



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2012/006

Judgment No.: UNDT/2012/102

Date: 2 July 2012

English

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

SERVAS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Stéphanie Cochard, ITC

Introduction

1. On 18 January 2012, the Applicant, a former staff member of the International Trade Centre (“ITC”), filed an application before this Tribunal against the decision refusing her payment of a repatriation grant and reimbursement of her travel expenses to Canada at the time of her separation from service.

2. In the final version of her submissions filed on 29 June 2012, she requested the Tribunal to rescind the aforementioned decision and to order the Ethics Office to be seized of her case.

Facts

3. The Applicant, a Canadian national, obtained temporary resident status in France for family reasons in 2008.

4. She entered the service of ITC in Geneva on 20 January 2009 on a short-term appointment that was renewed through 19 July 2009. Following the entry into force on 1 July 2009 of the new Staff Regulations and Rules, the Applicant was reappointed on 20 July 2009 to the same post, this time on a temporary contract. Until 31 May 2010, she served as a Programme Assistant at the G-5 level and, from 1 June 2010 to 18 July 2011, she was reappointed as Associate Programme Adviser at the P-2 level.

5. On 18 July 2011, the Applicant was separated from service with ITC.

6. On 5 August 2011, the Applicant travelled to Canada.

7. In September 2011, she took steps to obtain permanent resident status in France. On 7 October 2011, the prefecture of Haute-Savoie acknowledged receipt of her request and extended her temporary residency until her case could be reviewed.

8. On 5 October 2011, the Applicant asked the Human Resources Section of ITC whether she was entitled to payment of repatriation grant and travel expenses. By e-mail, dated 7 October, the Human Resources Section replied that she was not entitled to the allowances as she had been recruited locally.
9. By e-mail dated 18 October 2011, the Chief of Human Resources of ITC confirmed that the Applicant was ineligible for the allowances in question.
10. On 1 November 2011, she requested a management evaluation of the decision refusing her payment of the repatriation grant and reimbursement of her travel expenses and, on 12 December 2011, she was informed of the Secretary-General's decision to uphold the contested decision.
11. On 19 December 2011, the Applicant was granted permanent resident status in France.
12. On 18 January 2012, she filed the present application against the decision refusing her payment of the repatriation grant and reimbursement of her travel expenses.
13. The Respondent submitted his reply to the application on 20 February 2012 and the Applicant submitted observations on 28 February.
14. On 19 June 2012, the Tribunal held a hearing which was attended in person by the Applicant and counsel for the Respondent.
15. On the same day, by Order No. 117 (GVA/2012), the Tribunal ordered the Respondent to file evidence in support of his assertion, made during the hearing, that the Applicant did not meet the criterion of two years of continuous service needed to be eligible for the reimbursement of travel expenses, as set out in rule 7.1 (b) of the Staff Rules.
16. On 20 June 2012, the Applicant submitted a request that the Tribunal order the Administration to produce certain documents proving that she was the victim of discrimination.

17. On 25 June 2012, the Respondent replied to Order No. 117 (GVA/2012) and on 29 June, the Applicant submitted observations and submissions amending the remedies sought in the application.

Parties' submissions

18. The Applicant's contentions are:

- a. It is not disputed that she meets three of the six criteria as set out in rule 3.18 (c) of the Staff Rules and Regulations to be eligible for the payment of the repatriation grant, namely: (i) she had more than one year of service; (ii) she resided outside Canada, which is the country of her nationality as recognized by the Secretary-General, while she served at Geneva; and (iii) she had not been dismissed or separated from service on grounds of abandonment of post. The decision of ITC was based on three errors: the assertion that she had been recruited locally; that she had acquired permanent resident status in France prior to separation from service; and finally, that she had not relocated outside the country of the last duty station;
- b. It is clear from rule 3.18, including the use of terms such as "country", "nationality" and "permanent resident status", that the legislator's intention was to link repatriation grant eligibility to nationality and national residency laws. ITC could not base its decision on the fact that her place of domicile in France was within commuting distance of Geneva when denying her the repatriation grant; it was a departure from a plain reading of rule 3.18;
- c. ITC erred in finding that she had been recruited locally and therefore did not meet the criteria set out in rule 3.18 (c) (iv). Although, as a General Service staff member, rule 4.4 required that she be considered as having been recruited "in the country or within commuting distance of each office, irrespective of [her] nationality", as soon as she was rehired at the P-2 level, she should have been considered to have been internationally recruited under rule 4.5;

