UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2024/062
Judgment No.: UNDT/2025/022
Date: 15 May 2025
Original: English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

OOKO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Kelvin Njuguna Mugwe

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

Introduction

1. By application filed on 7 October 2024, the Applicant, a former Chief of Unit, Information Systems and Telecommunications working with the United Nations Integrated Transition Assistance Mission in Sudan ("UNITAMS") filed an application contesting:

a. The 19 May 2024 decision to terminate his permanent appointment due to abolition of the post he encumbered;

b. The decision not to retain him in service in accordance with staff rule 9.6 (c); and

c. The decision not to pay him repatriation grant upon his separation from the Organization.

2. The Respondent submitted a reply on 7 November 2024 where it argued that the contested decisions were lawful. The Respondent maintained that:

a. Termination of the Applicant's appointment was made under staff rule 9.6 (c) due to the abolition of the post upon closure of the Mission per the 1 December 2023 General Assembly Resolution S/Res/2715 (2023);

b. The Organization fulfilled its obligations to make reasonable and good faith efforts to assist the Applicant in finding an alternative position. The Applicant was given priority consideration for the positions for which he was eligible and for which he applied during the applicable period of 19 May 2024 to 19 August 2024; and

c. The Applicant has no right to a repatriation grant because his post was reassigned to his home country Kenya where he was already residing at the time of his separation. Further, the Applicant accepted the reassignment to Nairobi after being told that there would be no exception to the repatriation rules if he was reassigned.

3. On 29 November 2024, the Applicant filed a rejoinder.

4. 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

5. The Applicant joined the Organization in 1990 and served in various United Nations missions throughout his tenure. At the time of termination of his permanent appointment, he was serving in UNITAMS, based in Sudan.

6. Nairobi was the Applicant's place of home leave and recruitment.

7. In April 2023, UNITAMS personnel were evacuated to Entebbe, Uganda due to the ongoing war in Sudan. The Applicant was among those evacuated.

8. On 6 June 2023, the Applicant was sent to Nairobi, Kenya on a temporary assignment to assist in the establishment of Information Communications Technology structures for UNITAMS.

9. On 8 July 2023, the Organization decided to establish temporary UNITAMS offices in Nairobi, Port Sudan and Addis Ababa.

10. On 9 July 2023, the UNITAMS Special Representative of the Secretary-General ("SRSG") requested the Office of Human Resources, Department of Management Strategy, Policy and Compliance ("OHR/DMSPC") to authorize him to pay relocation and repatriation grants to 10 Kenyan staff members in the professional and field service categories on assignment in Kenya.

11. On 4 August 2023, OHR/DMSPC denied the request stating that the staff members did not meet the requirements to receive the entitlements. OHR/DMSPC partly stated:

> When staff members are assigned to their home countries, it is generally expected that most expatriate benefits should cease. Expatriate benefits are designed to assist staff members who work and live outside their home countries in an expatriate status. For instance, the education grant, established by ICSC and approved by

> the GA, aims to cover a portion of the additional costs associated with educating the children of staff members in an expatriate situation. Similarly, the repatriation grant serves as a service benefit earned by expatriate staff members not serving in their home country or holding permanent residence in the last duty station of service upon leaving the country of their last duty station.
>
> These conditions are based on GA decisions and the purpose and rationale for these entitlements which have been reaffirmed in resolutions 49/241 and 55/223. Both resolutions stressed that the repatriation grant and other expatriate benefits (including education grant) should only be provided to internationally recruited staff members who both work and reside in a country other than their home country, while in an expatriate status. This is further reflected in Staff Rule 4.5, which clarifies that staff recruited locally at a duty station for posts in the Professional and higher categories at that specific duty station are considered internationally recruited but would generally not be entitled to some or all of the allowances or benefits. The eligibility criteria and conditions for payment and for both the education grant and repatriation grant can be found in their respective administrative instructions (ST/AI/2018/1/Rev.1) and (ST/AI/2016/2).
>
> Any assignment or reassignment, whether voluntary or involuntary is a change of duty station and leads to changes in staff entitlements in accordance with the applicable entitlements. Unfortunately, due to the current situation in Sudan, there may be staff members facing similar circumstances and experiencing changes in their entitlements due to assignment to Nairobi, the home country.
>
> We would also like to highlight that there are currently over 90 staff members of Kenyan nationality working in Nairobi in International Professional posts who do not benefit from any expatriate benefits since they are serving in their home country. Granting an exception to the 10 UNITAMS staff members would lead to unequal treatment of similarly situated staff members working under the same conditions and the same regulatory framework. In this regard, we refer to Rule 12.3 (b), which specifies that exceptions to the Staff Rules may be made by the Secretary-General, provided that such exceptions are not inconsistent with any staff regulation or other GA decisions and are not prejudicial to the interests of any other staff member or group of staff members.

