



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1347

Van Khanh Nguyen
(Appellant)

v.

Secretary-General
of the International Seabed Authority
(Respondent)

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge John Raymond Murphy Judge Sabine Knierim
Case No.:	2022-1696
Date of Decision:	24 March 2023
Date of Publication:	15 May 2023
Registrar:	Juliet Johnson

Counsel for Appellant: George G. Irving

Counsel for Respondent: Yongsheng Cai

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Ms. Van Nguyen (Appellant), a former Finance Officer of the International Seabed Authority (ISA), contests the decision of the ISA Office of Administration (OAS) to deny payments to her of various entitlements, including repatriation grant, accrued leave, repatriation travel, relocation grant, outstanding education grant, and retroactive payment of the non-removal allowance (NRL).

2. This is the second appeal by Ms. Nguyen, this time, from the decision of a panel of the Joint Appeals Board (JAB) of the International Seabed Authority (ISA) issued on 1 April 2022 (impugned JAB Decision),¹ which Appellant now challenges before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). Following the prior remand from the UNAT, the JAB had been re-established to review her case. In the impugned JAB Decision, the JAB dismissed Ms. Nguyen's claims, in terms of ISA's decisions of 16 September 2019, concerning the payment to her, in connection with her resignation and separation from ISA, of: i) repatriation grant, ii) 28.5 days of accrued annual leave, iii) USD 1,069.42 as outstanding education grant, iv) a lump-sum amount for one-way air fare from Kingston, Jamaica, to Hanoi, Vietnam, for her and her dependents plus three days of accrued leave in compensation for travel time, v) USD 18,000 as relocation grant, vi) the NRL at a monthly rate of USD 225 for 18.5 months (the duration of her shortened secondment to ISA), and vii) USD 20,000 in compensation for her time and efforts spent on this litigation. The JAB also dismissed Ms. Nguyen's claim for compensation as well as her other complaints made in her Additional Submissions dated 12 August 2021.

3. For the reasons set forth herein, the Appeals Tribunal grants the appeal in part.

Facts and Procedure

4. Ms. Van Nguyen joined the United Nations Population Fund (UNFPA) at United Nations Headquarters (UNHQ) in New York on 11 August 2014, as an Asset Management and Common Services Specialist at the P-3 level. Ms. Nguyen continues to be a UNFPA staff member.

¹ *Van Nguyen v. Secretary-General of the International Seabed Authority*, Case No. ISBA/JAB/Nguyen/2019/II, 1 April 2022. (The cover page of the JAB Decision mistakenly states that it was issued on 1 April 2021, which is incorrect.)

5. On 12 December 2017, Appellant received an offer from ISA to become a Finance Officer at the P-4 level with ISA in Kingston, Jamaica. This offer included a statement of emoluments.
6. On 19 December 2017, an agreement called “the Memorandum of Inter-Organization Exchange (MIOE)” was raised for Appellant to be seconded from UNFPA to ISA for two years. The MIOE stated that it “sets out the terms and conditions governing the provisions on exchange of Ms. Van Khanh Nguyen, from UNFPA/UNHQ in New York, to the International Seabed Authority, hereinafter referred to as ISA, within the framework of the Inter-Organization Agreement”.
7. The MIOE stated that “[a]ll three parties concerned – [Appellant], UNFPA/NY and ISA – are signatories to the present Memorandum and confirm that they will fulfill the terms and conditions contained therein, as stipulated hereafter”. The MIOE was sent and signed by the Director of OAS, to Appellant and the Director of the Division of Human Resources (DHR), UNFPA.²
8. The MIOE stated that the “exchange shall be for an initial period of two years commencing on 31 January 2018, with the staff member returning to UNFPA/UNHQ after the agreed duration of this MIOE”. The MIOE also stated that UNFPA/UNHQ agree[d] to grant Appellant “return rights” to UNFPA, either to a specific post or to a general post in the Organization.³
9. On 22 December 2017, the Director, DHR, UNFPA, responded to the MIOE by letter, stating that UNFPA was “agreeable to accommodate [ISA’s] request in line with the Inter-Organization Agreement Concerning Transfer, Secondments and Loans of staff among organizations applying the UN Common System of Salaries and Allowances” (IOA). This letter further stated that “for the period of secondment to ISA, Ms. Nguyen will have a general lien with UNFPA”.
10. On 29 January 2018, Ms. Nguyen received her formal letter of appointment from ISA, to take effect on 14 February 2018, and with expiry on 13 February 2020.
11. On 21 July 2019, Appellant received a job offer from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

² The MIOE in the record of this case is the MIOE as sent by ISA and is not counter-signed by UNFPA or Appellant.

³ As the MIOE in the record is the version sent by ISA, there is no box “ticked” to indicate which return right option was selected by UNFPA.

12. On 2 August 2019, Appellant submitted a resignation letter to the ISA Secretary-General, who accepted it on 6 August 2019, with an effective resignation date from ISA of 31 August 2019.

13. On 9 August 2019, the Director, DHR, UNFPA, sent a formal letter regarding the “Inter-Agency secondment from UNFPA to UNRWA: Ms. Van Khanh Nguyen” to the HR Operation Services Division of UNRWA. Therein, the Director, DHR, stated that “UNFPA is agreeable to accommodate [UNRWA’s] request in line with the [IOA]”. UNFPA proposed an effective date of Ms. Nguyen’s release to UNRWA to be 1 September 2019.

14. On 14 August 2019, Director, OAS, sent Appellant an internal memorandum regarding her separation entitlements from ISA, noting that these entitlements “also take into account your secondment as reflected in the . . . (MIOE) between UNFPA and ISA effective from 14 February 2018 to 14 February 2020” but that this period had been “curtailed to 31 August 2019 as agreed by both the receiving (ISA) and the releasing (UNFPA) organizations”.

15. Appellant filed a request for review of ISA’s entitlements decision that same day.

16. On 21 August 2019, the Director, OAS, sent Director, DHR, UNFPA, a formal letter confirming that ISA agreed to the foreshortening of Appellant’s secondment with ISA, in accordance with the IOA, effective 31 August 2019.

17. Appellant requested to travel from Kingston to Hanoi on 31 August 2019.

18. As of 1 September 2019, Appellant was effectively returned to UNFPA, which released her to UNRWA on secondment.

19. Appellant and her family traveled from Hanoi to Amman, Jordan, where UNRWA is located, on 5 September 2019, which was paid for by UNRWA.

20. On 16 September 2019, the ISA Secretary-General denied Appellant’s entitlement claims with regard to her separation from ISA. In addition, the ISA Secretary-General advised that he was exercising his discretion not to recover from her certain portions of the relocation grant or costs related to shipment of personal effects and her private car.

21. On 15 October 2019, Appellant submitted an appeal to the JAB, requesting that the JAB order the payment to her of six items: i) repatriation grant, ii) 28.5 days of accrued annual leave, iii) USD 1,069.42 as outstanding education grant, iv) a lump-sum amount for one-way airfare from

Kingston to Hanoi for her and her dependents plus three-days of accrued leave in compensation for travel time, v) USD 18,000 as relocation grant, and vi) the NRL at a monthly rate of USD 225 for 18.5 months (the duration of her shortened secondment to ISA).

22. On 16 April 2020, the JAB issued its Report of the Panel of the Joint Appeals Board in Case No. ISBA/JAB/Nguyen/2019/II (JAB Report)⁴. The JAB Report rejected each and every claim made by Appellant as either without merit or time-barred, after having reviewed her claims against the relevant provisions of the IOA and the Staff Regulations and Rules of the International Seabed Authority (ISA Staff Rules). The JAB declined to recommend that the ISA Secretary-General review his decision of 16 September 2019.

23. On 6 July 2020, Appellant appealed the JAB Report to the Appeals Tribunal.

24. On 19 March 2021, the Appeals Tribunal issued Judgment No. 2021-UNAT-1089, in which it held that the JAB was not a neutral first instance process as required by both Article 2(10) of the Appeals Tribunal Statute and Article 2(5) of the Special Agreement between ISA and the Secretary-General of the United Nations.⁵

25. The Appeals Tribunal remanded Appellant's appeal to the JAB so that her case could be "reconsidered and decided by a neutral first instance process that produces a written decision and record that includes a statement of the relevant facts and law, with written reasons and analysis".⁶

26. Appellant was given a further opportunity to submit any additional observations and documents to the reconstituted JAB, which she did on 12 August 2021. In December 2021, four months later, Appellant requested leave to submit a pension statement from the United Nations Joint Staff Pension Fund (UNJSPF), which was denied by the JAB.

