

UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2014/004

Judgment No.: UNDT/2014/096

Date: 14 July 2014

Original: English

Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Abena Kwakye-Berko

REID

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for the Appli

Introduction

1. The Applicant is a former staff member of the United Nations Support Mission in Libya (UNSMIL) who was employed on a series of temporary contracts for over one and a half years. In his Application dated 2 January 2014, amended on 31 January 2014, he avers that on relocation to Libya from Canada he was entitled to receive a full relocation grant, that is, the same as a staff member on a Fixed-Term Appointment (FTA).

2. The Respondent filed a Reply on 21 February 2014 in which it is asserted that the Applicant was paid USD1

14. On the same date, the Applicant wrote an email asking the CHRO for advice on the appropriate person to pursue his claims with.

15. On 15 July 2013, the Applicant filed a request for management evaluation of the decisions to

The Applicant submits that “The UN Human Resources handbook Guidelines on Relocation Grant (RLG)” make no distinctions between TAs and FTAs.

21. The Noblemaire Principle is supposed to guide the United Nations’ remuneration policy as confirmed in *Muthuswami et al* 2010-UNAT-034.

22. The nature of TAs as stipulated in ST/AI/2010/4/Rev.1 has not been respected as they are supposed to be for seasonal and short-term/surge work lasting less than one year.

23. To demand the same relocation grant as staff on FTAs is not to confuse the two types of appointment since the essential element, the temporary nature of the contract, remains intact. The Applicant further submits that the International Labour Organization, the World

27. The Applicant received the entitlements to relocation grant applicable to staff on TAs in accordance with the mandate of the General Assembly, the Staff Regulations, Staff Rules and ST/AI/2010/4/Rev.1. He signed a letter of appointment in which he accepted the terms and conditions of his employment contract as specified in the Staff Regulations and Staff Rules including staff rule 7.15(h)(i).

28. The entitlements of staff on TAs are limited to the provision in staff rule 7.15(h)(i). ST/AI/2006/5 does not apply to the Applicant but to staff members who have appointments of one year or longer. The Applicant's appointment to Libya was on a TA of three month duration. Although his appointment was renewed, at no time was he appointed for one year or longer.

29. Staff rule 7.15(h)(i) and section 11.1(c) of ST/AI/2010/4/Rev.1 expressly regulate the rights of staff members appointed on TAs. In addition, the Information Circular on excess baggage states that the rate for assignments of less than one year and an unaccompanied shipment entitlement of 100 kilos is USD1,200 and is applicable to the Applicant's relocation to Libya.

30. The Applicant entered into a settlement agreement concerning his claim that he should have been appointed to an FTA following the conduct of a selection exercise. His claim is not receivable since he has released the Organization from any liability for any failure not to appoint him to a fixed-term position. The Applicant is accordingly estopped from raising any issues concerning allegations of a right to appointment to an FTA in this case.

31. The principles enunciated in *Cys*

demands that in both instances, the contractual provisions of the respective contracts are enforced.

33. The rationale in *McCluskey*, 2013-UNAT-332 applies in this case. As the Applicant was appointed on a TA, he does not fall within the same class of staff members as those appointed on a fixed-term appointment. He had been appointed in different circumstances under different rules.

34. The Noblemaire principle is not applicable to the Applicant's claim as it does not cover entitlements such as relocation grants.

35. For these reasons, the Respondent requests that the Application be dismissed.

Considerations

Receivability

36. The competence of the Tribunal is determined by the provisions of pursuant to the provisions of art. 2.1 (a) of the Statute:

The Dispute Tribunal shall be competent to hear and pass judgment on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract " and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance...

37. To determine whether this claim is receivable, the Tribunal must examine the substance of the Applicant's Application to determine if it falls within the competence of the Tribunal.

38. The Applicant does not deny that he received the relocation grant he was due as a staff member on TA but alleges that the rules on relocation grants discriminate against staff members engaged on continuous temporary contracts.

Relocation grant entitlements for staff members on temporary appointments

39. Prior to 2009, the entitlement to a relocation grant by United Nations staff was governed by section 11.1 of ST/AI/2006/5. This provided for a relocation grant for travel on assignment for one year or longer, transfer or separation from service of a staff member appointed for one year or longer.

40. In 2008, in A/63/298 (Detailed proposals for streamlining United Nations contractual arrangements: a way forward), the Secretary-General proposed to streamline United Nations contractual entitlements under a s5.5()] TJ ET Q q BT /F1 11.28 Tf 0

both the new rules and the revised administrative instruction maintained the same wording on the relocation grant entitlement.

43. Section 11 of ST/AI/2010/4/Rev.1 is reproduced below:

Section 11
Travel-related entitlements

11.1 A staf(f)-85

unaccompanied shipment entitlement of 100 kilos is US\$ 1,200 which is the amount the Applicant received.

46. In A/65/202 dated 20 August 2010, the Secretary-General provided information to the General Assembly on the provisional staff rules to implement the new contractual arrangements. In paragraph 11 he specifically referred to temporary appointments as follows:

Chapter III, on salaries and related allowances, reflects the harmonization of conditions

50. It is clear from his submission that the gravamen of the Applicant's case is that the changes to the Human Resources regime and the rules which apply to

(Signed)

Judge Coral Shaw

Dated this 14th day of July 2014

Entered in the Register on this 14th day of July 2014

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi