



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2018/075
Order No.: 176 (NY/2019)
Date: 16 December 2019
Original: English

Before: Judge Eleanor Donaldson-Honeywell

Registry: New York

Registrar: Nerea Suero Fontecha

GRAY

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON CASE MANAGEMENT

Counsel for Applicant:
Mohamed Abdou, OSLA

Counsel for Respondent:
Elizabeth Brown, UNHCR

Introduction

1. On 19 October 2017, the Applicant, a former staff member at the P-3 level on a temporary appointment with the United Nations High Commissioner for Refugees (“UNHCR”), filed an application to contest the decision to “refuse the payment of relocation grant and separation travel” in relation to her separation on 30 March 2017. The case was initially filed with the Geneva Registry.
2. On 22 November 2017, the Respondent filed his reply in which he submits that the application is without merit.
3. 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

4. Under the Appeals Tribunal’s consistent jurisprudence, the Dispute Tribunal has “the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review” (see *Fasanella* 2017-UNAT-765, para. 20).
5. The Tribunal notes that while the Applicant states that she contests the decision to “refuse the payment of relocation grant and separation travel”, the case file appears to show that, as evident from her request for management evaluation and the application, she, in fact, challenges the refusal of the payment of three different entitlements relating to her separation: (a) repatriation grant, (b) lump-sum payment *in lieu* of shipment entitlement, which she refers to as a “relocation grant”, and (c) travel expenses on separation from service.
6. The Tribunal notes that the Applicant, in providing documents regarding the contested decision, submitted some email exchanges by which the payment for “relocation grant and separation travel” was denied. However, there was no

submission to the Tribunal by the Applicant of the separation memorandum referenced in the email exchanges.

7. The Tribunal also notes that there is an issue to be determined as to what the applicable law on this matter is as the parties in the present case rely on different legal frameworks. All that appears to be agreed by both parties is that the Staff Rules apply in this case. The Tribunal notes that the Staff Rules applicable at the relevant time are set forth in ST/SGB/2017/1.

8. Regarding the repatriation grant, the Tribunal notes that, in setting forth the eligibility for repatriation grant, staff rule 3.19 (c)(i) lists the following as one of the eligibility criteria:

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

Staff rule 3.19(b)(v) in turn defines qualifying service as “five years or more of continuous service”.

9. However, according to sec. 13.5 of the UNHCR Inter-Office Memorandum (“IOM”) No. 36/2010/Corr. 2 dated 21 March 2011 on the subject matter of "Administration of Temporary Appointments", submitted by the Respondent as the applicable law,

A repatriation grant shall be payable to a staff member whom the Organization is obliged to repatriate and who has accrued one year or more of continuous service.

10. Considering the different definitions of qualifying service for an eligibility for repatriation grant under staff rule 3.19 and IOM No. 36/2010/Corr. 2, the Tribunal needs UNHCR to confirm that it indeed defined qualifying service differently for the purpose of repatriation grant at the relevant time.

11. Regarding a lump-sum payment *in lieu* of shipment entitlement referred to as a “relocation grant” by the Applicant, the Tribunal notes that the Respondent appears to equate “relocation grant” with “relocation shipment” under staff rule 7.16, even

though there is a possible lump-sum payment *in lieu* of “unaccompanied shipment” as governed under staff rule 7.15. In this regard, the Tribunal further notes that sec. 11.1(c) of IOM No. 36/2010/Corr. 2 provides that (emphasis added):

A staff member who holds a temporary appointment serving in positions subject to international recruitment shall be eligible ... Unaccompanied shipment, as applicable. *The lump sum option in lieu of standard shipment entitlement shall be available.*

12. The Tribunal also notes that sec. 12.3 of the same document provides that “[t]ravel, unaccompanied shipment and the daily subsistence allowance portion of the assignment grant shall not be paid, in any case, to a staff member who, upon initial appointment with the Organization, did not travel at the United Nations expense because he/she was recruited at the duty station or within commuting distance from the duty station”.

13. However, since this document does not provide the detailed guidance on the amount of these travel and shipment entitlements and the relevant procedures and UNHCR submits that ST/AI/2016/4 is not applicable to UNHCR, the Tribunal needs UNHCR to provide information as to whether there is any internal guidance or policy document governing travel, shipments, lump-sum payment in lieu of shipment entitlements, etc., similar to ST/AI/2016/4 (Excess baggage, shipments and insurance).

14. The undersigned Judge notes that as her current term with the Dispute Tribunal is limited to three months, the parties will be required to strictly cooperate with observing the deadlines set out in the Tribunal’s orders.

15. In light of the above,

IT IS ORDERED THAT:

16. By **4:00 p.m. on Monday, 23th December 2019**, the Respondent shall:

- a. Provide a copy of the Applicant’s separation documentation related to her separation on 30 March 2017;

b. Confirm what legal framework applies to the Applicant's separation on 30 March 2017 and provide a copy thereof, if not already submitted to the Tribunal.

c. The Tribunal will thereafter consider the information provided and give further case management directions as to the identification of issues, the process to be used for determination and any other issue that may arise.

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 16th day of December 2019