Impugned JAB Decision

27. After their review of all of the pleadings, the new JAB panel decided that, at the relevant time, Appellant was and remains a staff member of UNFPA (the releasing organization) on secondment to ISA (the receiving organization from 14 February 2018 to 31 August 2019) and then

⁴ The JAB Report was the original recommendation of the JAB and is distinguished in this Judgment from the impugned JAB Decision.

⁵ *Van Khanh Nguyen v. Secretary-General of the International Seabed Authority*, Judgment No. 2021-UNAT-1089, paras. 21-23.

⁶ *Ibid.*, para. 29.

to UNRWA (the receiving organization from 1 September 2019). The JAB also decided that Appellant's claims were covered by a number of documents, including the ISA Staff Rules, the staff rules applicable to UNFPA and UNRWA, and the contractual arrangements between Appellant, ISA and UNFPA, including the MIOE. In turn, the MIOE was concluded within the framework of the IOA.⁷

28. The JAB reviewed seven specific entitlement demands of Appellant ((a)-(g)) and a general claim to compensation in the amount of USD 20,000 for the time, effort and costs associated with her pursuit of her claims against ISA. Appellant's specific claims for payment were for:⁸

- (a) Repatriation Grant, prorated at the rate of 4 weeks of salary per year of service in accordance with Appendix II of the ISA Staff Rules
- (b) Accrued annual leave balance (leave earned minus leave taken) during my employment period with the ISA, equal to 28.5 days
- (c) Outstanding Education Grant of USD 1,069.42
- (d) Lump sum amount for one-way travel tickets from Kingston, Jamaica to Hanoi, Vietnam for me and my eligible dependents, based on appropriate quotations.
- (e) Compensation for travel time equivalent to 3 days of accrued leave.
- (f) Relocation grant on separation of USD 18,000
- (g) Non-removal allowance of USD 225 per month for 18.5 months

29. The JAB noted that its predecessor panel had exhaustively considered Appellant's complaints and had dismissed each one in the initial JAB Report. The JAB stated that it had carefully considered its predecessor's conclusions and, in the impugned JAB Decision, was adopting for its own the JAB Report's conclusions with respect to complaints (a), (b), (c), (e), (f), and (g), as further elaborated below.

30. With respect to (a) *the repatriation grant*, Appellant had argued that ISA was responsible for this payment based on ISA Staff Rule 9.5; whereas, Respondent had argued that the IOA provided that if a staff member on secondment resigns from the receiving organization but not from the releasing organization, the staff member is not entitled to repatriation travel.⁹ The JAB

⁷ Impugned JAB Decision, paras. 26-27.

⁸ *Ibid.*, para. 28.

⁹ JAB Report, paras. 24-25.

decided that ISA was not responsible for paying the repatriation grant, given that the IOA applied to this case.¹⁰

31. With respect to (b) *accrued annual leave*, Appellant had argued that she was entitled to payment of 28.5 days of annual leave accrued during her period of service with ISA, pursuant to ISA Staff Rule 9.7. Respondent had countered that, pursuant to Article 14(d) of the IOA, when a staff member returns to the releasing organization, the staff member carries with him or her any accrued annual leave credit.¹¹ Having due regard to Article 14(d) of the IOA, the JAB decided that Appellant had taken her accrued annual leave from ISA to UNFPA and then to UNRWA, and thus there was no responsibility on the part of ISA to pay for accrued annual leave during her period of service with ISA.¹²

32. With respect to (c) *outstanding education grant*, Appellant had requested reimbursement for certain expenses for her daughter totalling USD 1,069.42. Respondent countered that the items claimed by the Appellant were regular equipment needed by all children of the same grade at the international school and did not qualify as “special needs”.¹³ The JAB decided that indeed, the items claimed by Appellant were regular equipment needed by all children and denied this claim.¹⁴

33. With respect to (d) *a lump sum amount for travel* from Kingston to Hanoi for Appellant and her dependents, Appellant had provided additional submissions to the new JAB to show that UNFPA had not provided her tickets for travel from Kingston to New York or reimbursed her for travel from Kingston to Hanoi. The JAB decided that any complaint related to this travel could not be attributable to ISA, and in any event, this claim was moot because UNRWA paid for her travel to Amman.¹⁵

34. With respect to (e) *compensation for travel time* equivalent to three days of accrued leave, neither party submitted additional reasons beyond those related to (d) travel expenses.¹⁶ The JAB decided that this claim was not an independent claim from that of travel expenses, and likewise moot.

¹⁰ Impugned JAB Decision, para. 33 (adopting JAB Report, para. 26).

¹¹ JAB Report, paras. 27-28.

¹² Impugned JAB Decision, para. 33 (adopting JAB Report, para. 29).

¹³ JAB Report, paras. 30-31.

¹⁴ Impugned JAB Decision, para. 33 (adopting JAB Report, para. 32).

¹⁵ *Ibid.*, paras. 34-38.

¹⁶ JAB Report, paras. 36-37.

35. With respect to (f) *the relocation grant* on separation, Appellant had argued that ISA Staff Rule 7.18(j) applied and that she was entitled to a lump sum of USD 18,000 in respect of a shipment of household goods and personal effects upon separation. Respondent asserted that under ISA Staff Rule 7.24, a removal grant is only payable for staff who serve for a period of two years or longer, which Appellant did not. Moreover, under the IOA, any relocation grant should be paid by UNRWA, which in fact, UNRWA did.¹⁷ The JAB agreed with Respondent that in the circumstances of this case, UNRWA was responsible for the relocation grant.¹⁸

36. Lastly, with regard to (g) *the NRL* under former ISA Staff Rule 3.15(f) and (g), Appellant argued that she should still be entitled to this allowance because the change in ISA Staff Rules in 2017 was not communicated to her when she accepted her appointment in 2018. Respondent contended that this claim was out of time, and in any event, the NRL had been discontinued in accordance with the new International Civil Service Commission Compensation Package policy, and even if it had not been in force, it would have been excluded by the IOA.¹⁹ The JAB agreed that this claim was not receivable and had no merit.²⁰

37. On Appellant's general claim to USD 20,000 for compensation for the time, effort and costs of Appellant's pursuit of her contractual entitlements, the JAB also adopted the prior JAB Report, which concluded that Appellant had given no explanation or evidence for this claim, and accordingly, denied it.²¹

38. The JAB also dismissed as irrelevant Appellant's complaints about the compliance of UNFPA with its employment obligations to her, as the JAB was solely concerned with the actions of ISA. For the same reason, the JAB considered Appellant's arguments about her actual start date with UNRWA (and whether it was 1 September or, a few days later when she received her medical clearance) as irrelevant. For the JAB's purposes, Appellant resigned from ISA with effect from 31 August 2019 and any complaints about the commencement of her employment with UNRWA could not be attributed to ISA or the subject of an application to the JAB.²²

¹⁷ *Ibid.*, paras. 39-40.

¹⁸ Impugned JAB Decision, para. 33 (adopting JAB Report, para. 41).

¹⁹ JAB Report, paras. 42-43.

²⁰ Impugned JAB Decision, para. 33 (adopting JAB Report, paras. 15, 44).

²¹ *Ibid.*, para. 33 (adopting JAB Report, para. 48).

²² Impugned JAB Decision, paras. 39-42.

39. The JAB thus dismissed all of Appellant's complaints on 1 April 2022.²³

40. On 31 May 2022, Appellant filed an appeal of the impugned JAB Decision with the Appeals Tribunal, to which Respondent submitted his answer on 28 July 2022.

Submissions

Ms. Nguyen's Appeal

41. Appellant argues that she is due all of the contractual entitlements specified in her appeal, because all of her claims for compensation are in accord with the relevant ISA Staff Rules. Appellant disputes Respondent's position, which is that the IOA is applicable to her case.

42. Appellant is of the view that the IOA does not apply because: a) ISA is not a signatory to the IOA; b) there is no signed tripartite agreement between UNFPA, ISA and Appellant concerning her appointment at ISA, and therefore, the terms and conditions in the IOA are not legally-binding on any party; and c) Appellant does not have a right of return to UNFPA, and therefore, she is not on a secondment within the framework of the IOA.

43. Appellant submits that even if the IOA did apply, Article 11 of the IOA specifies that "Appeals against administrative decisions taken before or after a transfer, or during a period of secondment or loan, will be heard by the appropriate appeals body of the organization which took the decision appealed against, and be dealt with under the regulations and rules of that organization."