12. On 18 July 2023, while in Nairobi, the Applicant was temporarily assigned to Port Sudan in Sudan. The Applicant states that his Sudanese residence visa had expired and that UNITAMS' efforts to get it renewed were unsuccessful. The Applicant, therefore, continued to work remotely from Nairobi, but with Port Sudan technically listed as his duty station.

13. On 1 December 2023, the United Nations Security Council, by resolution 2715 (2023) terminated the mandate of UNITAMS. Upon termination of its mandate, UNITAMS went into liquidation phase running from 1 March 2024 to 31 August 2024.

14. On 29 January 2024, UNITAMS notified the Applicant of the decision to terminate his permanent appointment in accordance with staff regulation 9.3 (c) and staff rule 9.7, effective 29 February 2024.

15. On 19 and 21 February 2024, the Applicant requested management evaluation of the decision to terminate his permanent appointment and requested the suspension of the same decision.

16. On 27 February 2024, UNITAMS informed the Applicant that his functions were among those required on the liquidation team, effective 1 March 2024 to 31 August 2024. Accordingly, the termination of his appointment issued on 29 January 2024 was rescinded.

17. On 29 February 2024, the Chief of Mission Support ("CMS") requested an exception from the OHR/DMSPC Global Strategy and Policy Division to pay relocation and repatriation grants to the Applicant and five other internationally recruited Kenyan staff members working from Nairobi.

18. OHR/DMSPC denied the request, indicating that the staff members' functions were moving within the mission area and that they would not be relocating upon separation from service.

19. On 28 March 2024, the Management Advice and Evaluation Section ("MAES") issued its decision upholding the 29 January 2024 decision to terminate the Applicant's permanent appointment. However, as noted above, that decision had already been rescinded in the interim due to the staff member's placement on the liquidation team.

20. On the 16 May 2024, the Applicant was notified that effective 1 June 2024 to 31 August 2024, his official post location would be changed from Port Sudan to

Nairobi. The Applicant was further informed that since his functions were moved to Nairobi, which is his place of home leave and recruitment, he would not be entitled to travel-related entitlements and benefits including relocation grant and repatriation grant. The Applicant and his colleagues were informed as follows:

> Reference is made to our earlier discussion on the closure of Port Sudan Duty Station COB 31 May 2024. Following the closure, should you opt to remain with UNITAMS effective 1 June 2024 to 31 August 2024, your post location would be changed from Port Sudan to Nairobi. As communicated earlier, since you were not travelled by the organization on a Temporary Assignment to Port Sudan, DOS HR Advice provided guidance clarifying that you would not be entitled to any of your travel related entitlements including repatriation grant and relocation grant.
>
> Having said the above, please note that we have for a 3rd time reverted to OHR/DMSPC seeking exceptional approval to pay relocation and repatriation grants. In case this request is approved, it would be recommended that you separate COB 31 May 2024, with Port Sudan still reflected as your duty station. If not and should you opt to remain with UNITAMS to COB 31 August 2024, your duty station would be changed to Nairobi effective 1st June 2024 and according to our records in Umoja, Nairobi is both your place of home leave and recruitment. For this reason, upon your separation COB 31 August 2024, you will not be entitled to any travel-related entitlements and benefits including RLG and repatriation grants. This is because you would be separated while at your authorized place of recruitment/home leave and therefore travel on repatriation would not apply.

