UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2024/052
Judgment No.: UNDT/2025/001
Date: 14 January 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

SOBIER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Nicole Wynn, AS/ALD/OHR/UN Secretariat
Victoria Nakaddu Mujunga, AS/ALD/OHR/UN Secretariat

Introduction

1. The Applicant is an Engineer at the P-4 level working with the United Nations Interim Force in Lebanon ("UNIFIL").

2. On 3 August 2024, he filed an application contesting:

(i) the decision not to authorize the installation of his dependents at his duty station in Naqoura or alternatively in Beirut, where the dependents of existing staff posted at Naqoura have been relocated following the introduction of temporary family restrictions ("the non-installation decision");

(ii) the denial of his request to receive the optional payment of a reduced non-family service allowance ("NFSA") at a category D duty station not designated as a non-family duty station ("the NFSA decision"); and

(iii) the denial of his request to grant the Applicant the post adjustment ("PA") applicable to existing staff members serving in UNIFIL and residing at the same duty station during the same time, location, and period as himself. ("the PA decision").

3. The Respondent filed a reply, on 4 September 2024, alleging that:

a. the claim regarding installation of Applicant's dependents is not receivable because there was no request for management evaluation. Moreover, the decision was based on the safety concerns for the dependents;

b. the NFSA decision is not receivable because it is moot, since the Applicant had been granted the requested relief and that the decision was lawful in any case; and

c. the PA claim lacked merit since he was not entitled to receive a personal transition allowance.

4. On 25 October 2024, the Applicant filed a rejoinder.

5. Having considered these submissions, the Tribunal is fully apprised of the facts and arguments of the parties and prepared to rule on the application.

Facts

6. The Applicant joined the Organization in 2006 and in the first half of 2023 was serving with the United Nations Multidimensional Integrated Stabilization Mission in Mali ("MINUSMA"). On 30 June 2023, the United Nations Security Council decided to terminate the MINUSMA mandate. As a result, the Applicant's position at MINUSMA would be abolished.

7. On 1 October 2023, the Applicant accepted an offer of appointment at UNIFIL. He was advised that "reassignment to UNIFIL will be implemented upon [your] assuming the new functions or the date you travel to the duty station on 20 November 2023, the latest."

8. In November 2023, the Applicant was laterally reassigned from MINUSMA to UNIFIL, stationed in Naqoura, Lebanon. He was onboarded to UNIFIL on 30 November 2023.

9. Earlier that year, in January 2023, the International Civil Service Commission ("ICSC") conducted a cost-of-living survey in Lebanon. As a result of the survey, the post adjustment multiplier ("PAM") applicable to duty stations in Lebanon was reduced to 34.9%. This was made effective immediately for new staff onboarded on or after 1 May 2023.

10. To mitigate the impact of the negative cost-of-living survey (and the resulting reduction in PAM), existing staff were granted a Personal Transitional Allowance ("PTA") of 116.6% reflecting the difference between the prior PAM and the new PAM. PTA is paid in full for the first six months and then reduced by 3 percent every four months until it is phased out.

11. Naqoura was a family duty station at the time when the Applicant accepted the new position, but on 13 October 2023, due to the deteriorating security situation, the United Nations Department of Safety and Security ("UNDSS") introduced

family restrictions in Naqoura. As a result, all dependents of existing internationally recruited staff members were to be relocated to Beirut, Lebanon.

12. On 21 November 2023, the ICSC temporarily changed the hardship classification of Naqoura, Lebanon, from category C to D duty station. Staff members were granted the equivalent hardship allowance for category D duty station.

13. By email dated 7 December 2023, a UNIFIL Human Resources Officer ("HRO") notified the Applicant that his eligible dependents would not be installed in Naqoura due to the family restrictions in place there. The HRO stated;

> As for the installation of your family, there are currently some family restrictions in UNIFIL and dependents were relocated from SLR (Tyre and South area) to NLR (Beirut and North area). Management is still in consultation with HRSD in NY on this subject and we do not travel dependents on installation from outside Lebanon for now.

14. By memorandum dated 8 January 2024, the ICSC extended the temporary hardship classification for Naqoura until 30 March 2024.

15. On 7 February 2024, the Applicant wrote to the UNIFIL Chief Human Resources Officer ("CHRO") requesting to install his dependents in Lebanon, including possibly Beirut.