44. Appellant reiterates that all of her entitlements and claims for compensation are in accordance with the terms of her employment and the ISA Staff Rules, and not by the rules and policies of any other organization.

45. With regard to the *repatriation grant*, Appellant is of the view that her entitlement is governed by ISA Staff Rule 9.5, under which ISA is responsible for a repatriation grant for the service duration of 18.5 months. Appellant disputes Respondent's reliance on Article 28(a) and Article 28(b) of the IOA, which provide that when a staff member resigns from the receiving

²³ *Ibid.*, para. 43.

organization but not the releasing organization, the staff member is not entitled to repatriation travel. Appellant states that the IOA is not applicable to her case.

46. Appellant also contests Respondent's submission that Appellant did not even meet the conditions of ISA Staff Rule 9.5. She notes that she was internationally recruited, completed more than one year of service at the time of separation, resided outside of her home country (Vietnam) and had not been summarily dismissed or abandoned her post. She also claims that she submitted a timely request for the repatriation grant and travel on 10 February 2020, well within the time limit of two years after the date of separation as specified in ISA Staff Rule 9.5(h).

47. Appellant also rejects Respondent's contention that Appellant was not truly repatriated because she was relocated to Amman, not to her country of origin. Appellant argues that she only needed to show that she "has relocated away from the country of the duty station" (which at the time was Kingston) under ISA Staff Rule 9.5(e).

48. Appellant submits that her claim to payment of 28.5 days of *accrued annual leave* is governed by ISA Staff Rule 9.7, which provides for payment of such leave upon separation from service.

49. Appellant rejects Respondent's position that accrued annual leave is paid only upon separation from service, and since Appellant only resigned from ISA and not from the United Nations Common System, this accrued leave should not be paid. Appellant submits that the only relevant rule is ISA Staff Rule 9.7.

50. Appellant also disputes Respondent's position that under Article 14(d) of the IOA, when a staff member returns to the releasing organization, the staff member carries with him or her any accrued annual leave credit, and that Appellant should not receive payment for her annual leave given that she has carried her annual leave balance to UNRWA. Appellant argues that, not only is the IOA inapplicable, but her annual leave carryover was "imposed" on her by ISA which ignored her request for payment and provided UNFPA with an administrative document concerning her credits, which was in turn sent to UNRWA.

51. With respect to Appellant's *repatriation travel*, Appellant considers that pursuant to ISA Staff Rule 7.1, ISA was responsible for her and her eligible dependents' travel expenses from Kingston to her place of home leave, Hanoi. Appellant rejects Respondent's reliance on the IOA and argues that she was entitled to payment of travel expenses from ISA because, pursuant to ISA

Staff Rule 7.1(c), Appellant had an appointment of two years with ISA, and such individuals are entitled to travel expenses to their place of home leave.

52. Appellant submits that while UNRWA paid for her travel from Hanoi to Amman, ISA was responsible for payment of her repatriation travel from Kingston to Hanoi. Appellant disputes the JAB's conclusion that ISA was not under any obligation to pay for her travel to Hanoi because it was her choice to travel to Hanoi and that she did not actually travel to New York. Appellant submits that she "had no choice" but to travel to Hanoi because she had not been medically cleared for appointment travel to UNRWA as of 31 August 2019. Appellant notes that her travel itinerary was Kingston – New York – Seoul – Hanoi, and that ISA should have at least paid her travel from Kingston to New York, instead of denying all financial responsibility.

53. Appellant also submits that the JAB incorrectly concluded that her claim to three days of travel time could not be separated from her claim for travel expenses. Appellant points to ISA Staff Rule 9.9(b) which provides for payment of additional days of travel to the place of entitlement for return travel upon resignation.

54. Appellant submits that the standard travel time from Kingston to Hanoi is three days, and that as she resigned effective 31 August 2019, she was entitled to these three additional days of accrued leave for repatriation or return travel time pursuant to ISA Staff Rule 9.9(b).

55. With regard to the *relocation grant*, Appellant submits that pursuant to ISA Staff Rule 7.18(j) she is entitled to USD 18,000 for the shipment of household goods and personal effects.

56. Appellant maintains the view that ISA is responsible for paying this entitlement because she completed more than one year of service with ISA. Appellant also disputes Respondent's position that UNRWA has paid for her relocation grant and submits that UNRWA paid for relocation only from Hanoi to Amman, and ISA is responsible for the relocation grant from Kingston to Hanoi. As with other entitlements, Appellant argues that ISA should not be permitted to use UNRWA's payments to her as a basis for denying ISA's own financial obligations.

57. On Appellant's *outstanding education grant* claims, she submits that pursuant to the ISA Administrative Instruction on Education Grant and Special Education Grant for disabled children (ISBA/ST/AI/2012/01), which was applicable for the 2018-2019 school year, Appellant was eligible for reimbursement of admissible expenses for her dependent child's education at the American International School of Kingston (AISK) during this period. Appellant was already

reimbursed USD 39,530.58 and thus requests the difference between this amount and the threshold for the special education grant (USD 40,600.00), which is USD 1,069.42.

58. In particular, Appellant argues that she should receive reimbursement for the highest value item, an iPad Pro (and its shipping cost), for which she obtained a certification from AISK stating that the iPad is required for both normal education and special education. Appellant submits that in accordance with Section 14 of ISBA/ST/AI/2012/01, she should receive 100 percent reimbursement for all admissible expenses under the special education grant rate.

59. With respect to the *NRL*, Appellant disputes that her claim is time-barred. Appellant received an e-mail from OAS on 15 March 2018 explaining that she was not entitled to the *NRL*. She disputes the JAB's conclusion that her request for review of this decision, made on 14 August 2019, was untimely because it was not within two months of receiving the OAS notification. Appellant is of the view that because the *NRL* is a recurring (monthly) entitlement, each monthly payment is a separate transaction and requires a separate review for processing. Thus, Appellant argues that her request for administrative review of the *NRL* in August 2019, was timely with respect to the *NRL* for July 2019. Appellant further argues that if she was entitled to the *NRL* in July 2019, then it follows she was entitled to the *NRL* for all preceding months, pursuant to ISA Staff Rule 3.10.

60. Appellant also rejects Respondent's position that she was not entitled to the *NRL* because this entitlement had been discontinued effective 1 October 2017. Appellant asserts that she was not advised of this discontinuation when she joined ISA.

61. Appellant also disputes Respondent's reliance on ISA Staff Rule 7.25 which does not provide for *NRL* when the staff member resigns before completing two years of service.

62. Appellant argues that ISA Staff Rule 7.25 does not apply to the *NRL* and is inapplicable to this case. Appellant argues that the *NRL* is regulated by ISA Staff Rule 3.15(f),(g), and (h), and that she is fully eligible under these provisions.

63. For the foregoing reasons, Appellant claims that ISA should pay her the *NRL* for a minimum duration of 12 months, if not for the whole duration of her service (18.5 months), taking into account the precedent of ISA making retroactive payments to other staff members.

64. With regard to all of Appellant's entitlement claims, Appellant argues that Respondent's decision was unfair and unlawful and violated her contractual entitlement rights.
65. Appellant seeks from the Appeals Tribunal a finding that the impugned JAB Decision fulfils the jurisdictional requirements set forth in Judgment No. 2021-UNAT-1130, such that the Appeals Tribunal may now render a decision on her claims.
66. Appellant requests that the Appeals Tribunal order ISA to pay her:
- (a) A repatriation grant for 18.5 months, prorated at the rate of four weeks of salary per year of service;
 - (b) For 28.5 days of accrued annual leave;
 - (c) Repatriation travel entitlements for her and her dependents from Kingston to Hanoi;
 - (d) A relocation grant on separation of USD 18,000
 - (e) Outstanding education grant claims;
 - (f) NRL for 18.5 months
 - (g) USD 20,000 as "compensation in damages and interest for the time, efforts, and associated costs spent to enforce the regulations and rules concerning her entitlements as well as financial loss due to delay in receiving the payments for such entitlements".

ISA Secretary-General's Answer

67. Respondent submits that the instant appeal should be dismissed in its entirety because the JAB correctly established that ISA was not responsible for paying for any of the entitlements or the compensation for damages demanded by Appellant.
68. Respondent draws the Appeals Tribunal's attention to the fact that ISA amended its Staff Rules in 2022, in accordance with the directive of this Tribunal in Judgment No. 2021-UNAT-1089.
69. The newly amended ISA Staff Rule 11 provides, in relevant part:²⁴

Rule 11.1(a)

There is hereby established a Joint Appeals Board to consider and advise the Secretary-General and decide appeals filed under the terms of staff regulation 11.1

²⁴ Secretary-General's Bulletin, ISBA/ST/SGB/2020/1/Amend. 1 (Amendments to the Staff Rules of the International Seabed Authority).

