



Before: Judge Goolam Meeran

Registry: New York

Registrar: Nerea Suero Fontecha

GERMAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. On 10 April 2019, the Applicant, an Associate Economic Affairs Officer with the United Nations Economic Commission for Latin America and the Caribbean (“ECLAC”) in Santiago, Chile, filed an application contesting the decision to deny his request for compensation for loss of his personal effects stored in a warehouse in Santiago.

2. The Respondent replied that the Applicant’s request for compensation was not filed within two months of the discovery of the loss as required by para. 13 of ST/AI/149/Rev.4 (Compensation for loss of or damage to personal effects attributable to service). The Respondent submitted that the Applicant’s loss was not directly attributable to his service with the Organization. The Respondent further submitted that the Applicant’s claim is also excluded under para. 8 of ST/AI/149/Rev.4 since no compensation shall be paid for loss of any articles that cannot be considered as reasonably required for day-to-day life under the conditions existing at the duty station, and that the Applicant’s lost personal effects fell under the exclusion. Finally, the Respondent submitted that the Applicant was estopped from claiming compensation since the storage facility paid the full declared value of his personal effects and he could not now claim that the value of his personal effects exceeded the value he declared at the time that he took insurance coverage.

3. The case was assigned to the undersigned Judge on 10 June 2019.

4. The Tribunal considered the file and decided that no further information was required and that a hearing was not necessary to determine the merits of the case.

Facts

5. In 2014, the Applicant moved to Santiago, Chile, to join ECLAC, and in the same year, he obtained private insurance coverage of his personal belongings stored in a warehouse in Santiago. He declared the total value as USD13000.

6. In July 2017, the Applicant was temporarily assigned to the United Nations Verification Mission in Colombia (“UNVMC”).

7. On 19 January 2018, during his temporary assignment to UNVMC, the Applicant was informed that there had been a fire in the warehouse in Santiago where his personal effects were stored.

8. On 7 August 2018, he accepted from the insurance company the sum of USD13000 in resolution of his claim regarding loss of his personal effects. It is noted that this was the full sum for which he had taken coverage.

9. On 5 October 2018, the Applicant requested that the Local Claims Review Board be convened to review his claim for loss of his personal belongings. He stated that although he received USD13000 as compensation, this amount did not cover the full value of the items that were destroyed in the fire.

10. On 18 October 2018, the Chief of Division of Administration, ECLAC informed the Applicant that his claim was not compensable by the Organization as loss of his personal effects was not directly attributable to the performance of duties on behalf of the Organization, as required by ST/AI/149/Rev.4. Specifically, the Chief of Division of Administration, ECLAC stated that it cannot be said that the warehouse fire or the decision to store personal effects is directly attributable to the performance of official duties since the loss did not occur in Bogotá where he was performing official duties. Furthermore, the Chief did not accept that the loss was due to the Applicant’s presence in an area designated as hazardous and occurred as a result of the hazards in that area. It was further noted that the Applicant accepted the lump sum relocation shipment option in connection with his temporary assignment to UNMC, which specifically provided that the Organization will not be responsible for any delays, additional expenses or liabilities that may arise.

11. On 10 December 2018, the Applicant requested management evaluation.

12. On 21 February 2019, the Applicant received a management evaluation decision upholding the contested decision.

Considerations

13. This Judgment is concerned with the question whether, in the given circumstances, the Applicant's loss of his personal effects may properly be compensated by the Organization under staff rule 6.5 and ST/AI/149/Rev.4. and whether the decision to refuse his claim was lawful.

Tribunal's jurisdiction

14. Before addressing the merits of the case, the Tribunal notes that the Respondent submitted in his reply that the Applicant's request for compensation was not made within the requisite time limit. However, the Respondent expressly stated in his reply that he was not contesting the receivability of this application and submitted comprehensive grounds arguing that the claim should be dismissed on its merits.

15. ST/AI/149/Rev.4 provides insofar as it is relevant:

Notification of loss and presentation of a claim for compensation

13. In order to be receivable by the Claims Board (see paras. 16 to 18 below), claims for compensation shall be made within two months of the discovery of the loss or damage, shall include copies of reports of investigations into the loss or damage and shall be submitted by the claimant to his or her executive officer/chief administrative officer for examination and submission to the Claims Board. Both the submissions by the claimant and by the executive officer/chief administrative officer shall be in the form of signed statements as described below.

16. The Applicant acknowledged that he discovered the damage to his personal effects on 19 January 2018 and did not make a claim for compensation until 5 October 2018, almost eight months thereafter. Therefore, there is no question that the Applicant did not file a claim within two months of the discovery of the loss or damage as required.

17. However, in denying the Applicant's claim for compensation, the Administration did not reject his claim on the ground that it was filed late and thus not receivable by the Claims Board in terms of paragraph 13 of ST/AI/149/Rev.4, but rejected his claim on the merits. The question of timeliness of the claim was first raised at the management evaluation stage notwithstanding the fact that it did not form any part of the decision making process and in particular was never given as the reason or one of the reasons for the impugned decision. In the circumstances, the Tribunal finds that the Administration implicitly waived the timeline required under paragraph 13 of ST/AI/149/Rev.4. Since the contested decision is the Claims Board's decision on 18 October 2018 to deny the Applicant's claim for compensation and the Applicant complied with the mandatory requirement of submitting a request for management evaluation and subsequently filing his claim before the Tribunal within time, the Tribunal has jurisdiction to consider the claim on its merits. The reasons for the decision being challenged are the reasons that formed the basis of the decision at the time that it was taken by the decision maker irrespective of the opinions expressed in the response to the request for management evaluation.

Whether the Applicant's loss of his personal effects may properly be compensated by the Organization

18. Staff rule 6.5 provides as follows (emphasis added):

Compensation for loss or damage to personal effects attributable to service

Staff members shall be entitled, within the limits and under terms and conditions established by the Secretary-General, to *reasonable* compensation in the event of loss or damage to their personal effects determined to be *directly attributable* to the performance of official duties on behalf of the United Nations.

19. ST/AI/149/Rev.4 provides insofar as it is relevant:

Conditions for the entitlement

3. Without restricting the generality of the provisions of staff rules 106.5, 206.6 and 306.4, loss of or damage to the personal effects

of a staff member shall be considered to be directly attributable to the performance of official duties when such loss or damage:

(a) Was caused by an incident which occurred while the staff member was performing official duties on behalf of the United Nations; or

(b) Was directly due to the presence of the staff member, in accordance with an assignment by the United Nations, in an area designated by the United Nations Security Coordinator as hazardous, and occurred as a result of the hazards in that area; or

...

5. Staff members should note that no compensation shall be paid for the loss of or damage to personal effects, except as provided under the Staff Rules and paragraph 3 of the present instruction. Otherwise, such loss or damage shall be the sole responsibility of the staff member. For this reason, it is recommended that staff members obtain, at their own expense, adequate personal property insurance coverage.

20. Under staff rule 6.5, the Applicant's loss of his personal effects may be compensated by the Organization on condition that the loss is directly attributable to the performance of official duties on behalf of the United Nations. Para. 3 of ST/AI/149/Rev.4 provides specific instances which shall be considered to be directly attributable to the performance of official duties. The Applicant claims that his case is covered by para. 3(a), which provides coverage when the loss "[w]as caused by an incident which occurred while the staff member was performing official duties on behalf of the United Nations", since he had to store his personal belongings in storage facilities in Santiago, Chile due to the limited shipment option provided for his temporary assignment to UNVMC. The Applicant concedes that para. 3(b) may not be applicable in his case.

21. The Tribunal finds that the Applicant stored and obtained insurance coverage for his personal belongings in 2014, three years prior to his assignment to UNVMC. Accordingly, neither the Applicant's decision to store his personal effects nor any loss as a result of the fire at the warehouse in Santiago, Chile are directly attributable to the Applicant's performance of his official duties in UNVMC and that neither para. 3(a) nor 3(b) of ST/AI/149/Rev.4 applies to the Applicant's claim.

22. Accordingly, the Tribunal finds that although the loss occurred during the period that the Applicant was performing official duties, his loss was not directly attributable to the performance of official duties on behalf of the United Nations as required by staff rule 6.5. Accordingly, he is not entitled to any compensation relating to his loss of personal effects.

23. The Respondent further submits that the Applicant's claim is excluded by para. 8 of ST/AI/149/Rev.4, which provides:

Exclusions and limitations

8. No compensation shall be paid for loss of or damage to any articles which, in the opinion of the Secretary-General, cannot be considered to have been reasonably required by the staff member for day-to-day life under the conditions existing at the duty station. In addition, no compensation shall be paid for loss of or damage to animals, motor cycles, boats, motors of all types and their appurtenances, jewellery, money (except as provided in subpara. 9 (h) below), negotiable instruments, tickets or documents.

The Tribunal notes that this reason did not form the basis of the decision at the time but will nevertheless address this argument as a matter of fact and law.

24. Insofar as the Applicant did not provide the description of all his personal effects lost by fire, as required under para. 14 of ST/AI/149/Rev.4, the Tribunal cannot make any finding on the nature of items lost. However, by the Applicant's own admission, the lost items included porcelain doll collection, paintings, exotic souvenirs, antiques, family pictures, and furniture, which cannot be considered as items "reasonably required by the staff member for day-to-day life under the conditions existing at the duty station". The Tribunal finds that the Applicant's claim did not comply with the requirements under para. 8 of ST/AI/149/Rev.4.

25. A further ground provided for rejecting the Applicant's claim is that he chose the lump sum relocation shipment option when accepting a temporary assignment to UNVMC. The terms and conditions included in the offer, which the Applicant accepted, specifically provided that the Organization will not be responsible for any

delays, additional expenses or liabilities that may arise. This condition is based on sec. 16.7 of ST/AI/2016/4 (Excess baggage, shipments and insurance):

Part V

Terms and conditions that govern the application of relocation grant

...

16.7 The Organization is not responsible for any delays in the arrival of personal effects or household goods or additional expenses that may be incurred or liabilities that may arise as a result of opting for the relocation grant. It is the staff member's responsibility to take out appropriate insurance. Where possible, the Organization may assist staff members in facilitating customs clearance and applicable import/export procedures.

26. The Tribunal agrees that to the extent that the Applicant argues that he had to store his personal belongings in a warehouse in Santiago due to the insufficiency of the relocation grant, this provision applies and the Applicant cannot claim additional expenses or liabilities caused by his decision to opt for the relocation grant.

27. Finally, the Tribunal notes that para. 24 of ST/AI/149/Rev.4 provides that payment of any approved compensation shall be conditional upon the recipient signing an instrument entitled "Undertaking and assignment", which states, among other things, that "[t]he sum total of the amount to be paid by the United Nations and the amount recovered or to be recovered by me from insurance, if any, in respect of said personal effects will not exceed the amount of the loss [of] or damage [to] personal effects sustained by me". Since the Applicant himself declared the total value of his personal effects as USD13000 and obtained this sum in compensation from the insurance company, any compensation payable by the United Nations could not exceed the amount of the loss sustained by him, i.e. USD13000, even if he was entitled to compensation under ST/AI/149/Rev.4. This fact alone would be sufficient to disentitle the Applicant to any compensation from the United Nations.

28. The decision to deny the Applicant's request for compensation for loss of his personal effects was made in accordance with the applicable law and there are no grounds to set it aside.

Judgment

29. The application is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 19th day of June 2019

Entered in the Register on this 19th day of June 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York