16. The next day, the CHRO replied to the Applicant stating:

> As advised by your HR Partner on 7 December 2023 and confirmed in a subsequent meeting with HR Team, chaired by the ISU Supervisor, the DO for SLR (Tyre and South area) has promulgated family restrictions for UNIFIL on 2 November 2023, and dependents were relocated from South Litani to North Litani River. Consequently, following consultation with HQ, all new staff members joining UNIFIL, after the UNDSS decision, have been informed that no dependents would be travelled to UNIFIL with duty station Naqoura on installation until those restrictions are lifted.
>
> As per your letter of appointment, your position location is Naqoura.
>
> In light of the above, please note that for the reasons mentioned above, we cannot authorize installation of your dependents in Beirut.

> However, please note that nothing precludes you from travelling your family members at [your] own cost to Beirut.

17. On 4 March 2024, UNIFIL sought guidance from the Department of Operational Support ("DOS") on the applicability of the "Pilot Measure for Duty Stations with Extreme Hardship Conditions" to UNIFIL. Under the pilot measure, eligible staff members in category D stations which were not designated as non-family stations, are eligible for a temporary grant of USD14,000 in lieu of the installation of eligible dependents.

18. On 13 March 2024, DOS informed UNIFIL that Naqoura did not fall under the pilot application of the optional reduced NFSA because the UNDSS family restrictions at these duty stations prevented installation of dependents.

19. On 29 March 2024, the Applicant requested management evaluation of the three contested decisions.

20. While management evaluation was pending, on 12 April 2024, the ICSC designated Naqoura as a non-family duty station with immediate effect. Accordingly, all UNIFIL internationally recruited staff members, including the Applicant, became eligible for the NFSA effective 12 April 2024.

21. On 7 May 2024, the Management Advice and Evaluation Section ("MAES") issued its decision, upholding the non-installation and PA decisions and finding the NFSA decision to be moot.

22. Effective 1 August 2024, the PAM was revised upward from 34.9% to 46.7%. Two days later the Applicant filed his application with this Tribunal.

Considerations

The decision not to install the Applicant's dependents in his duty station.

23. The Respondent argues that the non-installation decision is not receivable because the Applicant failed to timely request management evaluation within 60 days "from the date on which the staff member received notification of the

administrative decision to be contested." Staff Rule 11.2 (c). See also, article 8.1(c) of the Statute of the Dispute Tribunal and *Dieng* 2019-UNAT-941, paras. 22-34).

24. In particular, the Respondent claims that the Applicant received notification of the non-installation decision on 7 December 2023 by email from the UNIFIL Human Resources Officer. Thus, the deadline to request management evaluation was 60 days from 7 December 2023, or 4 February 2024[1]. The Respondent further argues that the Applicant's 7 February 2024 correspondence to the UNIFIL Chief Human Resources Officer did not reset the statutory deadline, citing *Fayek-Rezk* 2021-UNAT-1162, para. 28; and *Mustafa* 2021-UNAT-1126, para. 23.

25. The Applicant argues that the denial of his request to install his dependents was "an ongoing violation of the Applicant's rights." He further argues that MAES did not find his request to be untimely.

26. Article 8.1(c) of the Dispute Tribunal Statute provides that an application is receivable by the Tribunal if the "applicant has previously submitted the contested administrative decision for management evaluation, where required."

27. It is undisputed that the Applicant did submit the non-installation decision for management evaluation and that MAES accepted the request without any comment on its timeliness. Nor did UNIFIL make any comment to MAES on the timeliness of the request.

28. For that reason alone, the Tribunal determines that the Administration has waived any objection to the timeliness of the management evaluation request and is estopped from raising that issue for the first time before this Tribunal. Finding otherwise would encourage the Administration to engage in a game of "gotcha",

[1]The Respondent is correct that the 60 days from the receipt of the notification on 7 December 2023 would have been 4 February 2024. However, it is noted that 4 February 2024 fell on a Sunday. Accordingly, the deadline for the Applicant to request management evaluation would have been Monday, 5 February 2024. Article 34 (b) of the UNDT Rules of Procedure.

which is contrary to the concept of fairness upon which the internal justice system is founded. [2]

29. In addition, the Appeals Tribunal has observed that the purpose of management evaluation "is to afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary." *Pirnea* 2013-UNAT-311, para. 42. Clearly, this purpose was achieved in this case. The Administration accepted the Applicant's request for management evaluation of the non-installation decision, examined whether there were any errors in that decision, and determined there were none. As such the Administration suffered no harm from any alleged delay in requesting management evaluation.

30. The Respondent also argues that, even if it were receivable, the decision was lawfully taken to protect the safety of the Applicant and his dependents in accordance with staff regulation 1.2 (c) of ST/SGB/2023/1, and Chapter IV, section D, para.14, and Chapter II, Annex, section D, para.8, of the United Nations Security Policy Manual. See also, *Pirnea* 2013-UNAT-311, para. 36.

31. The Applicant argues that at the time of his reassignment, Naqoura was classified as a family duty station which entitled him to relocate his dependents pursuant to staff rule 7.2(d)(iii). He further argues that the temporary family restrictions "did not explicitly prohibit the relocation of dependents for newly reassigned staff."

32. The Applicant also claims that his classification as "critical staff" was overlooked by the Organization, pointing to language in an April 2024 communication from DOS to UNIFIL which said, *inter alia*, "Given the evolving nature of the security situation in Lebanon, we do not advise that UNIFIL travels eligible family members of newly onboarded non-critical staff to Beirut…"

[2] This should not be read as endorsing the abolition or rejection of time limits. Such limits have legitimate purposes and generally must be strictly enforced. However, when the Administration has remained silent in the face of an allegedly untimely management evaluation request, it cannot give voice to that allegation for the first time during judicial review.

33. Finally, the Applicant argues that he should have been permitted to relocate his dependents to Beirut, "a safer and accessible location", which "also serves as the designated location for rest and recuperation for UNIFIL personnel."

34. With regard to the merits of the non-installation claim, the Tribunal agrees with the Respondent that the decision was lawful and rejects the Applicant's arguments to the contrary.

35. First, the true nature of the contested decision must be understood. Although the Applicant characterises it as a decision not to install his dependents, the record shows that this really amounts to a claim to receive installation benefits.

36. This issue first arose when the Applicant requested the Human Resources Section for "some kind of briefing regarding the installation of the family and the entailments [*sic*] for this period." In that same email, he stated that "I fully understand the dynamic situation which UNIFIL is going though nowadays." Not surprisingly, he was told that the current family restrictions prevented installation of the Applicant's family.

37. The Applicant raised the issue again in early February 2024 via an email in which he again knowledges that he was "fully aware of the challenges in South Lebanon that restricted the residence of staff members". He then said he was seeking final direction "[t]o ensure that I do not jeopardize the opportunity to exercise my entitlement."

38. In response, the Administration reiterated the advice he was given on 7 December 2023, and "confirmed in a subsequent meeting with HR Team", that the family restrictions in place prohibited installation of dependents at that time. However, the response noted "that nothing precludes you from travelling your family members at [your] own cost to Beirut".

39. There is nothing in the record that indicates that the Applicant took any effort to travel his family to Beirut at his own expense. This is not surprising given his repeated references to the challenges and dynamic situation at the time. Thus, it is

quite obvious to the Tribunal that this claim is about money and not familial presence.

40. As to the Applicant's first legal argument on the issue, that Naqoura was classified as a family duty station at the time of his "reassignment" there, the true facts do not support it. His appointment letter said that the reassignment would be implemented upon assuming his new functions at UNIFIL or the date he travelled to the duty station. The record indicates that, therefore, the reassignment was implemented on 30 November 2023. By then the family restrictions at Naqoura had been in place for six weeks, and the conditions had caused the duty station to be granted a special hardship classification of "D". It is irrelevant whether or not Naqoura was formally classified as a family duty station when he arrived. The existence of armed conflict and the deteriorating security situation made the presence of dependents at the duty station unsafe.

41. The decision not to bring the Applicant's family to this unsafe area was obviously reasonable. It is disingenuous for the Applicant to claim that his family should have been installed at that time.

42. Similarly, it is of no moment that the family restrictions "did not explicitly prohibit the relocation of dependents for newly reassigned staff." It is obvious from the substance of the family restrictions that new staff could not be permitted to install their dependents in Naqoura at the same time that existing staff were having to relocate their dependents from there.

43. The Applicant's argument about his being "critical staff" is also disingenuous wordplay. The language he quotes was used in responding to a request for advice on whether UNIFIL may install dependents of "newly onboarded **non-critical** staff members assigned to Tyre/Naqoura". (emphasis added). Given the question, it is not surprising that the response mentioned "non-critical staff". However, the very next sentence states the broader concept: "Given the temporary family restrictions in place for Tyre/Naqoura, the organization cannot travel eligible family members until the family restrictions are lifted by DSS and the staff member returns to Tyre/Naqoura or a designation of non-family is issued by ICSC." As such, the

Applicant's status as either "critical staff" or "non-critical staff" is of no significance.