- d. ITC erred in finding that rule 4.5 (b) applied to her case. For those staff members whose duty station is Geneva, that rule can only apply to staff members of Swiss nationality or who have permanent resident status in Switzerland, and to staff members of French nationality residing in France;
- e. ITC erred in finding that she had permanent resident status in the country where she was serving when she was separated from service and therefore she did not meet the criterion set out in rule 3.18 (c) (v). She only had temporary resident status in France. The fact that she had given a “permanent” address in neighbouring France in her personal history profile was unrelated to permanent resident status and was not proof of her status, particularly as she had completed her personal history profile when she was still in the General Service category and deemed to have been recruited locally. If ITC had acted in good faith when determining her status, it would have asked her, like other staff members, to provide proof of her relocation to another country using the form used for that purpose;
- f. ITC abused its discretionary authority by determining, implicitly, that her place of home leave was Thonon-les-Bains and her home country was France;
- g. Under rule 7.1 (a) (iv) of the Staff Rules, she was entitled to have her travel expenses to Toronto, her place of recruitment, reimbursed. Contrary to the assertions of the Management Evaluation Unit, the fact that her trip to Toronto was not related to moving house should not affect her eligibility her reimbursement of that trip. A comparison of rule 7.1 (official travel) and rule 7.16 (removal) showed that the eligibility requirements for the payment of travel expenses, on the one hand, and removal expenses, on the other, are distinct and the fact that a staff member is not eligible for removal expenses did not disqualify him/her from reimbursement of travel expenses;

- h. Rule 3.18 (e) makes the payment of the repatriation grant contingent on the submission of documentary evidence satisfactory to the Secretary-General that the former staff member has relocated away from the country of the last duty station. ITC cannot contend that the Applicant did not meet that requirement because she chose to live in Thonon-les-Bains in neighbouring France while she worked for ITC and she has continued to live there since. Obtaining permanent resident status in France after her separation from service incurred costs other than those covered by Chapter VII of the Staff Rules (travel and removal expenses) and that it is, in fact, the purpose of the repatriation grant to cover such costs;
- i. The refusal of ITC to pay her the repatriation grant and to reimburse her travel expenses was part of a larger pattern of retaliatory actions taken against the Applicant following the conclusion of a settlement agreement.

19. The Respondent's contentions are:

- a. The Applicant was recruited locally by ITC in the General Service category, under the provisions of rule 4.4 (a) of the Staff Rules. Before taking up her duties with ITC, she had lived for several years in Switzerland or the neighbouring area of France. In the curriculum vitae submitted prior to her recruitment, she had indicated that she was residing in a village in France 11 km from Geneva, then in her personal history profile of April 2009, in another village in France 13 km from Geneva. Evidence shows that the Applicant did not leave Canada to accept a job offer from ITC;
- b. When she was appointed retroactively to the Professional level, she had, admittedly, acquired the status of international recruit, but under rule 4.5 (b) of the Staff Rules and Regulations, that did not automatically qualify her to receive the repatriation grant or reimbursement of her travel expenses upon her separation from service;

- c. With regard to the repatriation grant, the Applicant did not, in fact, satisfy the eligibility criteria listed under rule 3.18 (c), particularly that contained in subparagraph (iv): “The staff member has not been locally recruited under staff rule 4.4”;
- d. Contrary to the Applicant’s assertion, ITC did not consider that she had permanent resident status in France and that it was not on the basis of subparagraph (v) of rule 3.18 (c) that she was denied payment of the repatriation grant;
- e. According to rule 3.18 (e) and annex IV of the Staff Rules and Regulations, the payment of the repatriation grant is also contingent upon submission of evidence that the staff member has relocated away from the country of the last duty station. Administrative instruction No. ST/AI/2000/5 (repatriation grant) also clarifies that the relocation shall not be temporary in nature. It was clear that the Applicant had not returned to live in Canada and had no intention to do so since she had been granted permanent resident status in France. Although the Applicant maintained that she had established Thonon-les-Bains, France, as her place of residence, that did not make her eligible for the repatriation grant since she moved there before leaving the service of ITC and Thonon-les-Bains was in the commuting zone of Geneva. The Applicant’s situation was very different to that outlined in Judgment No. 656, *Kremer and Gourdon* of the former Administrative Tribunal;
- f. With regard to the payment of the Applicant’s travel expenses to Canada upon her separation from service, she would be eligible only if she had established her domicile in Canada, which was not the case;
- g. In any event, the Applicant was not entitled to payment of travel expenses to Canada since rule 7.1(b) stated that “the United Nations shall pay the expenses of a staff member to travel to the place of recruitment” and the Applicant was not recruited from Canada.

Consideration

20. The Applicant contests the decision refusing her payment of a repatriation grant and reimbursement of her travel expenses to Canada upon her separation from service.

21. While in a final document submitted the day after the hearing, the Applicant requested the Tribunal to order the Administration to produce new documents, the Tribunal considers that it has sufficient information from the documents already submitted and the discussions at the hearing and therefore rejects this request.

22. Since the Secretary-General does not have the discretionary power to grant or refuse an allowance provided for under the Staff Rules and Regulations and is required to apply the current regulations strictly, the Tribunal, when it considers an application contesting the refusal of an allowance, as in this case, must restrict itself to verifying whether the relevant regulations entitle staff members to the said allowances regardless of the merits of the reasons given by the Administration for refusing them. Thus, the Applicant's reasoning that she was refused payment of the contested allowances as part of a larger pattern of retaliatory actions and that other staff members in the same situation as her would have received the contested allowances is irrelevant with regard to the case under consideration and must be rejected by the Tribunal.

As to the repatriation grant

23. Annex IV of the Staff Rules and Regulations provides:

In principle, the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate and who at the time of separation are residing, by virtue of their service with the United Nations, outside their country of nationality. ... Eligible staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General.

24. It clearly follows from the above provision that to be eligible for payment of a repatriation grant, the staff member must not only meet certain conditions, but, first and foremost, must have relocated upon separation from service. Yet, the Applicant, who has held temporary resident status in France since 2008, before she was recruited by ITC, has not relocated upon her separation from service.

25. The Applicant is, therefore, not eligible for the said grant.

As to travel expenses

26. Rule 7.1 on official travel of staff members states:

(a) Subject to conditions established by the Secretary-General, the United Nations shall pay the travel expenses of a staff member under the following circumstances:

...

(iv) On separation from service, as defined by article IX of the Staff Regulations and chapter IX of the Staff Rules, except in cases of abandonment of post, and in accordance with the provisions of paragraph (b) below;

...

b) Under subparagraph (a) (iv) above, the United Nations shall pay the expenses of a staff member to travel to the place of recruitment. However, if the staff member had an appointment for a period of two years or longer or had completed not less than two years of continuous service, the United Nations shall pay his or her expenses to travel to the place recognized as his or her home for the purpose of home leave under staff rule 5.2 [...]

27. Since the Applicant was recruited locally, she cannot contend on the basis of the first sentence of paragraph (b) of rule 7.1 that she was eligible, upon her separation from service, for the reimbursement of expenses to travel to Canada, her country of nationality. However, the Applicant affirmed at the hearing that since she had completed two years of continuous service at ITC, she was eligible under the second sentence of the same paragraph. That second provision links the payment of travel expenses upon separation from service to staff members' right to take home leave in accordance with rule 5.2 of the Staff Rules.

28. The aforementioned rule 5.2 states:

(a) Internationally recruited staff members, as defined under staff rule 4.5 (a) and not excluded from home leave under staff rule 4.5 (b), who are residing and serving outside their home country and who are otherwise eligible shall be entitled once in every twenty-four months of qualifying service to visit their home country at United Nations expense for the purpose of spending in that country a reasonable period of annual leave. Leave taken for this purpose and under the terms and conditions set forth in this rule shall hereinafter be referred to as home leave.

(b) A staff member shall be eligible for home leave provided that the following conditions are fulfilled: [...]

(c) Staff members whose eligibility under paragraph (b) above is established at the time of their appointment shall begin to accrue service credit towards home leave from that date. Staff members who become eligible for home leave subsequent to appointment shall begin to accrue such service credits from the effective date of their becoming eligible. [...]

29. Although it is not contested that the Applicant was appointed to the P-2 level on 1 June 2010, by applying the aforementioned rules, the Applicant began to accrue service credits for home leave only from that date. It therefore follows that as of 18 July 2011 when she separated from service, she did not meet the requirement of two years continuous service within the meaning of the aforementioned rule 5.2.

30. It follows that the Applicant is not entitled to payment of the allowances that she claimed.

As to the Applicant's other submissions

31. While the Applicant also requested the Tribunal to order the Ethics Office to be seized of her case, the Tribunal must conclude that such a request has no connection with the dispute that is the subject of the management evaluation request and the application. That request submitted to the Tribunal must be rejected as not receivable.

32. Nevertheless, given the detailed allegations made by the Applicant, both in writing and at the hearing, that ITC would have awarded staff members in the same situation as her the allowances that she was refused, the Tribunal must remind the Administration of what was stated at the beginning of this judgment, that is: that it does not have the discretionary power to grant or refuse allowances provided for in the regulations; that the latter must be interpreted in the same way for all staff members; and that granting allowances unjustifiably to certain staff members could give rise to the personal accountability before the Secretary-General of those who took such decisions.

Conclusion

33. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 2nd day of July 2012

Entered in the Register on this 2nd day of July 2012

(Signed)

René M. Vargas, Registry, Geneva