Introduction

1. The Applicant, a Senior Policy Officer at the P-5 level in the Policy, Planning and Application Branch ("PPAB") in the Peacebuilding Support Office ("PBSO), filed an application on 20 March 2014 contesting the decision by the Office of Human Resources Management ("OHRM") that she was not eligible for the benefit of mobility allowance. The Applicant seeks (a) rescission of the contested decision and approval of her application for the mobility allowance, (b) retroactive payment of the allowance on the basis of a mobility count of four from the date of the original request in January 2012, (c) prejudgment interest upon the foregoing pecuniary damages, with interest at the United States of America ("US") Prime

4. On 18 October 2013, the Applicant requested management evaluation of the decision denying her mobility allowance and, on 24 December 2013, the Under-Secretary-General for Management upheld the decision denying her payment of mobility allowance.

5. The case was assigned to the undersigned judge in August 2014.

6. Pursuant to Order No. 299 (NY/2014) dated 4 November 2014, the parties attended a Case Management Discussion ("CMD") on 17 December 2014 to discuss whether any further information or clarification was required from either party, if any further evidence was necessary, including the testimony of witnesses, and if the parties were amenable to refer the case to the United Nations Ombudsman and Mediation Services.

7. At the CMD, the parties informed the Tribunal that there were only two factual circumstances on which they did not agree and that they believed that the discrepancy with regard to these two facts could be clarified via *inter partes* discussions following which they would file a joint submission.

8. By Order No. 346 (NY/2014) dated 18 December 2014, the Tribunal ordered the parties to file and serve a joint submission identifying the agreed facts indicating whether they required the production of additional documents and providing their view on whether the case could be resolved on the papers before the Tribunal.

9. In response to Order No. 346 (NY/2014), on 20 February 2015, the parties filed a joint submission in which they stated that they had no objection to a determination of the case on the papers. The Respondent required no further documents but produced some additional documentation concerning the Administration's consideration of the Applicant for mobility allowance in 2012. The Respondent requested that the facts set out in the joint submission be included in the record of the case. The Applicant did not oppose the Respondent's request but sought leave to make further submissions. Both parties had no objection to the case being disposed of on the papers.

10. By Order No. 37 (NY/2015) dated 5 March 2015, the Tribunal granted leave to the Applicant's request and ordered that any additional legal submissions in relation to the

… On 23 March 2009, the Applicant was re-employed as Programme Officer at the P-4 level with DESA in New York for a two-month period on a FTA through 22 May 2009, pending selection of a candidate

> … The Applicant has moved since the management evaluation request has been filed. On 1 December 2013, [the Applicant] moved within UNMISS on promotion and change in function/office. On 14 February 2014, [the Applicant] moved to ["PBSO"] in New York.

13. In the 20 February 2015 joint submission, the Respondent further presented the following additional facts:

> … On 28 November 2012, the Chief of Human Resources Centre in the Regional Service Centre in Entebbe forwarded to [FPD] the list of UNMISS staff members, including the Applicant, who reported that payments for the mobility allowance were outstanding (List).
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> … On 1 December 2012, the Applicant was selected to the position of Senior Political Affairs Officer at the P-5 level, with [UNMISS].
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> … On 3 December 2012, FPD provided UNMISS with an updated List, with remarks on the status of the mobility allowance issues of the UNMISS staff members, e.g., indicating "granted", "pending" or "no MHA worksheet". In the Applicant's case, the remarks indicated "no MHA worksheet".
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> … On 31 December 2012, during the course of the mission's review of mobility allowance cases, FPD's advice was sought by UNMISS on whether the mobility allowance count is reset in the Applicant's case given her resignation effective 23 September 2009.
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> … On 9 January 2013, in response to UNMISS's review of her application for a mobility allowance, the Applicant advised UNMISS that she separated from her FTA with DESA in 2009 for the express purpose of taking up a TA in DPKO and after being informed by the Executive Office of DPKO that she was administratively unable to carry her FTA with DESA over to DPKO on TA.
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> … On 12 March 2013, the Applicant requested an update from UNMISS on her application for the mobility entitlement. UNMISS replied that the mission "still do not have any updated information from FPD."

14. The Respondent requested that these additional

15. In the Applicant's 5 March 2015 response

a. The Respondent's interpretation of "prior consecutive service" for the purpose of mobility allowance, pursuant to ST/AI/2007/1 (Mobility and hardship allowance) or ST/AI/2011/6 worded in similar terms, is erroneous given that eligibility to mobility allowance is contingent upon a staff member having served the Organization for five years with consecutive movements, without regard to breaks in service;

b. "Prior consecutive service" means sequential, but not necessarily uninterrupted, qualifying periods of service, which is confirmed by the provision of sec. 2.3 of ST/AI/2007/1 according to which "separate periods of service shall be considered as consecutive for the purpose of section 2.1 when their cumulative duration reaches five years within the prior six-year period";

c. The removal of this provision in the administrative instruction adopted in 2011 does not have the effect of changing the definition of "consecutive service" as there is no explicit provision restricting implicitly or explicitly the well-established definition of what is considered as "prior consecutive service", which was confirmed in an article published on the Organization intranet in 2012;

d. There is no requirement in ST/AI/2011/6 that the entire period of service must be uninterrupted. Changes made by the Administration to previous provisions were clearly indicated and subject of recorded debate, noted in the General Assembly resolution 62/248 referred to in the administrative instruction;

e. Administrative issuances are required to establish new rules with clarity, particularly when they seek to reduce entitlements (reference is made to ST/SGB/2009/4 (Procedures for the promulgation of administrative issuances), secs. 5-6), in order to permit staff consultation which seems to have been eluded in this case if the Respondent's interpretation is upheld considering that the changes to mobility entitlement, unlike other provisions, has not been highlighted in the administrative instruction;

> *she has previously served and the length of time served at each duty station.*

21. Staff rule 4.17(a) and (b) (Re-employment) and Staff Rule 4.18 (Reinstatement) of ST/SGB/2011/1 state:

> **Rule 4.17**
> **Re-employment**
>
> (a) A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18.
>
> (b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.
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> **Rule 4.18**
> **Reinstatement**
>
> (a) A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within twelve months of separation from service may be reinstated in accordance with conditions established by the Secretary-General.
>
> (b) On reinstatement the staff member's services shall be considered as having been continuous, and the staff member shall return any monies he or she received on account of separation, including termination indemnity under staff rule 9.8, repatriation grant under staff rule 3.18 and payment for accrued annual leave under staff rule 9.9. The interval between separation and reinstatement shall be charged, to

> *Qualifying service*
>
> 2.1 To qualify for payment of the mobility allowance, a staff member must have five years' prior consecutive service as a staff member in the United Nations or another organization of the common system. Service credited towards the five-year requirement may include service as a staff member in one of the categories eligible for payment of the allowance under section 1.4, as well as prior service in a non-eligible category when allowed under section 2.6.
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> 2.2 At all duty stations classified in categories A to E, the mobility allowance is payable from the second assignment, provided the requirement of five years' continuing service has been met. At duty stations classified in category H, the mobility allowance is payable from the fourth assignment and only if the staff member has had two or more assignments, each for a period of one year or longer, at duty stations classified in categories A to E.
>
> 2.3 *Separate periods of service shall be considered as consecutive for the purpose of section 2.1 when their cumulative duration reaches five years within the prior six-year period*, unless broken by one of the following occurrences: resignation, abandonment of post, summary dismissal or dismissal for misconduct, agreed termination, termination for unsatisfactory service and separation from service under staff rule 104.14 (i) (i) of staff on probationary appointment. *Separation due to other occurrences, such as non-renewal of fixed-term appointment, or separation to take up another appointment within the United Nations common system, shall not break the period of service for the purposes of this section*.
>
> 2.4 Service shall not be considered as broken by periods of special leave, but full months of special leave without pay shall not be credited towards the five-year service requirement.

23. Sections 1.2 and 1.3 (Eligibility) of ST/AI/2011/6, which entered into force on 1 July 2011 and was applicable at the time of the Applicant's request for payment of mobility allowance, provides that:

> 1.2 Staff in the Professional and higher categories (i.e., international Professional staff), staff in the Field Service category and internationally recruited General Service staff shall be eligible for payment of the allowances under this scheme, provided they meet the requirements set out in section 1.3 and the particular conditions governing each allowance, as set out in sections 2, 3, 4 and 5 below.
>
> 1.3 Eligibility for the mobility and non-removal allowances under this scheme shall require an appointment to a duty station, or a

> normally giving rise to an assignment grant under staff rule 7.14. However, some of the allowances may also be paid when an appointment or assignment with payment of a daily subsistence allowance is subsequently extended to one year or longer, in which case the allowances may be paid as of the first day following discontinuation of the subsistence allowance.

