



Before: Duty Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

BERTHAUD

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Robbie Leighton, OSLA

Counsel for Respondent:

Angela Arroyo, UNDP

Introduction

1. The Applicant is a former staff member of the United Nations Development Programme (“UNDP”), and the Applicant’s husband is a former staff member of the World Food Programme (“WFP”).

2. By Judgment *Berthaud* UNDT/2021/063, this Tribunal adjudicated the Applicant’s challenge against UNDP’s decision to pay her repatriation grant at single rather than dependency rate by rejecting the application in its entirety.

3. By Judgment *Berthaud* 2022-UNAT-1253, the Appeals Tribunal vacated the above-mentioned UNDT Judgment and remanded the case to it for consideration of the

discrete issues of (i) the exact amount of the repatriation grant to which Ms. Berthaud is entitled, per Section 17(d) of the UNDP Repatriation Policy, as interpreted by this Tribunal, and (ii) whether her claim to that entitlement is eventually more financially advantageous than that accorded to her with the contested administrative decision.

Consideration

4. In *Berthaud* (para. 41), the Appeals Tribunal found that

under the legal framework envisaged by Section 17(d) of the UNDP Repatriation Policy ... when both spouses are staff members and both entitled to the repatriation grant and there exist dependent children ... then it is the first spouse to separate from service [i.e., the Applicant] who is afforded a choice to claim payment of the repatriation grant at the dependency rate. It is not the second spouse to separate from service [i.e., the Applicant’s husband] who is conferred such a right to make a choice nor the Administration, as this is not an issue that is subject to the discretionary authority of the Administration. This, however, does not mean that the amount of grant payment to the first spouse to separate, who made such a choice, will eventually be at the dependency rate, because, as noted above, in the calculation of it the Administration will factor in the entitlement possibly already received by the second spouse.

5. Also, in *Berthaud* (para. 42), the Appeals Tribunal stated that in the Applicant's case

it is common cause that Ms. Berthaud, the first spouse to separate, made her choice under Section 17(d) of the UNDP Repatriation Policy by claiming her repatriation grant at the dependency rate, while her spouse, a WFP's staff member, who separated afterwards, received payment of the repatriation grant at the single rate.

6. Finally, in *Berthaud* (para. 43), the Appeals Tribunal further found that

given that [the Applicant's] husband had completed an aggregate service exceeding the minimum of five years of qualifying service per Sections 3(a) and 6(a) of the UNDP Repatriation Policy, he was entitled to the repatriation grant for the balance of the remaining service period subsequent to the separation of Ms. Berthaud, notwithstanding that it had been less than five years of continuous service, i.e., only three years.

7. It follows from the above that to examine the remanded issue, namely the exact amount of the repatriation grant to which the Applicant is entitled pursuant to Section 17(d) of the UNDP Repatriation Policy as interpreted by the Appeals Tribunal, it is necessary to request the Respondent to enter the following information into the record:

- a. The amount that UNDP actually paid to the Applicant as repatriation grant at the single rate together with supporting detailed calculations of it indicating *inter alia* the period used for the repatriation grant calculation;
- b. The amount that UNDP would have paid to the Applicant as repatriation grant at the dependency rate together with supporting detailed calculations of it indicating *inter alia* the period used for the repatriation grant calculation;
- c. The amount of the repatriation grant at the single rate that WFP paid to the Applicant's husband together with supporting detailed calculations of it indicating *inter alia* the period used for the repatriation grant calculation;

d. The amount of the repatriation grant at the single rate that WFP would have paid to the Applicant's husband based on three years of service, namely the period from the Applicant's date of separation from service and that of her husband's, together with supporting detailed calculations of it; and

e. The amount of the repatriation grant at the dependency rate that WFP would have paid to the Applicant's husband based on three years of service, namely the period from the Applicant's date of separation from service and that of her husband's, together with supporting detailed calculations of it.

8. Concerning point 7.e above, the Respondent shall submit his arguments, together with supporting documentation, on whether the Applicant's husband was entitled to the repatriation grant at the dependency rate at the time of his separation from service from WFP.

IT IS ORDERED THAT:

9. The Respondent shall file the information/arguments outlined in paras. 7 and 8 above by **Wednesday, 28 December 2022**.

(Signed)

Judge Teresa Bravo (Duty Judge)

Dated this 29th day of November 2022

Entered in the Register on this 29th day of November 2022

(Signed)

René M. Vargas M., Registrar, Geneva