...

Rule 11.2(n)

Within 14 days of the date on which the consideration of an appeal has been completed, the panel shall, by majority vote, adopt and issue a written decision on the appeal which shall include a record of the proceedings in the appeal and a summary of the reasons, fact and law as well as all considerations that the panel deems appropriate. Votes on the decision shall be recorded and the dissenting opinion of any member of the panel may be included in the report, at the request of the panel member.

70. Respondent advises that Rule 11.2(o), which previously granted the ISA Secretary-General the final say on a decision has been expressly repealed.

71. Respondent also highlights that in accordance with ISBA/ST/SGB/2020/Amend. 1, the newly amended rules “shall also apply to all appeals which have been remanded from the United Nations Appeals Tribunal from 27 March 2020 to date”.

72. Respondent notes that the reconstituted JAB carefully considered the prior JAB Report and saw “no reason to depart from the conclusions which its predecessor reached” and adopted the conclusions of the prior panel “as its own”.

73. Respondent submits that Appellant has not established any error of law or fact by the JAB with regards to its conclusions that Appellant was on a two-year secondment from UNFPA to ISA, which was foreshortened by Appellant’s tender of resignation to ISA, effective 30 August 2019, and then began a second secondment with UNRWA effective 1 September 2019.

74. Respondent submits that Appellant has failed to demonstrate any error of fact or law with respect to the JAB’s conclusions that Appellant’s claims were governed by a combination of ISA’s Staff Rules, the respective staff rules and regulations of UNFPA and UNRWA, and the MIOE between Appellant, ISA and UNFPA, which in turn incorporated the terms and conditions of the IOA.

75. Respondent points out that Appellant has expressly acknowledged that she was on secondment from UNFPA to ISA, as in her communication to UNRWA on 2 August 2019, stating that: “I am currently on secondment from UNFPA to ISA until Feb 2020”.

76. Respondent reasserts that Appellant was and remains a UNFPA staff member, as found by the JAB Decision. This is also in accordance with UNAT's finding in *Skoda* that "in cases of secondment, staff members do not lose their service lien with their parent organization".²⁵

77. Respondent asserts that Appellant was seconded from UNFPA to ISA under the terms and conditions of the IOA and MIOE. Respondent draws the Appeals Tribunal's attention to Article 1.2(d) of the IOA, which defines a secondment as: "the movement of a staff member from one organization to another for a fixed period (...) during which the staff member (...) will retain his or her rights of employment in the releasing organization". In addition, Respondent points to Article 9 of the IOA which establishes that a staff member's resignation in the receiving organization does not affect their right to resume employment in the releasing organization.

78. Based on the foregoing, Respondent submits that upon her resignation from ISA, Appellant was not separated or terminated from UNFPA and thus remained within the United Nations Common System.

79. Respondent argues that the ISA Staff Rules and Regulations must be governed, read, construed and applied in light of the IOA. ISA Staff Rule 1.5(b) expressly provides that "[i]nter-agency loans, secondments and transfers are defined in and shall be governed by the inter organization agreement concerning the transfer, secondment or loan among the organizations applying the United Nations common system of salaries and allowances". The MIOE of 19 December 2017 also referenced that the IOA would be applied to the instant case.

80. With regard to the specific entitlements, Respondent first submits that the JAB correctly established that ISA was not responsible for the payment of the *repatriation grant*. Respondent points out that in response to this finding of the JAB, Appellant "merely insists" that ISA was responsible for paying her a repatriation grant.

81. Respondent avers that, as found by the JAB, Appellant was seconded from UNFPA to ISA under the framework of the IOA. In particular, Respondent submits that Article 28 of the IOA governs this case, and that no repatriation travel is due when a staff member resigns from the receiving organization but not from the releasing organization.

²⁵ *Skoda v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-017, para. 6.

82. Respondent maintains that Article 28(b) is directly applicable because Appellant had resigned from ISA, but not UNFPA, returning to UNFPA without a break in service. Accordingly, she is not entitled to repatriation travel.

83. In addition, Respondent claims that this conclusion is supported by ISA Staff Rules that establish payment of a repatriation grant “upon separation”; however, Appellant was not “separated” from ISA, rather, she began a new secondment with UNRWA. Moreover, Appellant was not repatriated to her home country of Vietnam, she was seconded to a new duty station in Amman, for which UNRWA paid her settling-in costs.

84. Respondent next submits that the JAB correctly established that ISA was not responsible for the payment of a sum in respect of any *accrued annual leave*, pursuant to Article 14(d) of the IOA.²⁶ Respondent points out that while Appellant argues that IOA is inapplicable, she had previously expressly acknowledged in her communications to UNRWA that she might need additional days to travel to Amman from Hanoi, but that “these days could be deducted from my leave balance which will be carried over from UNFPA”. She thus admitted that she understood that she carried with her the annual leave credit from ISA to UNFPA, and then to UNRWA.

85. Contrary to Appellant’s assertions, Respondent reiterates that ISA Staff Rule 9.7 for the payment of money in substitution of accrued annual leave only applied upon separation from service. Here, Appellant has not separated from the United Nations Common System and her contract was not terminated. For all of these reasons, Respondent asserts that Appellant’s claim for payment for accrued annual leave should be rejected.

86. With regard to *outstanding education grant* expenses, Respondent submits that the JAB correctly established that Appellant was not due further payments. Respondent argues that Appellant has limited her claim to only “technical items” (including an iPad) being cited as necessary for special needs. Respondent notes that AISK expressly stated that the iPad was not especially for special needs children but was required for all students of AISK. Accordingly, as it was listed in the regular and ordinary school supplies list for AISK students, this was not

²⁶ Article 14(d) provides: “When a staff member returns to the releasing organization, the staff member will carry with him or her any accrued leave credit at the date of his or her return.”

an admissible educational expense pursuant to either Section 12 of ISBA/ST/AI/2012/01, or Section 5 of ST/AI/2018/2 (Special education grant).

87. Moreover, Respondent submits that it has fully granted and settled Appellant's special education grant as established by three different proofs of special education grant payments in the record of this case. Respondent thus asserts that the JAB was correct to find that ISA was not responsible for any outstanding education expenses.

88. With regard to certain *travel entitlements*, Respondent submits that the JAB correctly established that ISA was not responsible for paying for Appellant's and her dependents' travel expenses from Kingston to Hanoi. Respondent argues that this travel is governed by Article 28(b) of the IOA, which excludes repatriation travel for staff members who return to the releasing organization. Accordingly, Appellant would only have been entitled to travel from Kingston to New York, the home of UNFPA headquarters where she was recruited from.

89. Respondent further avers that UNRWA was prepared to pick up Appellant from Kingston, but she refused and insisted on being brought from Hanoi. In any event, UNRWA subsequently paid for her travel expenses and confirmation of Appellant's receipt of various relocation entitlements is in the record (appointment travel, relocation shipment, settling in grant). Accordingly, Respondent states that this claim is also moot.

90. Respondent submits that the impugned JAB Decision correctly established that ISA was not responsible to pay a *relocation grant* to Appellant. Respondent agrees with the finding of the JAB Decision that it was for UNRWA to pay the relocation grant.

91. Respondent notes that in UNRWA's offer of appointment, Appellant was offered "[w]ith respect to the shipment of personal effects and household goods", which is what Appellant demands from ISA, that she could "make [her] own arrangements . . . for shipment of personal effects and household goods and receive a payment of \$15,000". UNRWA has paid USD 15,000 to Appellant. Respondent argues that even if ISA were obliged to pay this emolument, which it was not pursuant to the IOA, for Appellant to collect this amount from ISA would constitute "double dipping" from two different United Nations organizations, as she would be charging the United Nations twice for the same claim.

92. Respondent submits that UNRWA's payment of the relocation grant was in accordance with Article 40(a) of the IOA, which provides that "[i]n the case of transfer, secondment or loan the receiving organization will bear the travel costs of the staff member and of any dependents authorized to travel, for the journey to the duty station of the receiving organization".

93. With respect to the *NRL*, Respondent submits that the JAB correctly established that Appellant's claim was not receivable, because, as found by the JAB: "The fact that, had [the *NRL*] been payable it would have been paid each month does not alter the conclusion that the decision not to pay it should have been challenged within two months of receiving the memorandum of March 15, 2018 [denying the *NRL* because it had been discontinued]."