24. Sections 2.1 to 2.4 of ST/AI/2011/6 states, in relevant part (emphasis added):

> *Qualifying service*
>
> 2.1 To qualify for payment of the mobility allowance, a staff member *must have five years' prior consecutive service* as a staff member in the United Nations or another organization of the common system. Service credited towards the five-year requirement may include service as a staff member in one of the categories eligible for payment of the allowance under section 1.2, as well as prior service in a non-eligible category when allowed under section 2.6.
>
> 2.2 At all duty stations classified in categories A to E, the mobility allowance is payable from the second assignment, provided the requirement of five years' consecutive service has been met. At duty stations classified in category H, the mobility allowance is payable from the fourth assignment and only if the staff member has

not eligible to receive the mobility allowance regardless of any exceptional extension of their appointment beyond 364 days”.

28. An abolished administrative instruction, recognizing the five years of cumulative separate periods of service reached within the prior six-year period (sec. 2.3 of ST/AI/2007/1) cannot apply to a request for mobility allowance submitted six months after a new administrative instruction with an app

> c. At all duty stations classified in categories A to E, the staff member must have a second assignment, provided that the requirement of five years consecutive service has been meet (sec. 2.2);
>
> d. At duty stations classified in category H, the staff member who has had previously two or more assignments, each for a period of one year or longer, at duty stations classified in categories A to E, must have a fourth assignment (sec. 2.2).

32. In January 2012, the Applicant was Applicant was appointed on an FTA for one year and the first requirement was fulfilled.

33. Regarding the second requirement, the Tribunal finds that, in the present case, the five years prior to the request for mobility allowance are to be calculated from 1 January 2006 until 31 December 2011.

34. These prior five years must be consecutive. The definition of "consecutive" as per the Webster's New World dictionary is "following in order, without interruption". The English dictionary defines "consecutive" as "following continuously". It results that, during the period mentioned above, the service must (shall) not be broken. In accordance with sec. 2.3 of ST/AI/2011/6, continuous service is not broken by periods of special leave, but full months of special leave without pay are (shall) not to be credited towards the five–year service requirement.

35. The Tribunal notes that as results from the parties' submissions, from 18 July 2004 to 31 July 2006, the Applicant served on a 300-series contract for OSCE. Between 1 August 2006 and 7 April 2007 the Applicant continued to be employed by OSCE. It results that from 1 January 2006 to 7 April 2007 the Applicant was employed by OSCE which is a non-UN entity, and this period cannot be taken into consideration because the five year consecutive (continuous) service must be in the United Nations or another organization of the United Nations common system (sec. 2.1).

36. On 8 April 2007, the Applicant was re-employed as Programme Management Officer with the United Nations Project Office of Governance in DESA, based in Seoul, Republic of Korea, on a project personnel appointment under the 200-series rules of the former Staff

Rules. On 5 December 2007, the Applicant was reassigned from the DESA office in Seoul to the DESA office in New York. The Applicant indicated in the 20 February 2015 joint submission that she "withdraws her claim to count her Seoul service as qualifying assignment for mobility purposes." On 8 April 2008, the Applicant's 200-series contract in DESA expired.

37. From 15 April 2008 through December 2008, the Applicant was re-employed as Programme Officer at the P-4 level with DESA in New York on an FTA, which was extended to 14 March 2009.

38. On 23 March 2009, the Applicant was re-employed as a Programme Officer at the P-

to 7 April 2007 (OSCE), 8 April to 5 December 2007 (DESA Seoul), which represents a total of 1 year, 11 months and 5 days.

44. On 30 November 2011, two months after her separation, the Applicant was re-employed with UNMISS on an FTA.

45. In accordance with the mandatory provisions from staff rule 4.17 in ST/SGB TD15sa was rbin

Conclusion

In the light of the foregoing, the Tribunal **DECIDES**:

The application is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 31st day of July 2015

Entered in the Register on this 31st day of July 2015

(Signed)

Hafida Lahiouel, Registrar, New York