44. Finally, there is no merit to the Applicant's claim that his dependents should have been installed in Beirut, like the dependents of other staff members. This ignores the fact that the Applicant (and his family) was not similarly situated to staff members previously present with their dependents before the family restrictions. Those dependents were already installed and present in Tyre/Naqoura when the armed conflict required their relocation to the relative safety of Beirut. By contrast, the Applicant's family was safely ensconced in Bamako, Mali. According to him, his family "will travel to Lebanon at a later stage during the winter break since kids are attending school at the moment." The distinction is patently obvious between evacuating dependents from a conflict zone to a safer nearby location and moving dependents from a place of safety to a country with safety concerns.[3]

45. In sum, the Tribunal finds that the contested decision not to relocate the Applicant's family was lawful.

The Non-Family Service Allowance decision.

46. Next, the Applicant challenges the denial of his request for the Non-Family Service Allowance ("NFSA"). The Respondent submits that the Applicant's challenge to the NFSA decision is moot because the Applicant has been granted the relief he requested. The basis for this argument is that ICSC has now designated Naqoura as a non-family duty station effective 12 April 2024, so all internationally recruited staff members, including the Applicant, became eligible for the NFSA.

47. The Applicant's position is that the issue of the NFSA is not moot because he did not receive NFSA for the period from 30 November 2023 to 12 April 2024.

[3] The Tribunal notes that the expansion of the armed conflict caused family restrictions to be imposed for the entire country, including Beirut, in early August 2024. Two months later, all international, non-critical staff (along with any remaining dependents) were evacuated from Lebanon.

48. The Tribunal agrees with the Applicant that the issue granting him NFSA effective 12 April 2024, does not resolve his claim of entitlement to NFSA for the previous four and one-half months. As such the claim is not moot.

49. On the merits of this claim, the Respondent argues that "the Applicant was not entitled to the NFSA before the ICSC designated Naqoura/Tyre as a non-family duty station," citing ST/AI/2019/3/Rev.1, section 2.3. The Applicant concedes that "Naqoura/Tyre was technically classified as a family duty station", but he argues that UNIFIL's decision not to install his dependents "due to family restrictions in place…. warranted the optional payment of a reduced NFSA." He also argues that failure to do so contradicts United Nations policies set forth in GA/73/273 and GA/76/240.

50. The NFSA is governed by staff rule 3.13, which provides that staff "who are appointed or reassigned to a **non-family** duty station may be paid a non-pensionable non-family service allowance." *Id.* para. (b) (emphasis added). It further provides that "[t]he amount and conditions under which the allowance will be paid shall be determined by the Secretary-General." *Id.* para. (c).

51. Thus, by its very terms, assignment to a non-family duty station is required for a staff member to be entitled to the NFSA. Since Naqoura was classified as a family duty station during the period at issue (30 November 2023 to 12 April 2024), the Applicant was not entitled to the NFSA. UNIFIL's decision not to install the Applicant's family there due to the DSS family restrictions does not override the clear requirements of staff rule 3.13.

52. As to the claim that this decision contradicts the policies set forth in GA/73/273 and GA/76/240, this argument is equally unavailing.

53. In GA/73/273, the General Assembly approved a pilot project to grant a payment "for staff members with eligible dependants in duty stations with E hardship classification conditions only." In GA/76/240, the General Assembly expanded this pilot program by providing a payment *in lieu* of settling-in grant "for staff members who opt not to install eligible dependents in category E duty stations not designated as non-family" and a reduced amount "for eligible staff members in

category D duty stations not designated as non-family". This pilot program was implemented in ST/AI/2019/3/Rev.1, section 2.

54. Here again, at the time of the contested decision, the eligibility requirements included that the staff member opted not to install eligible dependents. Given the DSS family restrictions in place, the Applicant had no option to install his dependents, did not opt not to install them, and thus did not meet the eligibility requirements.[4]

55. As for whether this decision contradicted the policies allegedly adopted in these General Assembly resolutions, it is important to remember that these resolutions approved only pilot programs. They were test efforts to analyse "the impact thereof, including on workforce planning, in different categories of duty stations, including non-family duty stations, and the actual cost to the organizations." GA/73/273, para. III and GA/76/240, para. D. As such, these resolutions do not reflect a clear and definite policy established by the General Assembly. At best, they reflect a tentative intent to consider whether such a policy was in the best interests of the Organization.

56. Accordingly, the Tribunal finds that the decision to deny the Applicant an NFSA was lawful.

The Post Adjustment decision.

57. Finally, the Applicant contests an alleged disparity between the post adjustment that he received upon his arrival at Naqoura, and the post adjustment received by staff members onboard at the duty station previously. He argues that this is a "core issue of fairness and equity" which will take six years to correct.[5]

[4]The designation of a particular duty station as family or non-family is the prerogative of the ICSC. This designation is done based on the review of conditions at the duty station over a period of six months or longer following the evacuation of dependents. In this case, the ICSC changed the designation precisely at the six-month mark.

[5] The record indicates that, due to the sustained substantial inflation, the post adjustment multipliers for Lebanon are reviewed on a monthly basis. (The is known as the "one month rule".) As a result, the post adjustment rate for Lebanon was increased to 46.7% effective 1 August 2024. Obviously, this will impact the length of the TPA.

This argument displays a fundamental misunderstanding of both the facts of this case and the purpose behind the Transitional Personal Allowance ("TPA").

58. As noted above, in early 2023, a cost-of-living survey in Lebanon resulted in a reduced PAM of 34.9% for duty stations in Lebanon, effective immediately for new staff onboarded on or after 1 May 2023. A TPA was used to transition existing staff (i.e., those onboarded before 1 May 2023) to the lower level of pay. The TPA reflects "the difference between the new lower pay level and the existing pay level. Its purpose is to facilitate a gradual transitioning of staff to the lower pay level." ICSC/CIRC/GEN/08/2023, para. 2. Thus, by its very design, the TPA will result in differences of pay between existing and new staff.

59. Adopting the Applicant's premise, that fairness and equity require all staff to be paid the same, would negate the purpose of both cost-of-living surveys and TPAs. Under the Applicant's logic, either everyone should get a TPA or nobody should. If everyone were granted a TPA, then all salaries would exceed the currently assessed cost-of living at the duty station. On the other hand, if TPA's were not granted at all, then existing staff would suffer dramatic and immediate pay drops.

60. The undesirability of either situation is reflected in the jurisprudence that a PTA is not a benefit or entitlement under the staff regulations and rules. *Slade* 2014-UNAT-463, para. 27. Instead, a TPA is a temporary "gap closure measure…in order to alleviate the impact of the reduction on the staff members' pay slips". *Lynn* 2020-UNAT-1039, para. 21. As such, a staff member has no legitimate expectation of receiving a TPA. *Slade* para. 31.

61. Indeed, the Applicant admits that "he is not asserting an acquired right to the [TPA] but is instead advocating for equitable treatment". However, any analysis of equitable treatment requires that the compared subjects be similarly situated. Here it is clear that the Applicant is in a different situation from existing staff members. He arrived when the cost-of living was lower and thus received the appropriate PA. Existing staff had been paid a higher PA to reflect the previously higher cost of living. Thus, in the absence of a TPA, the latter would experience an immediate

and significant pay drop. Thus, equitable treatment analysis does not apply in this situation.

62. In his application, the Applicant also claims that UNIFIL should have invoked staff rule 3.6(b)(i) and requested the Secretary-General to make alternative arrangements to allow him to receive the post-adjustment at his previous duty station which he claims was higher.

63. First, it appears that the Applicant raised this argument for the first time in the application for judicial review. The record does not indicate that the Applicant requested such relief of the Administration, that it was the subject of the contested decisions, or that it was submitted to management evaluation. As such it is not properly before the Tribunal.

64. Additionally, the argument appears only in the remedies section of the application, wherein the Applicant says he "would like to request the esteem court to request the SG to authorize the payment of higher PA between my previous duty station with MINUSMA in Timbuktu, Mali for 50.7% (as of November 2023) and UNIFIL Naqoura for 35.6% for the same period; as per Staff Rule 3.6 (b) on Post Adjustments." It is not within the Dispute Tribunal's authority to advocate with the Secretary-General on behalf of an applicant.

65. Moreover, staff rule 3.6(b)(i) is discretionary by its very terms. "While the salaries of staff members …are normally subject to the post adjustment of their duty station during assignments for one year or more, alternative arrangements **may be made** by the Secretary-General…." (emphasis added). As such, there is no entitlement to have the Secretary-General make such alternative arrangements.

66. Thus, this request is unavailing, and the Tribunal finds no merit to the Applicant's challenge to the PA decision.

Conclusion

67. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)
Judge Sean Wallace
Dated this 14th day of January 2025

Entered in the Register on this 14th day of January 2025
(Signed)
Wanda L. Carter, Registrar, Nairobi