94. In addition, Respondent points out that the International Civil Service Commission (ICSC) had discontinued the *NRL* from 1 October 2017, before Appellant joined ISA in February 2018, and the *NRL* was not listed as one of the emoluments in her job offer from ISA.

95. Lastly, Respondent submits that the impugned JAB Decision correctly adopted the conclusion that Appellant had given no explanation or evidence to support her compensation claim of USD 20,000, and Appellant did not specifically contest this finding, and thus this should be rejected by the Appeals Tribunal.

96. In conclusion, Respondent respectfully submits that the impugned JAB Decision should be affirmed in all respects because the JAB correctly concluded that Appellant was not entitled to any of the claimed entitlements or compensation.

Considerations

97. At the outset, the Appeals Tribunal takes note that ISA has amended its Staff Rules in accordance with our direction in Judgment No. 2021-UNAT-1089. The revised ISA Staff Rules 11.1(a) and 11.2(n), together with the repeal of ISA Staff Rule 11.2(o), now satisfy the requirements of Article 2(10) of the Appeals Tribunal Statute such that we may exercise jurisdiction over Ms. Nguyen's appeal.

98. The Appeals Tribunal will first consider the legal relationship of Ms. Nguyen with ISA and then address in turn each of Ms. Nguyen's specific requests constituting the subject-matter of the present appeal.

Ms. Nguyen's legal relationship with ISA

Legal framework

99. The IOA provides, in relevant parts, as follows:

I. General

1. (a) The Organizations listed in Annex I have reached the following agreement concerning the rights of a staff member of one organization who is transferred, seconded or loaned to another organization, and the rights and liabilities of the two organizations concerned.

...

2. For the purposes of this Agreement:

(a) "Releasing organization" is an organization which transfers, seconds or loans a staff member to another organization pursuant to this Agreement;

(b) "Receiving organization" is an organization which accepts a staff member on transfer, secondment or loan from another organization pursuant to this Agreement;

...

(d) "Secondment" is the movement of a staff member from one organization to another for a fixed period, normally not exceeding two years, during which the staff member will normally be paid by and, except as otherwise provided hereafter, be subject to the staff regulations and rules of the receiving organization, but will retain his or her rights of employment in the releasing organization. The period of secondment may be extended for a further fixed period by agreement among all the parties concerned.

...

III. Contractual Relationships between the Staff Member and the Organizations

...

9. (a) When a staff member is seconded to another organization, his or her contractual relationship with the releasing organization will, except as may be otherwise provided hereafter, be suspended until the expiry of the agreed period of secondment, or until such earlier date as the parties may agree.

100. In the present case, the evidence on file, including Ms. Nguyen's own concessions (see, for example, Ms. Nguyen's e-mail of 2 August 2019 to UNRWA, where it is explicitly noted by her that "I am currently on secondment from UNFPA to ISA until Feb 2020"), supports the JAB's finding that Ms. Nguyen was on secondment to ISA from UNFPA, under the

IOA, for an initial period of two years commencing on 14 February 2018. In fact, the available record clearly indicates that on 22 December 2017, UNFPA agreed with ISA to release Ms. Nguyen to ISA, under the above conditions, to which Ms. Nguyen consented and gave her acquiescence by signing the relevant letter of appointment and taking up her duties with ISA.

101. Consequently, in accordance with the above referenced legal framework of the IOA and our relevant jurisprudence,²⁷ Ms. Nguyen, though on secondment, did not lose her service lien with her parent organization, UNFPA, remaining its staff member, as the JAB correctly held.

Whether Ms. Nguyen was entitled to a repatriation grant

Legal framework

102. The relevant ISA Staff Rules provide in pertinent part:

Chapter IX Separation from Service

...

Rule 9.5 Repatriation grant

Purpose

(a) The purpose of repatriation grant provided by Staff Regulation 9.5 is to facilitate relocation of expatriate staff members to a country other than the country of the duty station, provided they meet the conditions contained in Appendix II to the Staff Regulations and in this rule.

Definitions

(b) The following definitions shall be used in ascertaining whether the conditions contained in Appendix II to the Staff Regulations and this rule are met:

(i) “Country of nationality” shall mean the country of nationality recognized by the Secretary-General;

(ii) “Dependent child” shall mean a child recognized as dependant under rule 3.17 (b) at the time of the staff member's separation from service;

(iii) “Home country” shall mean the country of home leave entitlement under rule 5.3 or such other country as the Secretary-General may determine;

²⁷ *Skoda, op. cit.*, para. 6.

(iv) “Obligation to repatriate” shall mean the obligation to return a staff member and his or her spouse and dependent children, upon separation, at the expense of the Authority, to a place outside the country of his or her duty station; (...)

...

Eligibility

(c) Staff members who are internationally recruited shall be eligible for payment of the repatriation grant in accordance with Appendix II to the Staff Regulations if they meet the following conditions:

- (i) The Authority had the obligation to repatriate the staff member upon separation after qualifying service of one year or longer;
- (ii) The staff member resided outside his or her country of nationality while serving at the duty station;
- (iii) The staff member has not been summarily dismissed or separated from service on grounds of abandonment of post.

d) No repatriation grant shall be paid to:

- (i) A staff member locally recruited under rule 4.6;
- (ii) A staff member who has permanent resident status in the country of the duty station at the time of separation.

...

Staff Regulations

Appendix II

Repatriation Grant

In principle, the repatriation grant shall be payable to staff members whom the Authority is obligated to repatriate and who at the time of separation are residing, by virtue of their service with the Authority, outside their country of nationality. The repatriation grant shall not, however, be paid to a staff member who is summarily dismissed. Eligible staff members shall be entitled to 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.

103. The relevant article of the IOA provides:

IV. Entitlements of the Staff Member

...

I. Travel and Removal Costs on Separation from the Receiving Organization

28. (a) If during a period of secondment the services of a staff member are terminated by the receiving organization but not by the releasing organization, or if the staff member resigns from the receiving organization but not from the releasing organization, the staff member's entitlement to repatriation travel, and that of his or her recognized dependants, will, subject to (b), be determined under the rules of the receiving organization.

(b) If, after separation under (a) above, the staff member returns to duty in the releasing organization without break in service, the staff member will not be entitled either for him- or herself or his or her dependants, to repatriation travel. Instead, the staff member and his or her recognized dependants will be entitled to travel to the duty station to which the staff member is assigned by the releasing organization.

104. Ms. Nguyen claims that under ISA Staff Rule 9.5 and the terms and conditions offered to her, ISA is responsible for paying her a repatriation grant for the service duration of 18.5 months, from 14 February 2018 to 31 August 2019.

105. In response, the Administration argues that pursuant to Articles 28(a) and 28(b) of the IOA, when a staff member resigns from the receiving organization but not from the releasing organization, the staff member will not be entitled to repatriation travel.

106. As already alluded, on 21 July 2019, after a year and a half of service with ISA, Ms. Nguyen received and accepted a job offer from UNRWA, following which, on 2 August 2019, Ms. Nguyen submitted her resignation from her post at ISA, which was accepted by the latter on 6 August 2019, effective on 31 August 2019. After Ms. Nguyen's resignation, ISA informed her that her separation entitlements also took into account her secondment as reflected in the MIOE between UNFPA and ISA effective from 14 February 2018 to 14 February 2020 and that, following her resignation from ISA, the secondment period was curtailed to 31 August 2019 as agreed by both the receiving (ISA) and the releasing (UNFPA) organizations.

107. In these circumstances, since Ms. Nguyen resigned from the receiving organization, ISA, but not from the releasing organization, UNFPA, per Article 28(a) and 28(b) of the IOA in combination with Rule 9.5 of the ISA Staff Rules and Appendix II of the

Staff Regulations, ISA was not under an obligation to repatriate Ms. Nguyen to her country of nationality, *i.e.*, Vietnam, as she and her recognized dependants were entitled only to travel to the duty station to which she was assigned by the releasing organization, *i.e.*, New York. Hence, the JAB was correct in concluding that ISA was not responsible for paying Ms. Nguyen a repatriation grant in the instant case.

108. The appeal fails in this respect.

Whether Ms. Nguyen was entitled to payment for her accrued annual leave balance (28.5 days)

109. Ms. Nguyen claims that, pursuant to ISA Staff Rule 9.7, ISA is responsible for paying her annual leave balance accrued during her employment period with ISA, calculated at 28.5 days by OAS.

