

Case No.: UNDT/NBI/2014/063

Judgment No.: UNDT/2016/075

UNITED NATIONS DISPUTE TRIBUNAL

Original: English

English: Judge

Registry: Nairobi

Registrar: A. K.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON LIABILITY AND
RELIEF

Counsel for the Applicant:
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Counsel for the Respondent:
Steven Detrich, HRM
Nicole Wynn, A HRM

Introduction and Procedural History

1. The Applicant holds a fixed term appointment with the United Nations. He is currently a Road and Airfield Engineer at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). He serves at the P-7 level and is based in Goma, Democratic Republic of the Congo (DRC).
2. On 5 August 2014, the Applicant filed an Application with the United Nations Dispute Tribunal in Nairobi challenging the decision denying him the lump sum relocation grant for the shipment of his personal effects on being reassigned from Kinshasa to Goma in 2014.
3. The Respondent replied to the Application on 3 September 2014.
4. The Tribunal held a case management discussion on 11 January 2015.

8. On the evening of 15 June 2015, the Parties filed a motion requesting that the deadline be extended up to ~~16~~ [

15. The Applicant was requested to contact the Movement Control Section (MOVCON) in order to make all the necessary arrangements, including the shipment of all his personal effects up to a maximum of 1000 kilograms to his new duty station

16.

United Nations expense to a duty station for an assignment⁴ or a change of official duty station⁵. The reassignment memo also confirms that the portion will be at the destination duty station rate⁶.

23. “Duty station” is uniformly considered to be a city, a country, a province, area or a Mission. This is apparent from the International Civil Service Commission (ICSC) Hardship Classification⁷, OHRM’s list of nonfamily duty stations⁸ as at 1 January 2014, the list of the largest duty stations that the Secretary-General has reported to the General Assembly, the categorization by the United Nations Department of Safety and Security and the Applicant’s letters of appointment and personnel action forms.

24. Pursuant to section 11.1 of ST/AI/2006/5, a staff member who is eligible may opt for a lumpsum payment in lieu of the entitlement to shipping. No discretion is conferred upon the Administration to take a decision in specific cases. There is nothing in ST/AI/2006/5 that could be plausibly read as creating an exception for “Mission area” or “within country” travel.

25. The Organization, subject to certain constraints, can amend administrative issuances to change benefits. It can grant Respondent discretion to provide benefits. It can even abolish benefits outright. In short, it can change the law. What the Organization cannot do is ignore the law as it stands. If ST/AI/2006/5 provides that a benefit must be given, it must be given.

Respondent’s submissions

26. There is no merit to the Application. Intra-mission transfers in the DRC are made using United Nations Transportation. For reasons of efficiency and reliability, the Organization transports staff members’ personal effects to the location of their

⁴ Staff rule 7.14(e).

⁵ Staff rule 7.14(f).

⁶ Staff rule 7.14(c).

⁷ (ICSC/CIRC/HC, January 2014).

⁸ (A/68/256, 30 August 2013).

new assignment. Since staff members do not incur transportation costs when they move intramission, there is no basis for payment of a lump sum in lieu of reimbursement of transportation costs.

The RLG [Relocation Grant] option does not apply to movements within countries. In these cases, staff members retain their right to unaccompanied shipment of personal effects.

32. The OHRM Guidelines acknowledge that in a field operation, mission staff may frequently be reassigned between duty stations within the mission area by the Chief/Director of Mission Support due to operational needs. For moves between mission duty stations, the mission itself arranges the shipment of the staff member's personal effects from the previous duty station to the new duty station of the staff member using United Nations air transportation and/or United Nations vehicle.

33. The relocation grant option is not applicable where there is no prospect of the staff member incurring costs and, as such, no obligation to reimburse the staff member could possibly arise. Where there are no potential costs that may be reimbursed under staff rule 7.15(d), the right to reimbursement does not arise, nor does the right to opt out and receive a relocation grant in lieu of reimbursement.

34. The application of staff rule 7.15(d) and section 11.1 of ST/AI/2006/5 to intra-mission transfers, as detailed in paragraph 5 of the Guidelines, was confirmed in two communications from the Administration to Missions (Field Personnel Division (FPD) guidance).

35. On 15 January 2007, the Personnel Management Support Service (now FPD) provided additional guidance applying the relocation grant option in the context of peacekeeping operations and special political missions where it clarified that the relocation option is not applicable to movements within the same country or for within-mission transfers and that, in these cases, staff members retain their right to unaccompanied shipment of personal effects.

36. In a subsequent fax of 24 June 2009, FPD provided guidance on the movement of staff within a mission from 1 July 2009 and reiterated that staff members transferred within a mission are entitled to shipment of their personal effects from the previous mission duty station to the new duty station, to be arranged by the mission, and that there is no option for payment of relocation grant in lieu of

shipment of personal effects for within-mission transfers, even if the within-mission transfer is to a different country within the mission area.

37. The Applicant's argument that the Guidelines and the FPD Guidance unlawfully supplement the policy regarding relocation grant and/or the determination of how it is to be implemented has no merit. Staff rule 7.15(d) clearly states that staff members have a right to reimbursement for costs incurred for unaccompanied shipments. Section 11.1 of ST/AI/2006/5 provides that a staff member may opt for lump sum payment of relocation grant in lieu of reimbursement for imbuement. [()] TJ ET Q q BT bph(t)

(a) A change of official duty station shall take place when a staff member is assigned from one duty station to another for a period exceeding six months or when a staff member is transferred for an indefinite period.

(b) A change of official duty station shall take place when a staff member is assigned from a duty station to a United Nations field mission for a period exceeding three months

41. The Applicant was being assigned from Bunia to Goma, both duty stations being within the MONUSCO mission area. Since both duty stations are in MONUSCO, can that assignment be interpreted to mean that the Applicant was not entitled to a lump sum relocation grant on grounds, as the Respondent informed the Applicant on 24 January 2014 that his reassignment "was in the same mission"?

42. Mission area was not defined in ST/AI/2006/5. However, ICSC Hardship Classification⁹ gives a list of duty stations located in a country, and the DRC where MONUSCO is. Bunia and Goma are classified as separate duty stations. It is not DRC that is classified as one duty station but the two different regions of Bunia and Goma that are classified as such. For purposes of classification of family duty stations or non-family duty stations, OHRM's list of non-family "duty stations" as at 1 January 2014 classifies Bunia and Goma as two distinct duty stations. In addition the report of the Secretary General to the General Assembly¹⁰ refers to Bunia and Goma as two duty stations¹⁰.

43. The Tribunal finds that the ICSC's list and classification of duty stations has formed, and forms the basis of, the Secretary General and OHRM's own lists and reports. DRC is clearly the Mission Area, within which Bunia and Goma exist as two distinct duty stations.

44. At the time the Applicant was informed he was being assigned to Goma from Kinshasa the relevant applicable law was ST/AI/2006/5¹¹

⁹ (ICSC/CIRC/HC, January 2014)

¹⁰ (A/68/256, 30 August 2013)

¹¹ ST/AI/2015/1 has since been promulgated to replace ST/AI/2006/5.

45. Section 11.1 of ST/AI/2006/5 stated that:

On travel on appointment or assignment for one year or longer, transfer or separation from service of a staff member appointed for one year or longer, internationally recruited staff members entitled to unaccompanied shipment under staff rules 107.21 [rule 7.15], 207.20 [cancelled] or 307.6, as detailed above, may opt for a lump sum payment in lieu of the entitlement. This lump

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given the principle of legislative hierarchy as held by Judge Eberstein in Villamorán

At the top of the hierarchy of the Organization's internal legislation is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins, a