

UNDT/2016/083, Gorbach

UNAT Held or UNDT Pronouncements

Mission area was not defined in ST/AI/2006/5. However, the International Civil Service Commission (ICSC) Hardship Classification provided a list of duty stations located in a country and, for the DRC where MONUSCO is, Kinshasa and Goma were classified as separate duty stations. For purposes of classification of family duty stations or non-family duty stations, the Office of Human Resource Management's (OHRM) list of non-family "duty stations," as at 1 January 2014, classified Kinshasa and Goma as two distinct duty stations. Additionally, the report of the Secretary-General to the General Assembly referred to Kinshasa and Goma as two duty stations. The ICSC's list and classification of duty stations informed, and formed the basis of, the Secretary-General and OHRM's own lists and reports. It was not lawful for the Administration to substitute ST/AI/2006/5 with its own guidelines, so as to deprive the Applicants of their right to opt for the relocation grant. The circumstances surrounding these applications fell squarely within the ambit of ST/AI/2006/5; which afforded the Applicants with the right to a relocation grant.

Decision Contested or Judgment/Order Appealed

Thirteen Applicants contested the decisions denying their claims for lump-sum relocation grants for the shipment of their personal effects on being reassigned from Kinshasa to Goma in 2014.

Legal Principle(s)

It is permissible for the Respondent to issue Guidelines or manuals that may explain the implementation of a Staff Rule or an Administrative Issuance. But these Guidelines cannot replace the clear provisions of an Administrative Issuance or Staff Rule. A policy that is not reflected in an administrative issuance has no legal basis. The principle of legislative hierarchy determined in Villamoran is applicable only

where there is a conflict between guidelines and manuals and a properly promulgated administrative issuance. In the absence of an administrative instruction, the manual or guideline is applicable.

Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Tribunal ordered rescission of the contested decisions.

Full judgment

[Full judgment](#)

Applicants/Appellants

Gorbach

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2014/112

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

13 Jun 2016

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Relocation grant

Applicable Law

Administrative Instructions

- ST/AI/2006/5

Staff Rules

- Rule 7.1(a)
- Rule 7.15

Related Judgments and Orders

2015-UNAT-496

2013-UNAT-286

2011-UNAT-149

2011-UNAT-150

2013-UNAT-342

2012-UNAT-276