110. In response, ISA argues that ISA Staff Rule 9.7 indicates that accrued annual leave should be paid only upon separation from service, and since Ms. Nguyen only resigned from ISA and not from the United Nations Common System, this accrued leave should not be paid.

Legal framework

111. With regards to this claim, the relevant ISA Staff Rule is:

Chapter IX Separation from Service

Rule 9.7. Commutation of accrued annual leave

If, upon separation from service, a staff member has accrued annual leave, the staff member shall be paid a sum of money in commutation of the period of such accrued leave up to a maximum of sixty working days. The payment shall be calculated:

- (i) For staff in the Professional and higher categories, on the basis of the staff member's net base salary plus post adjustment;

...

112. With respect to the IOA, the pertinent legal provision on annual leave is:

IV. Entitlements of the Staff Member

...

C. Annual Leave

14. (a) When a staff member is transferred, seconded or loaned, the staff member will carry with him or her to the receiving organization any accrued annual leave credit.

...

(d) When a staff member returns to the releasing organization, the staff member will carry with him or her any accrued leave credit at the date of his or her return.

113. As already held, Ms. Nguyen resigned from her position at ISA on 2 August 2019, but was not separated from the United Nations Common System, and her contract was not terminated. Rather, Ms. Nguyen resumed her employment with UNFPA, the releasing organization, with whom she had never lost her service lien, remaining its staff member, as the JAB correctly held. Concomitantly, the JAB was right in finding that ISA was not responsible for paying any accrued leave to Ms. Nguyen as she had taken her accrued leave to UNFPA and thus correctly rejected her claim to the contrary as baseless.

114. The appeal fails on that score.

Whether Ms. Nguyen was entitled to payment for outstanding education grant expenses

Legal framework

115. The relevant rule with respect to Ms. Nguyen's claim to unpaid educational expenses of USD 1,069.42 is ISBA/ST/AI/2012/01, which provides in pertinent part:

II. Special education grant for disabled children

Section 10

Eligibility

Staff members shall be eligible for the special education grant in accordance with the provisions of staff rule 3.14(h).

Section 11

Conditions of entitlement

11.1 Eligible staff members may claim special education grant when the following conditions are met:

(a) The child is unable, by reason of physical or mental disability, to attend a normal educational institution and therefore requires special teaching or training, on a full or part-time basis, to prepare him or her for full integration into society;

(b) Or the child, while attending a normal educational institution, requires special teaching or training to assist him or her in overcoming the disability.

...

Section 12

Admissible educational expenses

The following educational expenses shall be admissible:

(a) Expenses required to provide an educational programme designed to meet the needs of the disabled child so that he or she may attend the highest level of functional ability. These expenses may include:

(i) Charges for teaching or training services;

(ii) Other costs or fees directly related to the educational programmes that are not optional or related to extracurricular activities, except for expenses for school supplies, uniforms, insurance, donations and contributions or similar charges;

(iii) Expenses for special equipment for educational purposes if not covered under health insurance;

(iv) Expenses for full board (food and lodging) in the case of a child attending an educational institution at the duty station when such boarding is an integral part of the educational programme;

(b) Expenses incurred for local transportation required for the disabled child.

116. In the present case, Ms. Nguyen submits that, pursuant to the foregoing instruction which was applicable for school-year 2018-2019, she was eligible for reimbursement of additional education grant claims submitted on 25 July 2019 for the expenses related to her child's education at AISK. Ms. Nguyen's child attended full time at AISK for school year 2018-2019. AISK is a regular school which also provided special arrangements for the special educational needs of Ms. Nguyen's child. Specifically, Ms. Nguyen's claim refers to an iPad (and its shipping cost) being cited as special needs.

117. However, the evidence on file, including the certification Ms. Nguyen obtained from AISK Director of Student Support, that the iPad is required for both normal education and special education for children at AISK, which she submitted to OAS on 13 December 2019, does not support Ms. Nguyen's claim. As the JAB correctly found the iPad was not an admissible expense because it was a regular requirement for all students, and not only for children with special needs, and therefore not reimbursable

118. The appeal fails on that score too.

Whether Ms. Nguyen was entitled to payment for one-way travel tickets from Kingston to Hanoi for her and her dependents, as well compensation for related travel time

119. Ms. Nguyen claims that, under ISA Staff Rule 7.1, ISA is responsible for her and her eligible dependents' travel expenses to her place of home leave, namely ISA is responsible for paying one-way tickets for her and her dependents from Kingston to Hanoi based on appropriate quotations, such as the ones she submitted to ISA. Moreover, Ms. Nguyen claims that she is also eligible for three days of accrued leave concerning repatriation travel time from Kingston to Hanoi, pursuant to ISA Staff Rule 9.9(b).

120. The Administration submits that Ms. Nguyen is not entitled to her travel expenses to Vietnam, but would have been entitled only to travel to New York, where UNFPA headquarters are located, and is the place where she was recruited from, in accordance with ISA Staff Rule 7.1(c) and Article 28(b) of the IOA that reads:

If, after separation under (a) above, the staff member returns to duty in the releasing organization without break in service, the staff member will not be entitled either for him- or herself or his or her dependents, to repatriation travel. Instead, the staff member ...will be entitled to travel to the duty station to which the staff member is assigned by the releasing organization.

Additionally, ISA submits that Ms. Nguyen's claim has, at this juncture, become moot, as she had relocated to Amman, and that UNRWA has already paid her expenses for this travel.

121. In respect of this matter, the JAB found that ISA was not under any obligation to pay for Ms. Nguyen's travel from Kingston to Hanoi because it was her choice not to travel to New York but instead to go to Amman via Hanoi, and her travel from Hanoi to Amman had been covered by UNRWA. Further, the question of paying for travel to New York had not arisen since Ms. Nguyen made no such journey.²⁸ In this context, the JAB held that any complaint in relation to these matters could not be attributable to ISA and should have been pursued with UNFPA.²⁹

²⁸ Impugned JAB Decision, para. 35.

²⁹ *Ibid*, para. 38.

122. In the same line of reasoning, the JAB found that Ms. Nguyen's claim for travel time equivalent could not be separated from the claim for travel expenses and was likewise moot.

Legal framework

123. The ISA Staff Rules relied upon for this claim include:

Chapter VII Travel and Removal Expenses

Rule 7.1 Official travel of staff members

(a) Subject to the conditions laid down in these Rules, the Authority shall pay the travel expenses of a staff member under the following circumstances:

(i) On initial appointment, provided the staff member is considered to have been internationally recruited under rule 4.7;

(ii) When required to travel on official business;

(iii) On home leave, in accordance with the provisions of rule 5.3;

(iv) On family visit, in accordance with the provisions of paragraph (b) below;

(v) On separation from service, as defined by Article IX of the Staff Regulations and Chapter IX of the Staff Rules and in accordance with the provisions of paragraph (c) below;

...

(c) Under subparagraph (a)(v) above, the Authority shall pay the travel expenses of a staff member to the place of recruitment or, if the staff member had a probationary appointment or an appointment for a period of two years or longer or had completed not less than two years of continuous service, to the place recognized as his or her home for the purpose of home leave under rule 5.3. Should a staff member, on separation, wish to go to any other place, the travel expenses borne by the Authority shall not exceed the maximum amount that would have been payable on the basis of return transportation to the place of recruitment or home leave.

...

Chapter IX Separation from Service

Rule 9.9 Last day for pay purposes

...

(b) When an internationally recruited staff member has an entitlement to return travel under rule 7.1 (a)(v), this shall not affect the determination of the last day for pay purposes in accordance with the provisions of paragraph (a) above. In the case of resignation, expiration of fixed-term appointment, termination or retirement, the

staff member shall be paid, on separation, an additional amount for days of authorized travel estimated on the basis of uninterrupted travel by an approved route and mode from the duty station to the place of entitlement to return travel. Such amount shall be calculated as is done for commutation of accrued annual leave under staff rule 9.7.

124. In the case at hand, it is not in dispute that, following Ms. Nguyen's resignation from ISA, but not from the releasing organization, UNFPA, she and her recognized dependents were entitled to travel expenses to the duty station to which she was assigned by the releasing organization, *i.e.*, New York, where UNFPA headquarters are located, and is the place where she was recruited from, in accordance with ISA Staff Rule 7.1(c) and Article 28(b) of the IOA.

125. Ms. Nguyen's above-mentioned entitlement is also corroborated and indicated on the OAS memorandum to her of 14 August 2019, which specified her separation entitlements upon resignation and took into account Ms. Nguyen's secondment as reflected in the MIOE between UNFPA and ISA effective from 14 February 2018 to 14 February 2020, but curtailed by mutual agreement to 31 August 2019 due to her resignation.

