from him?
- b. Following the Applicant's new assignment to UNIFIL in Lebanon, what travel expense benefits was the Applicant and his dependents entitled to?
- c. Did the Applicant fail to disclose information to UNIFIL regarding the status of his dependents so that they could be properly relocated by UNIFIL to Lebanon instead of being repatriated to India?

Legal framework

21. Annex IV of the Staff Regulations (Repatriation grant) provides that:

In principle, the repatriation grant shall be payable to staff members who have completed at least five years of qualifying service, whom the Organization is obligated to repatriate and who at the time of separation are residing, by virtue of their service with the United Nations, outside their country of nationality. The repatriation grant shall not, however, be paid to a staff member who is dismissed. Eligible staff members shall be entitled to a repatriation grant only

upon relocation outside the country of the duty station. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General.

22. Staff rule 3.19 (Repatriation grant) provides that the purpose of the repatriation grant is to facilitate the relocation of expatriate staff members to a country other than the country of the last duty station, provided that they meet the conditions contained in the applicable legal framework.

23. The main provision cited by the parties in this matter is staff rule 3.19(c)(i), which addresses eligibility to receive a repatriation grant. It provides as follows:

Eligibility

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

(i) The Organization had the obligation to repatriate the staff member upon separation after qualifying service as defined in staff rule 3.19 (b) (v);

24. The central issue in this case is more specifically related to travel than repatriation expenses generally. On the facts two types of expenses were incurred, namely, repatriation and relocation expenses. The staff rules and regulations governing repatriation and relocation travel expenses are as follows (emphasis added):

Regulation 7.1

Subject to conditions and definitions prescribed by the Secretary-General, the United Nations shall in appropriate cases pay the travel expenses of staff members, their spouses and dependent children.

...

Rule 7.1

Official travel of staff members

(a) Subject to conditions established by the Secretary-General, the United Nations shall pay the travel expenses of a staff member under the following circumstances:

...

(iii) *On change of official duty station*, as defined in staff rule 4.8;

(iv) *On separation from service*, as defined by article IX of the Staff Regulations and chapter IX of the Staff Rules ...

25. The other relevant aspect of the legal framework is ST/AI/2009/1 (Recovery of overpayments made to staff members), which defines “overpayments” as “payments made by the Organization to a staff member in excess of his or her entitlements under the Staff Regulations and Rules and relevant administrative issuances”.

26. The central consideration to determining the issues in this case is whether the Applicant was entitled to the benefit of both repatriation and relocation travel expenses. On an examination of the history regarding the travel expenses incurred for the Applicant’s family and the legal framework, the answer is clear. There was only the entitlement to have his family relocated to his new duty station once it became known that there was to be no separation. It is clear from the legal framework outlined above that in the circumstances the Applicant faced from January to July 2017 there were two types of travel expense benefits that may have been applicable. Firstly, for the separation expected to take effect on 30 June 2017, of which he was given advanced notice, the Applicant would have been entitled to travel expenses for repatriation of his family. Secondly, for the lateral reassignment to another duty station, which was offered to the Applicant on 18 May 2017, the Applicant was entitled to travel expense benefits for relocation of his family from Abidjan to Beirut, Lebanon.

27. It is not in dispute that the Applicant knew that he was not going to be separated several weeks before his family utilized the tickets purchased for repatriation. Accordingly, on a strict interpretation of the rules there was no entitlement then to proceed with the repatriation travel.

28. The Applicant is to be commended, in that on his account, as soon as he was informed of the changed circumstances, he made enquiries as to what re-arrangements should be made for his family by visiting the ONUCI Travel Office. The Tribunal notes that the Applicant submits that on 24 May 2017 he was advised in

person by the ONUCI Travel Officer, Mr. DP, that his family could be repatriated from Côte d'Ivoire to India despite the Applicant's lateral reassignment from ONUCI to UNIFIL. The Applicant states that he reasonably relied on this advice and therefore he should not be held liable for his family's travel to India. The Tribunal takes note that, however, during the same week, on 30 May 2017, the same ONUCI Travel Officer, Mr. DP, informed the Applicant by email to revert to UNIFIL to arrange for his travel from Abidjan to Beirut, Lebanon. This email was in response to the Applicant's inquiry about issuing a ticket for his own travel.

29. The Tribunal considers that the Administration's written communication to the Applicant in response was clear enough to indicate that while ONUCI was not responsible for the Applicant's travel arrangements he had to seek assistance from his new UNIFIL mission for his relocation. Implicitly this meant he should have done so for his family as well. It is further unclear why the Applicant did not cancel the repatriation travel request for his family to India on UMOJA once he knew he would not be separating from the Organization but moving to UNIFIL, Lebanon.

30. Further, the Applicant had a responsibility to be aware of the applicable rules which included the requirement to disclose to the Administration all information relevant to administrative arrangements. Ignorance of the law is no excuse, and every staff member is deemed to be aware of the regulations and rules (*Diagne et al*, 2010-UNAT-067; *Christensen*, 2012-UNAT-218).

31. However, the Applicant failed to inform UNIFIL that he had a family while arranging for his own travel and onboarding with UNIFIL. Instead, the Applicant raised a travel request with UNIFIL on 1 June 2017 for only himself from Abidjan to Beirut and not for his family. He then allowed his family to travel to India on 27 June 2017 on tickets issued for the purpose of repatriation. He waited until 14 July 2017, after his family had travelled to India and after he was installed in Lebanon, to write to UNIFIL's Chief Human Resources Officer to inform her that his family also needed to be installed in Lebanon.

32. The Applicant's allegation that UNIFIL should have known that his family resided with him is without merit. Under staff rule 1.5(a), the Applicant was responsible for supplying UNIFIL with relevant information regarding his dependents for the purpose of determining his status and completing travel arrangements. In addition, UNIFIL Human Resources advised the Applicant that the onus was on him to raise a travel request through Umoja for travel to Lebanon. Staff rule 1.5(a) provides:

Staff members shall be responsible for supplying the Secretary-General with relevant information, as required, both during the application process and on subsequent employment, for the purpose of determining their status under the Staff Regulations and Rules as well as *for the purpose of completing administrative arrangements in connection with their employment. Staff members shall be held personally accountable for the accuracy and completeness of the information they provide.* (emphasis added)

33. This misunderstanding by the Applicant that led to him allowing his family to be repatriated is not unexpected in the context of the difficult circumstances he faced at that time. He continued to give yeoman service in a work environment that was rapidly shutting down around him. A reasonable choice was also made to keep his family with him until June 2017 so as to ensure the school term was finished. Had the Applicant's family taken the business class travel home at any time before mid-May 2017, as others in the mission apparently had, there would have been no basis for recovery of the travel expenses from him. This is so because at that time the separation was still pending.

34. It is for this reason that a direction was given to the parties by Order No. 187 (NY/2019) issued on 31 December 2019 that they issue a joint submission on whether the matter could be informally resolved. On 20 January 2020, the parties jointly submitted that they did not wish to attempt to resolve the matter informally. In the circumstances, the type of consideration and compromise that may have been afforded during alternate dispute resolution did not materialize.

35. On a literal interpretation of the rules, the decision taken by the Administration was lawful. Following the 18 May 2017 notification of his

reassignment to UNIFIL in Beirut, the Applicant was on notice that he would no longer be separating from the Organization. The Applicant was therefore no longer entitled to repatriation travel for his dependents to India. By allowing his family to travel to India on 27 June 2017 on the tickets issued by ONUCI, the Applicant incurred the liability of an overpayment as he was clearly not entitled to the repatriation benefit. Under sec. 2.2 of the ST/AI/2009/1, the Organization can rightfully recover this overpayment from the Applicant.

Conclusion

36. In light of the above, the application is rejected.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 4th day of March 2020

Entered in the Register on this 4th day of March 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York