21. On 19 May 2024, the Applicant received a new notice of termination of his permanent appointment and his service on the liquidation team since the post for which he had been retained for the liquidation team would be abolished effective 31 August 2024.

22. On 31 May 2024, UNITAMS closed the Port Sudan duty station and moved the Applicant's official post to the Nairobi duty station on 1 June 2024. Thus, the Applicant was permanently reassigned to Nairobi where he was already based working remotely for the past eleven months.

23. On 11 June 2024, the Applicant wrote to the CMS/Head of UNITAMS liquidation team reiterating that he believed he was qualified for a repatriation grant and that his duty station remained the same despite his reassignment to Nairobi.

24. On 24 June 2024, the Applicant's request for the payment of repatriation grant was denied.

25. On 10 July 2024, the Applicant requested management evaluation of the decision to not to pay him repatriation grant.

26. On 23 October 2024, MAES upheld the contested decision.

27. The Applicant indicates that between 19 May 2024 and 31 August 2024, he applied for 16 vacant positions at the FS7, P-4 and P-5 levels.

Considerations

28. The issues for the Tribunal's determination are: (a) whether the 19 May 2024 decision to terminate the Applicant's permanent appointment due to abolition of the post was unprocedural and unlawful; (b) whether the decision not to retain him in service in accordance with staff rule 9.6 (c) was unlawful; and (c) whether the decision not to pay him repatriation grant upon his separation from the Organization was unlawful.

Issue I: Whether the 19 May 2024 decision to terminate the Applicant's permanent appointment due to abolition of the post was unprocedural and unlawful

Applicant's submissions

29. The Applicant contends that the termination of his permanent appointment on the basis of abolishment of his post was unprocedural and unlawful. In support of his case, the Applicant raises two grounds.

30. First, the Applicant submits that his post was terminated by an authority who was not competent to do so, citing Chapter IX of ST/SGB/2019/2, (Delegation of Authority in the Administration of the Staff Regulations and Rules and the Financial Regulations and Rules) (Delegation of Authority Instrument")." He

agrees that this instrument gives authority to the Head of Entity to separate staff members due to resignation, abandonment of post, expiration of appointment or abolishment of post approved by the General Assembly. However, the Applicant maintains that this instrument does not give authority to the Head of Entity to terminate a permanent appointment without the consent of the concerned staff member. According to him, termination of a permanent appointment without a staff member's consent is delegated to the Under-Secretary-General for Management Strategy who has the authority to terminate a continuing appointment in the interest of good administration up to and including at the D2 level.

31. Therefore, the Applicant argues that, since the letter of termination of his permanent appointment was signed by the Head of UNITAMS Liquidation Team and not the Head of Entity, that termination was executed by an authority that was not competent to do so. Relying on *Bastet* (2015-UNAT-511), the Applicant avers that in absence of any official document delegating such authority from the Secretary-General to the UNITAMS Head of Entity, the action by the UNITAMS' Head of Entity in terminating his appointment was *ultra vires* and thus unprocedural, flawed and unlawful.

32. Secondly, the Applicant submits that the termination of his permanent appointment was premised on misapprehension of the rules. Staff rule 13.2 (c) forbids the application of staff rule 9.3 (b) to permanent appointments based on changes in mission mandate and implicitly excludes termination of a permanent appointment by the Secretary-General without the consent of the staff member.

Respondent's submissions

33. The Respondent's position is that the Applicant's appointment was terminated due to the abolition of the Post. The General Assembly abolished all UNITAMS posts and ordered the Mission closure.