126. Notably, this memorandum states, *inter alia*, under the title "Travel on Separation", that:

You and your eligible dependents are eligible to a one way airline ticket from Kingston to the releasing organization UNFPA/New York.

You have two options for this travel:

To have your ticket issued by ISA in which case you will be eligible for the normal travel entitlements, such as terminal expenses and excess baggage. Upon completion of the travel please submit to Human Resources the e-ticket receipt (or ticket stub), boarding passes and copies of passport stamps, together with F.10 claim form.

You may opt for a lump sum payment in lieu of all entitlements related to your separation travel. For travel by air, this amounts to 75% of the established fare by the least costly scheduled air carrier between your duty station and the closest airport to the established place of entitlement. Upon completion of the travel please submit to Human Resources the e-ticket receipt (or ticket stub), boarding passes and copies of passport stamps, together with receipt for lump-sum travel form.

127. Moreover, there is incontrovertible evidence on file supporting Ms. Nguyen's assertion that, following her resignation from ISA, she did in fact travel on 30 August 2019 from Kingston to her duty station in New York, as her Kingston-Hanoi itinerary consisted of the leg from Kingston to New York (full itinerary: Kingston – New York – Seoul – Hanoi). The

relevant documents, *i.e.*, the e-ticket receipt, boarding passes and copies of passport stamps, have been submitted to ISA by Ms. Nguyen.

128. Under these legal and factual circumstances, and bearing in mind that the Administration has an obligation to act in good faith vis-à-vis its staff members,³⁰ the Appeals Tribunal holds that Ms. Nguyen was entitled to the payment of the expenses of the trip from Kingston to New York, per ISA Staff Rule 7.1, as well as to compensation for travel time analogous to the day(s) of accrued annual leave, per ISA Staff Rule 9.9.

129. Contrary to ISA's submissions, Ms. Nguyen's specific claims had not become moot due to her relocation to UNRWA, because her appointment with UNRWA was irrelevant to and did not detract from her entitlement to travel expenses from ISA, Kingston, to her duty station of UNFPA, New York, and to the aforementioned compensation provided for in ISA Staff Rule 9.9.

130. In view of the forgoing, the JAB erroneously concluded to the contrary thereupon, and therefore Ms. Nguyen's appeal succeeds in part on these scores.

Whether Ms. Nguyen was entitled to a relocation grant of USD 18,000

131. Ms. Nguyen submits that pursuant to ISA Staff Rule 7.18(j), she is entitled to a lump sum of USD 18,000 for the shipment of household goods and personal effects upon separation.

132. In response, ISA argues that the relevant provision is ISA Staff Rule 7.24, which provides that the removal grant is only payable provided that the staff member had an appointment for a period of two years or longer, which Ms. Nguyen did not. ISA maintains that since Ms. Nguyen was not "terminated" but that, instead, she has been moved on secondment by UNFPA to UNRWA, immediately after her resignation from ISA, the IOA applies, which provides in Article 40(a) that in the case of transfer, secondment or loan the receiving organization will bear the travel costs of the staff member and of any dependants authorized to travel, for the journey to the duty station of the receiving organization. Hence, it

³⁰ Compare *Deema Jarallah v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1296, para. 47; *Al Hallaj v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-810, para. 39.

is the new receiving organization, UNRWA, which bears the obligation to pay any relocation grant in lieu of shipment of personal effects to Ms. Nguyen.

Legal framework

133. With respect to the relocation grant, the relevant ISA Staff Rules are as follows:

Chapter VII Travel and Removal Expenses

Rule 7.18 Excess baggage and unaccompanied shipment

...

General provisions on unaccompanied shipments

(c) For the purpose of these rules, “personal effects and household goods” shall mean effects and goods normally required for personal or household use, excluding animals.

...

Unaccompanied shipments for staff appointed or assigned for one year or longer

(j) On travel of appointment or assignment for one year or longer, on transfer to another duty station, or on separation from service of a staff member appointed for one year or longer, charges for shipment of personal effects and household goods by the most economical means may be reimbursed up to a maximum of:

(i) 1,000 kg or 6.23 cubic metres for the staff member;

(ii) 500 kg or 3.11 cubic meters for the first family member;

(iii) 300 kg or 1.87 cubic metres for each additional family member authorized to travel at the expense of the Authority.

...

Rule 7.24 Removal costs

Eligibility for payment of removal costs

(a) An entitlement to payment of removal costs of personal effects and household goods, as defined in staff rule 7.18 (c), shall arise with respect to internationally recruited staff members, under the following circumstances, and in accordance with conditions established by the Secretary-General: (i) On initial appointment for a period of two years or longer; (ii) Upon separation from service, provided 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, and a. Had been granted removal to Kingston, or b. Had been recruited at Kingston and is repatriated to the place of home leave or other location, in accordance with rule 7.1 (c).

Maximum entitlements

(b) Payment by the Authority of removal costs shall be on the basis of the following:

(i) 4,890 kilograms or 30.58 cubic metres, including packing but excluding crating and lift vans, for a staff member without a spouse or dependent child, and 8,150 kilograms or 50.97 cubic metres for a staff member with a spouse or dependent child residing at the official duty station. Higher maxima may be authorized if the staff member presents convincing evidence that his or her normal and necessary personal effects and household goods to be removed exceed those limits; (...)

Rule 7.25 Loss of entitlement to unaccompanied shipment or removal expenses

(a) A staff member who resigns before completing two years of service shall not normally be entitled to payment of removal expenses under rule 7.24 above.

134. With regard to this specific claim, the JAB found that in the circumstances of this case it was for UNWRA to pay the relocation grant, and UNWRA has done so, from Hanoi to Amman, which was Ms. Nguyen’s choice.

135. The JAB’s conclusion is incorrect on both prongs of its underpinning reasoning. It is a matter of the record that Ms. Nguyen’s Statement of Emoluments (for Appointments of One Year or More), dated 12 December 2017, stated in part E, under the title “Shipment of Personal Effects and Household Goods”, that:³¹

In addition, the Organization will pay expenses incurred to transport personal effects and household goods by the most economical means, as determined by the Secretary-General, up to a maximum, including packing weight or volume, but not excluding crating and lift vans, of: (i) 1,000 kilograms or 6.23 cubic meters for yourself; (ii) 500 kilograms or 3.11 cubic meters for first family member; (iii) And 300 kilograms or 1.87 cubic meters for each additional family member.

In lieu of the above, you can opt for the lump sum amount of \$18,000.00.

136. As the Appeals Tribunal has consistently held, the issuance of a letter of appointment (LoA) signed by the appropriate United Nations official or someone acting on his or her behalf is more than a mere formality.³² Rather, the LoA governs the conditions of the employment

³¹ Emphasis added.

³² *Deema Jarallah*, *op. cit.*, para. 44; *Badawi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2012-UNAT-261, para. 28; *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120; *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029.

relationship, along with the Regulations and Rules of the Organization which are incorporated into the contract.³³

137. In these circumstances, a valid contract of employment existed between Ms. Nguyen and ISA which was the controlling document. In any event, as Ms. Nguyen rightly argues, the provisions of ISA Staff Rule 7.18(j) entitle her to shipment of her personal effects and household goods. Furthermore, the language of her statement of emoluments established in a clear and unambiguous way that Ms. Nguyen, inter alia, was entitled to a lump sum of USD 18,000 in lieu for the shipment of personal effects and household goods.

138. Where a clear and unambiguous contractual undertaking has been made which forms part of the concluded relevant employment contract, as in the case at hand, the authority undertaking the contractual commitment will not be allowed to depart from it. ISA was under an obligation to honour its contractual obligations to Ms. Nguyen. It was clearly inscribed in Ms. Nguyen's contract of employment that she was entitled to a lump sum of USD 18,000 in lieu for the shipment of personal effects and household goods and this unequivocal contractual commitment of ISA to pay her that amount of money was capable of immediate implementation. There is no gainsaying that, Ms. Nguyen, having completed more than one year of service with ISA upon separation, was entitled to that lump sum in accordance with her contract and ISA Staff Rule 7.18(j)

139. In this respect, we recall our jurisprudence that the Administration has an obligation to act in good faith and comply with applicable laws. Mutual trust and confidence between the employer and the employee are implied in every contract of employment. Both parties must act reasonably and in good faith.³⁴

140. Thus, ISA was bound to implement the specific terms of employment in accordance with the principle of good faith by which international organizations are bound and with their duty to treat their staff members with consideration and fairness, which constitute in

³³ *Deema Jarallah, op. cit.*, para. 44; *Muwambi v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-780, para. 46; *Badawi, op. cit.*, para. 28, citing *Abboud v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-100.

