



Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Abena Kwakye-Berko

TOSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Yun Hwa Ko, UNFPA

Introduction

1. The Applicant challenges the Respondent's decision not to pay him the daily subsistence allowance ("DSA") in connection to a stay in Cairo allegedly related to official trip.

Procedural History

2. The Applicant is a staff member of the United Nations Population Fund ("UNFPA"). At the time of the application, he was serving as Representative at the UNFPA Oman Country Office ("CO Oman") within the Arab States Regional Office ("ASRO") at the P-5 level.

3. On 30 June 2021, the Applicant filed an application before the United Nations Dispute Tribunal to challenge the Respondent's decision not to pay him (i) the cost of the plane ticket from Muscat, Oman to Cairo, Egypt on 8 September 2020 and terminal expenses for that trip and (ii) DSA for the Applicant's stay in Cairo between 10 – 16 October 2020.

4. The Respondent filed his reply on 29 July 2021. He contends that the impugned decision was lawfully made and that the Applicant was not entitled to payments applicable to official travel.

5. On 24 January 2022, the Tribunal issued Order No. 008 (NBI/2022) to inform the parties that this matter will be adjudicated on the basis of their written submissions. The Order also invited the parties to file their respective closing submissions.

6. On 31 January 2022, the deadline set for the filing of closing submissions in this case, the Applicant sought extension of time and suspension of proceedings in UNDT/NBI/2021/058 and 074. While he made cursory reference to *this case* (2021/048) in his motion, nothing in the document suggested that he was also seeking an extension of the deadline that had been set in Order No. 008 (NBI/2022).

7. The Respondent filed his closing submissions on 31 January 2022, as directed.

Facts and Submissions

8. In early 2020, the Applicant, an Egyptian national, was selected to be UNFPA's Representative to Libya. He was based in Muscat, Oman, at the time. The position reports to the ASRO, at the P-5 level. The Applicant is an Egyptian national.

9. On 19 August 2020, Ms. Sona Lakhanpal, then ASRO Human Resources Strategic Partner, Division for Human Resources ("DHR"), informed the Applicant that he was exceptionally authorized "to travel to Tunis/Tripoli" to present his credentials as the new Representative of the UNFPA to Libya.

10. The Applicant applied for annual leave, which was approved, for the period 8 – 17 September 2020 to repatriate his family and install his children at school.

11. He travelled to Cairo, Egypt, on 8 September 2020.

12. On 9 September 2020, the Applicant applied for his annual leave to be extended until 8 October 2020 for "family repatriation, kids schooling and medical consultation." This was approved too.

13. On the same day, the Applicant informed Ms. Lakhanpal that he was on annual leave for one month, until 8 October 2020, and that he would "get in touch with [Shible Sahbani, then Officer-in-Chief, Libya Country Office] on that date to start planning for the mission noting that [he] will be flying directly from Cairo to Tunis and return to Muscat, as planned."

14. On 7 October 2020, the Applicant wrote to Ms. Lakhanpal and informed her that he was communicating with colleagues to arrange for travel.

15. Between 10 and 13 October 2020, the Applicant exchanged several emails with Mr. Sahbani and Ms. Lakhanpal seeking travel authorization.

16. On 13 October 2020, the Applicant submitted an official travel request to Mr. Sahbani. His request included the travel from Muscat to Cairo on 8 September 2020.

17. On 14 October 2020, Mr. Sahbani approved the travel request.

18. On 14 October 2020, the Applicant wrote to the Director, DHR, asking to be paid for (i) the ticket from Muscat to Cairo on 8 September 2020 with terminal expenses and (ii) DSA for Cairo for the period 10 – 16 October 2020.

19. The Applicant travelled to Tunisia on 17 October 2020.

20. In March 2021, Applicant was reimbursed for the cost of his ticket from Muscat to Cairo on 8 September 2020 with terminal expenses.

21. On 6 April 2021, the Applicant submitted a request for a management evaluation of the Respondent’s decision to not pay him DSA for the period 10-16 October 2020.

Considerations

22. The Applicant claims only the DSA for 6 days plus damages for its refusal, having had the cost of the ticket reimbursed by the Administration.