34. In response to the Applicant's first ground, the Respondent submits that contrary to the Applicant's claim, the Head of the Liquidation Team had the delegated authority to issue the termination notice and relies on a document showing the delegation of authority history, where Ms. Clemantine Nkweta-Salami,

who was Head Liquidation-UNITAMS, had the delegated authority to issue the termination letter.

35. In relation to the Applicant's second claim, relying on the jurisprudence of the Tribunal (*Galati* 2022-UNAT-1218, para. 34 and *Hassanin*, 2017-UNAT-759, para. 45), the Respondent asserts that the Applicant's permanent appointment was subject to termination under staff regulation 9.3(a)(i) and staff rule 9.6(c)(i) which authorize the Secretary-General to terminate the appointment of a staff member (including a continuing appointment) for reasons of abolition of post or reduction of staff.

36. The Respondent contends that the Applicant misunderstands Chapter 13 of the staff regulations and rules, which merely delineates the transitional measures for the treatment of permanent appointments and other contract types after the contractual reforms of July 2009. Following the contractual reforms, a permanent appointment is treated the same as a continuing appointment according to staff rule 13.2(a). Staff rule 13.2 contains some exceptions to the termination of permanent appointments, but none apply to the Applicant.

37. The Respondent further argues that a permanent appointment does not guarantee an appointment until retirement or the mandatory age of separation of 65 as the Applicant alleges. Permanent appointments only provide for priority consideration as outlined in staff rule 9.6(c) under conditions specified in sections 5.10 and 5.11 of ST/AI/2023/1, Downsizing or restructuring resulting in termination of appointments ("Downsizing AI"). As the Appeals Tribunal held in *Hassanin* 2017-UNAT-759, para. 24, "[t]he Staff Rules do not provide an absolute right for any staff member to be retained."

Applicable law

38. Staff Regulation 9.3(a)(i) provides, in relevant part, that:

> (a) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of his or her appointment or for any of the following reasons:

> (i) If the necessities of service require abolition of the post or reduction of the staff.

39. Staff Regulation 9.3 (b) states:

> In addition, in the case of a staff member holding a continuing appointment, the Secretary-General may terminate the appointment without the consent of the staff member if, in the opinion of the Secretary-General, such action would be in the interest of the good administration of the Organization, to be interpreted principally as a change or termination of a mandate, and in accordance with the standards of the Charter.

40. Staff rule 13.2 provides:

> Staff members holding a permanent appointment shall retain the appointment until they separate from the Organization. Effective 1 July 2009, all permanent appointments shall be governed by the terms and conditions applicable to continuing appointments under the Staff Regulations and the Staff Rules, except as provided under the present rule.

Consideration

41. It is a well settled jurisprudence that an international organization necessarily has the power to restructure some or all of its departments or units, including the abolition of posts, and the Tribunal will not interfere with a genuine organizational restructuring even though it may have resulted in the loss of employment of staff. However, like any other administrative decision, the Administration has the duty to act fairly, justly and transparently in dealing with staff members (see *Hersh* 2014-UNAT-433, para. 17; *Bali* 2014-UNAT-450, *Matadi et al.* 2015-UNAT-592). If the applicant claims that the decision was ill-motivated, the burden of proving any such allegations rests with the applicant (see, for instance, *Azzouni* 2010-UNAT-081, para. 35; *Obdeijn* 2012-UNAT-201, para. 38).

42. Regarding the Applicant's challenge relating to the official who signed his termination letter, the Respondent has produced a document showing the delegation of authority history, where Ms. Clemantine Nkweta-Salami who was, Head of Liquidation-UNITAMS had delegated authority to issue such termination letter. This evidence is sufficient to invoke the presumption of regularity and shift the

burden of proof to the Applicant (*Azzouni* 2010-UNAT-081, para. 35; *Obdeijn* 2012-UNAT-201, para. 38). However, the Applicant fails to present any rebutting evidence.

43. Therefore, the presence of this delegation of authority document, settles the Applicant's claim. It is clear that the Head of Liquidation-UNITAMS had the delegated authority and the Applicant's claim lacks merit.

44. Regarding the Applicant's second contention that staff rule 13.2 (c) forbids the application of staff rule 9.3(b) to permanent appointments on the basis of changes in mission mandate and implicitly excludes termination of a permanent appointment by the Secretary-General without the consent of the staff member, the starting point is that permanent appointments are subject to termination under staff regulation 9.3(a)(i) and staff rule 9.6(c)(i).

45. The United Nations Appeals Tribunal ("UNAT") has held that "[t]he Staff Rules do not provide an absolute right for any staff member to be retained". *(Hassanin* 2017-UNAT-759, para. 24).

46. The Tribunal, therefore, agrees with the Respondent that a permanent appointment does not guarantee an appointment until retirement or the mandatory age of separation of 65. Permanent appointments only provide for priority consideration as outlined in staff rule 9.6(c) under conditions specified in sections 5.10 and 5.11 of ST/AI/2023/1 (Downsizing or restructuring resulting in termination of appointments) ("Downsizing AI").

47. In addition, the Applicant's contention that staff rule 13.2(c) forbids the application of staff rule 9.3(b) to permanent appointments seems to be misplaced. Staff rule 9.3(b) relates to the recommendations by the senior review bodies and central review bodies for the termination of permanent appointments for unsatisfactory service, which is not an issue in this case.

48. Accordingly, the Tribunal finds that the termination of the Applicant's permanent appointment on the basis of abolishment of his post was procedurally proper and lawful.

Issue II: Whether the decision not to retain the Applicant in service in accordance with staff rule 9.6(c) was unlawful

The Applicant's submissions

49. The Applicant next argues that, even if the decision to abolish his post was lawful, the Administration failed to make good faith efforts to retain him against a suitable post before terminating his permanent appointment pursuant to staff rules 13.2(d) and 9.6(c). The Applicant relies on *Fasanella* 2017-UNAT-765, para 32, *Secretary-General* 2022-UNAT-1218, and *Nega* UNDT/2022/105 as support for this argument.

50. The Applicant indicates that he applied to 16 suitable positions, including Chief of Unit, Information Systems and Telecommunications, P.4 Job ID239434; Chief of Unit, Information Systems and Telecommunications FS-7, Job ID229674; and Telecommunications Officer, P-4, Job ID 236479. Considering that he was an employee for 34 years, his permanent appointment status, his integrity and being from a closing mission, the Applicant maintains that he would have been best suited for these positions. However, the Administration did not make good faith efforts to forestall the termination of his appointment or place him on any of the vacant positions.

The Respondent's submissions

51. The Respondent submits that the Organization was not required to "place" the Applicant in a new position following the termination of his appointment. Rather, staff rule 9.6(c) requires the Organization to "assist" staff members in finding alternative positions. The Downsizing AI and the jurisprudence preceding its promulgation state that staff members must apply for positions.

52. Relying on sections 5.10 and 5.11 of the Downsizing AI, the Respondent submits that priority consideration is limited to job openings (excluding generic job openings) within three months after the date of notification of termination for staff members holding permanent appointments. Further, the priority consideration

applies to applications for job openings submitted before the date of notification of termination, provided the date for applying for the job opening has not expired by the date on which the three-month priority consideration period has begun.

53. The Respondent maintains that the Organization made reasonable and good faith efforts to assist the Applicant in finding an alternative position by extending his employment by including him on the liquidation team until the closure of the mission thereby allowing him additional time to find a position, by flagging his Personal History Profile ("PHP") in *Inspira* for priority consideration for suitable vacancies, and by following up twice with hiring entities about his applications.