³⁴ *Deema Jarallah, op. cit.*, para. 47; *Jafari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-927, para. 31; *Abu Lehia v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2018-UNAT-814, para. 17.

their specific application an inextricable part of the parties' compliance with the "terms of appointment".³⁵

141. ISA's allegation to the contrary, namely that, because of Ms. Nguyen's secondment from UNFPA to UNRWA, it is the new receiving organization, UNRWA, which bears the obligation to pay any relocation grant in lieu of shipment of the personal effects to Ms. Nguyen, is devoid of any merit, as Ms. Nguyen's entitlements vis-à-vis UNRWA concern a completely disparate employment relationship existing between her and UNRWA which does not detract in any way from ISA's obligation to honour its own contractual obligations to Ms. Nguyen.

142. Therefore, the appeal succeeds on this score and the JAB's decision is modified accordingly.

Whether Ms. Nguyen was entitled to the NRL

143. Ms. Nguyen also makes claim to the NRL under former ISA Staff Rule 3.15(f), which was discontinued on 1 October 2017, before she signed her contract with ISA and took up her duties on 29 January 2018.

144. ISA submits that in accordance with the new International Civil Service Commission Compensation Package policy, applicable to the entire United Nations Common System, including UNFPA and ISA, the NRL was discontinued, effective 1 October 2017, which means that the NRL does not apply to any staff member appointed by ISA on and after 1 October 2017. This ICSC policy was implemented by ISA through the respective amendment of the ISA Staff Rules, and through the Secretary-General Bulletin ISBA/ST/IC/2017/11 (Introduction of a new compensation package for staff members in P and higher categories). Accordingly, this ICSC policy was applicable to Ms. Nguyen since 2017, while she was still working at UNFPA, and continued to apply when she was seconded to ISA. Further, Ms. Nguyen was duly informed of the discontinuation of the NRL, both in her administrative details, as well as by memo of 15 March 2018.

145. Ms. Nguyen does not refute that the new ICSC compensation package applied within the United Nations Common System, including that the NRL was discontinued, effective 1 October 2017, before she signed her contract with ISA. However, Ms. Nguyen argues that

³⁵ *Deema Jarallah, op. cit.*, para. 47; *Al Hallaj, op. cit.*, para. 39.

ISA's failure to communicate such change in NRL policy to her before her appointment was misleading. Upon appointment, she contends that she had been given a copy of the ISA Rules which indicated that the NRL still existed, and therefore, she is entitled to the NRL in accordance with the ISA Staff Rules communicated to her.

146. In these legal and factual circumstances, we agree with the Administration's contention that Ms. Nguyen was not entitled to the NRL, since such entitlement no longer existed at the time Ms. Nguyen came into an employment relationship with ISA on 14 February 2018. Hence, we reject Ms. Nguyen's contention to the contrary as without merit.

147. Moreover, the aforementioned argument advanced by Ms. Nguyen on this score is akin to a claim founded on the principle of estoppel. She essentially argues that ISA is precluded or estopped from denying her entitlement to the NRL under former ISA Staff Rule 3.15(f) because she relied on a representation from ISA, by virtue of being given a copy of the ISA Staff Rules upon her appointment, which indicated that the NRL still existed. There is no merit in this submission for the following reasons.

148. First, Ms. Nguyen has failed to invoke or produce evidence that she had acted upon that misrepresentation to her prejudice, in the sense that she would not have accepted her appointment with ISA had she known she was not entitled to the NRL.

149. Second, and most importantly, the main obstacle in the way of accepting Ms. Nguyen's argument is that acceptance of it would bestow discretionary powers upon the Administration of ISA to pay her the NRL when it had no legal basis to do so, given the change in ICSC policy as of 1 October 2017. To permit the Administration to grant the NRL without proper legal authorization would result in the Administration arrogating a discretionary power to itself which it does not legally possess. If the grant of the NRL as a matter of right is unauthorized by the policy, the application of estoppel would have the effect of ratifying decisions that the Administration of ISA is not allowed to make. That would undermine the principle of legality. It would render the policy and its specific parameters nugatory.

150. This conclusion renders it unnecessary to examine the other ground of appeal advanced by Ms. Nguyen that the JAB erred in law by finding that her specific claim was time-barred and thus non-receivable because Ms. Nguyen had not requested administrative review of it in due time, that is within two months after receiving the notification in writing on

15 March 2018 of the discontinuation of the NRL. They are not decisive for the outcome of the present case.

151. The appeal fails on that score.

Whether Ms. Nguyen was entitled to USD 20,000 as compensation for time, effort and associated costs for pursuing her claims against ISA

152. In her Statement of Claim before the JAB, Ms. Nguyen sought USD 20,000 as compensation for time, effort and associated costs spent to enforce the application of the ISA Staff Rules and the terms of her contract.

153. The JAB rejected this claim on the grounds that Ms. Nguyen had given no explanation and provided no evidence, and that, in any event, as the JAB has dismissed all of her claims, and in the absence of any special circumstance, “there is no reason to award a sum by way of compensation ‘for time, effort and associated costs’”.³⁶

154. On appeal, Ms. Nguyen reasserts her right to be paid USD 20,000 by ISA as compensation in damages and interest for the time, effort and associated costs spent to enforce the application of the ISA Staff Rules concerning her entitlements, and requests financial compensation for the delay in receiving the payments for such entitlements.

155. It is settled case law³⁷ that a party appealing a judgment of the UNDT is unlikely to succeed in having the judgment reversed, modified or the case remanded to the UNDT unless the appeal challenges the impugned judgment on one or more of the grounds referred to in Article 2(1)(a) to (e) of the Appeals Tribunal Statute. These principles also apply to the Appeals Tribunal’s review of decisions issued by neutral first instance entities under Article 2(10) of the Statute.³⁸

156. In the present case, Ms. Nguyen has failed to specifically identify the errors allegedly committed by the JAB in dismissing this aspect of her Statement of Claim and therefore, the appeal is defective for that reason alone. Nowhere in her appeal brief does Ms. Nguyen explain

³⁶ Impugned JAB Decision, para. 31 (adopting JAB Report, para. 48).

³⁷ *Langa Dorji v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1278, paras. 21-24; *Atome (De Bondt) v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-877, paras. 13-15.

³⁸ See, e.g., *Savadogo v. Registrar of the International Tribunal for the Law of the Sea*, Judgment No. 2016-UNAT-642, para. 56.

how the JAB erred in dismissing her claim to USD 20,000 as compensation for time, effort and associated costs spent to enforce the application of the ISA Staff Rules and the terms of her contract, exceeded or failed to exercise its jurisdiction or competence, erred on a question of law or procedure, or erred on a question of fact, resulting in a manifestly unreasonable decision. Ms. Nguyen is obviously not happy with the JAB Decision, but it is not sufficient for her merely to indicate that she disagrees with it. She has not complied with her statutory obligation as an appellant, in demonstrating that the JAB has committed an error of fact or law warranting the intervention by the Appeals Tribunal. For this reason alone, her appeal must fail.

157. In any case, regarding Ms. Nguyen's above request for compensation, the claimant bears the burden of establishing the negative consequences resulting from the illegality, namely that there is a "cause-effect" nexus between the illegality of the contested administrative decision and the harm itself.³⁹ If the claimant does not discharge this burden, the compensation cannot be awarded. In the appeal, Ms. Nguyen fails to do so. Without identifying the harm or providing evidence in support of the claim, Ms. Nguyen has not discharged her burden and there can be no award for harm or material damages for any reason.

³⁹ *James Michel Songa Kilaure v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1304, para. 38; *Mihai v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-724, para. 21.

Judgment

158. The appeal succeeds in part and the JAB Decision in Case No. ISAB/JAB/Nguyen/2019/II is hereby modified as follows. ISA is ordered to pay Ms. Nguyen:

- a. the expenses of the trip from Kingston to New York, per ISA Staff Rule 7.1., as well as compensation for travel time analogous to the day(s) of accrued annual leave, per ISA Staff Rule 9.9; and
- b. a lump sum of USD 18,000 for the shipment of household goods and personal effects upon separation from ISA.

Interest will accrue on the total sum from the date this Judgment is entered in the Register at the current US Prime Rate until payment. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

In all other respects, the appeal is dismissed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Raikos, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Knierim

Judgment published and entered into the Register on this 15th day of May 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar