United Nations AT/DEC/1109

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1109

Case No. 1233: WOLLSTEIN Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Omer Yousif Bireedo; Ms. Brigitte Stern;

Whereas, on 30 October 2001, Edda Wollstein, a former staff member of the United Nations, filed an Application requesting the Tribunal, inter alia:

> "A. *to find* that the recommendation of the [Joint Appeals Board (JAB)] be rejected due to their misunderstanding on the matter [i]n dispute, as well as the Secretary-General's decision based on that recommendation.
>
> B. *to find* that the Applicant is entitled [to] payment of [a] repatriation grant for the period of 23 August 1967 to July 1979.
>
> …
>
> E. *to order* the Respondent to pay the Applicant the difference not paid for the period 1 December 1970 to July 1979.
>
> F. *to order* the Respondent [to pay] the interest accrued on the amount of money not paid, at a reasonable accumulative rate of interest determined by UNAT.
>
> G. *to order* the Respondent [to pay] an indemnity for denying an air ticket for traveling to Germany, in the amount of US$ 4,000 - (four thousand dollars).
>
> H. *to order* the Respondent to pay an indemnity for the unnecessary troubles, anxiety and grievance inflicted on the Applicant, in the amount of US$ 5,000 - (five thousand dollars).
>
> I. *to order* the Respondent to grant her a sum of US$ 2,500 for expenses generated by this appeal."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2002 and periodically thereafter until 31 May 2002;

Whereas the Respondent filed his Answer on 21 May 2002;

Whereas the Applicant filed Written Observations on 16 June 2002;

Whereas, on 3 July 2003 the Tribunal decided not to hold oral proceedings in the case;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Organization on 1 December 1956 on a two-month short-term appointment as a Clerk-Typist at the G-3 level, with ECLAC. Her place of recruitment was Santiago, Chile. She was not entitled to home leave. After a number of extensions of her appointment, she received a probationary contract effective 1 October 1957 which was converted to a "regular contract" effective 1 October 1959.

Effective 23 August 1967, the Applicant was transferred to the United Nations Industrial Development Organization (UNIDO) in Vienna, Austria, as a G-8 level Accountant on a six month probationary contract. Her nationality was listed as German. Her place of home leave was designated as Hamburg, Germany.

Effective 1 February 1968, the Applicant was granted permanent.status.

On 25 April 1968, the Applicant requested that her country of home leave be changed to Chile, justifying her request as follows:

> "I was born in Italy of parents of German nationality and have resided in Santiago, Chile from 1939 [(i.e. as an infant: her date of birth is 31 January 1938)] to the present time. My permanent residence is in Santiago and I was recruited as a local staff member for the Economic Commission for Latin America. In addition, I have received my schooling in Chile and am a registered voter of that country. I would also like to point out that I hold a permanencia card issued to permanent residents by the government of Chile.
>
> All members of my family reside in Santiago and maintain their permanent residence in that city. ...
>
> I have visited Germany only as a tourist and have no close family or personal ties in Hamburg or any other area of the country. As previously stated, my family resides in Santiago and for this reason I would desire to take home leave in that city."

On 27 September 1968, the Applicant's request was approved by Headquarters as an exception under staff rule 105.3 (d) (iii) a, and her place of home leave was re-designated Santiago, Chile.

On 1 May 1971, the Applicant was transferred to ECLAC-Port of Spain and on 1 September 1978 to ECLAC-Mexico.

Effective 1 December 1982, the Applicant was reassigned to ECLAC in Santiago. Her nationality remained listed as German, and her established base for home leave, Santiago, Chile, remained unchanged.

The Applicant separated from service on 30 April 1998, three months after her official retirement date. She was paid a repatriation grant in the amount of 6.25 weeks of net salary, (US$ 8,007.07) payable without proof of relocation, for the period 23 August 1967 to 30 November 1970.