54. The Respondent elaborates that in addition, the Applicant received priority consideration for positions at his level or one level below for which he applied within the priority consideration period, *i.e.*, 19 May 2024 to 19 August 2024. The application specifies four positions for which the Applicant applied but was not selected.

a. Job Opening (JO)#239434, P-4 Chief of Unit, Information Systems and Telecommunications, UNIFIL;
b. JO #236479, P-4 Telecommunications Officer, UNGSC;
c. Temporary Job Opening (TJO) #236817, P-4 Administrative Officer, UNSCOL;
d. JO #229674, FS-7 Chief of Unit, Information Systems and Telecommunications, MINUSMA.

Applicable law

55. Staff rule 9.6(c), provides that:

> Except as otherwise expressly provided in paragraph (d) below and staff rule 13.2 (Permanent appointment), if the necessities of service require that appointments of staff members be terminated as a result of the abolition of a post or the reduction of staff, and subject to the availability of suitable posts in which their services can be effectively utilized, provided that due regard shall be given in all cases to relative competence, integrity and length of service, a staff member whose appointment is terminated as a result of the abolition

> of a post or the reduction of staff shall be retained in the following order of preference: (i) staff members holding continuing appointment; (ii) staff members recruited through competitive examinations for a career appointment; (iii) staff members holding fixed-term appointments.

56. Section 5.10 of the Downsizing AI states:

> Staff members in retention group 1 who hold appointments without limitation who were not retained in the downsizing entity or assigned to another entity pursuant to section 5.8 and were informed that their appointments would be terminated before their expiration dates pursuant to section 5.9 ("downsized staff members") shall be considered before any other candidates when they apply for positions at their original level or one level below within their category in other entities. Staff members temporarily assigned or temporarily promoted to serve in a higher-level position shall be given such priority consideration for positions at their original level or one level below within their category only.

57. Section 5.11 of the Downsizing AI states:

> This priority consideration shall apply to applications for job openings, excluding generic job openings, and for temporary job openings, which are submitted:
>
> a. Within one month after the date of notification of termination in the case of fixed-term appointees;
>
> b. Within three months after the date of notification of termination in the case of staff members holding a permanent or continuing appointment.

Consideration

58. The Tribunal notes that the Applicant was not entitled to priority consideration for the position of Chief of Unit, Information Systems and Telecommunications (JO #229674), FS-7 because that position was in a different category (Field Service) than the Applicant's Professional category. Thus, Section 5.10 of the Downsizing AI does not apply for that job opening. ("shall begiven priority consideration for positions...within their category only.").

59. The Applicant was, however, eligible for priority consideration in the professional category positions for which he applied. His non-selection for these

positions was, nevertheless, caused by other factors. The record indicates that both Job Opening #239434, (P-4 Chief of Unit, Information Systems and Telecommunications, UNIFIL) and #23679, (P-4 Telecommunications Officer, UNGSC) were cancelled. As a result, there were no selection decisions made for these openings.

60. The Respondent points out that the Applicant received priority consideration for the UNSCOL Administrative Officer (TJO# 236817) position but was deemed unsuitable because he lacked required experience in administration, finance, accounting, human resource management, or related fields since his entire work experience is in Information and Communications Technology. The Applicant has not provided any evidence to contradict this.

61. Regarding the Applicant claim that he was suitable for the positions because he was a United Nations employee for 34 years, his permanent appointment status, his integrity, and because he was from a closing mission, the Tribunal notes that the Applicant does not provide any rule or jurisprudence to back his claim. As enshrined in the applicable rules, for selection, even on priority consideration, Applicant must meet the specific job requirements of the job opening, which he did not.

62. In conclusion, based on the available evidence, the Tribunal finds that the Administration has demonstrated that all reasonable efforts were made to consider the Applicant for available suitable posts in keeping with staff rule 9.6(c).

Issue III: The decision not to pay the Applicant repatriation grant upon his separation from the Organization.

Applicant's submissions

63. The Applicant argues that the Administration disregarded and misapplied the staff rules governing the payment of repatriation and relocation grant entitlements in his case. The Applicant had served as an expatriate for over 34 years and was thus entitled to the repatriation grant under staff rule 13.6 and the relocation grant under staff rule 7.12 (b)(viii) and staff rule 7.13 (a) (iii).

64. The Applicant states that, contrary to the Administration's position, he was not settled in Nairobi. He was in Nairobi at the time of separation because the Administration had assigned him there on a temporary assignment and due to Administration's failure to secure him a visa to go to Port Sudan, where he was deployed effective 24 July 2023.

Respondent's submissions

65. The Respondent submits that the Applicant was not serving outside his home country when he separated, a prerequisite of receipt of the repatriation grant. Staff rule 9.12(a) and Section 1 of the Repatriation Grant Administrative Instruction specifically provide that the repatriation grant is intended to assist in re-establishing expatriate staff members in a country other than their last duty station, provided they meet the conditions in Annex IV to the Staff Regulations. The General Assembly Resolution of 28 April 1995 states that repatriation grants and other expatriate benefits are limited to staff members who both work and reside in a country other than their home country.

66. The Applicant was permanently assigned to Nairobi when he was separated, as reflected in his personnel action notification. Nairobi was not a temporary duty assignment as the Applicant alleges. On 16 May 2024, the Officer-in-Charge/HR informed the Applicant that his official duty station changed from Port Sudan, Sudan, to Nairobi, Kenya and advised him that he should separate rather than be reassigned to Nairobi if he wanted to receive the repatriation grant of 28 weeks' pay. Subsequently, the Applicant wrote directly to OHR, acknowledging his reassignment to Nairobi and that he would not receive a repatriation grant for that reason. The Applicant chose the reassignment and fully understood the consequences. He has cited no regulation or rule entitling him to receive a repatriation grant.

Consideration

67. The starting point in examining the issues of repatriation and relocation grants is to first establish whether Nairobi was the Applicant's duty station at the time of

his separation from service. Once this is concluded, then the Tribunal will examine the applicable rules.

68. The Tribunal finds the Applicant's averment that he was in Nairobi on a temporary assignment not to be entirely truthful. The evidence on the record clearly shows that, while his initial assignment to Nairobi on 6 June 2023 was temporary, that status had changed in the subsequent 14 months. On 18 July 2023, he was reassigned to Port Sudan and on the 16 May 2024, the Applicant was notified that effective 1 June 2024 to 31 August 2024, his post location was to be changed from Port Sudan to Nairobi. The Applicant was further informed that since his functions were moved to Nairobi, which is his place of home leave and recruitment, he would **not** be entitled to travel-related entitlements and benefits including relocation grant and repatriation grant.

69. The evidence further shows that the Applicant was advised that in order to enjoy the repatriation and relocation benefits, he should separate while his duty station was still Port Sudan. The Applicant rejected this advice and opted to remain in service as his post was transferred to Nairobi. Therefore, contrary to the Applicant's contention, it is clear that at the time of his separation, the Applicant was permanently deployed to Nairobi.

70. Having resolved the issue of the Applicant's duty station, the Tribunal applies that fact to the applicable rules. Staff rule 9.12(a) requires the re-establishment of expatriate staff members in a country other than their last duty station. Further, the General Assembly Resolution of 28 April 1995 states that repatriation grants and other expatriate benefits are limited to staff members who both work and reside in a country other than their home country. In the instant case, at the time of his separation, the Applicant was working and residing in Kenya, his home country. Therefore, the rules cited by the Applicant would only apply if the Applicant had met the first requirement set by rule 9.12.

71. In view of the above, the Tribunal finds that the decision not to pay the Applicant a repatriation grant upon his separation from the Organization was lawful.

Conclusion

72. In light of the foregoing, the Tribunal DECIDES to deny the application in its entirety.

(Signed)
Judge Sean Wallace
Dated this 15th day of May 2025

Entered in the Register on this 15th day of May 2025

(Signed)
Wnda L. Carter, Registrar, Nairobi