23. He submits that his travel itinerary “was planned and initiated during Oman airports lockdown period;” that the lockdown was indefinite and there were no direct flights from Muscat to Tunis. The Applicant submits that he needed to get himself to Tunis “so that he can board UN Humanitarian Aviation Service (UNHAS) Flight to Libya as the only way to enter Libya.” He encountered significant pandemic and visa related logistical challenges with the travel arrangements, all of which were communicated to the Respondent “who approved it as part of the overall challenging arrangements.”

24. He submits that the Respondent first approved a ticket from Muscat to Cairo “and then revoked it;” and argues that if his travel to Cairo “was official, then, DSAs should have been granted when ticket reimbursement was granted.”

25. In particular, the Applicant refers the Tribunal to para. 48 of the Administrative Guidelines for Offices on the Novel Coronavirus (COVID-19)

pandemic¹:

48. Initiated travel. In the event that the authorized itinerary must be changed for reasons related to COVID-19 travel restrictions, the following will apply:

a) Departure from official business destination not possible. If during the authorized travel on official business, local authorities or UN guidelines do not allow departure, DSA will remain payable until departure is authorized and up until the first available flight.

26. The Tribunal finds that this claim is not founded. It is worth recalling that on 8 September 2020, he left Muscat to Cairo, where he spent 14 days of quarantine, and 14 additional day as annual leave until 8 October 2020. On 8 October 2020, he booked his travel from Cairo to Tunis for 17 October 2020. He stayed in Cairo for the duration of the intervening period, and worked from there.

27. Staff rule 7.10 (a) provides:

[A] staff member authorized to travel at United Nations expense shall receive an appropriate daily subsistence allowance in accordance with a schedule of rates established from time to time...

28. The United Nations Development Programme (“UNDP”) policy on Authorizing Official Business Travel (“Travel Policy”) and the UNDP Policy on DSA (DSA Policy) respectively provide as follows:

Travel Policy:

1. All business travel organized and paid by the organization should be approved prior to travel, and before any prepayments can be made (emphasis added).

DSA Policy:

3. DSA shall be paid for periods away from the duty station, during which the traveller is on official travel status. Such periods include authorized rest stopovers and stopovers that are part of the approved official itinerary. . . .

27. If annual leave is taken prior to the start of official travel, DSA is paid effective the day of arrival in the destination for business once annual leave status has ceased.

¹ Framework for the management of staff members in United Nations Common System Headquarters and Field Duty Stations CEB Human Resources Network Version 4.0 14 April 2020.

29. The rules are therefore clear. DSA is provided for official trips only, and these must be *formally* approved prior to travel.

30. In this case, it results from the records that the Applicant intended to move from Muscat to Tunis for official purposes and that, owing to the COVID-19 emergency situation, the only possible route was through Cairo. The Administration was informed of the difficulties of the official trip and generically allowed it by email; it also reimbursed the flight from Muscat to Cairo.

31. However, the situation then evolved, as the staff member remained in Cairo longer, for quarantine, then for leave days, then for remote working, for a period of almost 40 days in total.

32. Even though the trip started with the features of the official trip, authorized as such by the Respondent, later on it change its nature, because the Applicant remained in an intermediate situation for a very long period, for personal reasons.

33. The Applicant took annual leave for personal reasons, and made plans to fly out of Cairo only on 17 October 2020. His decision to work remotely between the time leave ended and his travel appears to have been of his own doing.

34. The second part of the trip could not therefore have been considered “official” for the purposes of the Organization, lack of connection with the professional reasons that originated the Applicant’s moving.

35. The decision to refuse DSA for the days the Applicant was in Cairo is therefore lawful, as that part of his presence in Cairo was clearly for personal purposes.

36. Paragraph 48 of the Guidelines cited by the Applicant would have been correct if leave days and telecommuting had not interrupted the causal link of the presence abroad in Cairo with the official trip.

Conclusion

37. In the light of the foregoing, the application is DISMISSED.

(Signed)

Judge Francesco Buffa

Dated this 4th day of March 2022

Entered in the Register on this 4th day of March 2022

(Signed)

Eric Muli, Legal Officer, for

Abena Kwakye-Berko, Registrar, Nairobi