On 7 May 1988, the Applicant requested payment of a repatriation grant to Hamburg, Germany pursuant to Annex IV of the Staff Rules as well as payment of her travel expenses. On 19 May, the Officer-in-Charge, Personnel Section, ECLAC, advised her as follows:

> "On your separation from service on 30 April 1998, we … authorized payment of the unforfeited balance of your accrued repatriation grant, which in accordance with ST/AI/300 is payable without proof of relocation. This corresponds to the unforfeited portion of your repatriation grant accrued from 23 August 1967 until 30 November 1982. A maximum of 12 years were forfeited beginning 1 December 1982, when you were reassigned to ECLAC/Santiago for service in your established place of home leave. By virtue of having moved to your established place of home leave, which was changed from Hamburg, Germany to Santiago Chile (at your request and as an exception under [Staff Rule 105.3 (d) (iii) a]) you lost entitlement to international benefits as of the same date of your reassignment. Accordingly we cannot grant you repatriation travel nor restore the forfeited portion of your repatriation grant."

On 15 June 1998, the Applicant requested administrative review of this decision.

On 10 September 1998, the Applicant lodged an appeal with the JAB. The JAB adopted its report on 22 August 2001. Its considerations, conclusion and recommendation read, in part, as follows:

> "***Considerations***
>
> …
>
> 22. Annex IV to the Staff Regulations provides that: "[i]n principle, the repatriation grant shall be payable to staff members whom the Organization is

obligated to repatriate and who at the time of separation are residing, by virtue of their service with the United Nations, outside their country of nationality.... Eligible staff members shall be entitled to a repatriation grant only upon relocation outside the country of the duty station. Detailed conditions and definitions relating to eligibility and requisite evidence of relocation shall be determined by the Secretary-General." The obligation to repatriate here means "the obligation to return a staff member and his or her spouse and dependent children, upon separation, at the expense of the United Nations, to a place outside the country of his or her duty station." (Staff Rule 109.5 (a)) The amount of the repatriation grant depends on the number of years of continuous service away from home country. (…) "Home country" here means "the country of home-leave entitlement under rule 105.3 or such other country as the Secretary-General may determine." (Staff Rule 109.5 (b))

23. To be eligible for the payment of the repatriation grant, a former staff member must provide evidence of relocation away from the country of the last duty station. (Staff Rule 109.5) …

…

25. Applying Annex IV to the Staff Regulations to the present case, the Panel was certain that the Applicant fully satisfied the requirement of residing, by virtue of [her] service with the United Nations, outside [her] country of nationality." However, it was not sure if the Applicant satisfied the other condition of being a former staff member "whom the Organization is obligated to repatriate," because at the time of her separation she was already residing in her home country and therefore could not be repatriated. Nevertheless, the Panel did not find it necessary to resolve that issue in order to dispose of the present case.

26. The Panel was of the view that the repatriation grant was not payable to the Applicant in any event because she failed to meet another essential condition, i.e., provision of evidence of relocation away from the country of the last duty station. The Panel noted that the Applicant had not disclosed her home address in any of her communications with the JAB, though she had been specifically asked to provide detailed information on her whereabouts after retirement. … It was the Panel s undivided view that, even assuming that the Organization had an obligation to repatriate her upon retirement, the Applicant was not entitled to the benefit of repatriation grant because she failed to submit the required evidence of relocation to a place outside Chile after her retirement.

Conclusion and recommendation

27. In light of the foregoing, the Panel unanimously agreed that the Applicant had failed to provide evidence to prove that she had resettled in a place outside Chile, her last duty station, and that, as she was unable to provide evidence of relocation, the Applicant was not entitled to the benefit of the repatriation grant for the qualifying service accrued subsequent to 1 July 1979.

28. The Panel makes no recommendation in support of the present appeal."

On 30 October 2001, the Applicant filed the above-referenced Application with the Tribunal.

On 29 November 2001, the Under-Secretary-General for Management informed the Applicant that the Secretary-General agreed with the JAB's conclusion and had decided to take no further action.

Whereas the Applicant's principal contentions are:

1. The Applicant is entitled to repatriation grant for the period from 1 December 1970 until 1 July 1979.

2. The Applicant was neither a Chilean national nor a permanent resident when she transferred to Santiago in 1982.

3. The Applicant did not take home leave in Germany because her family had been refugees and their property had been confiscated.

4. The JAB erred in its consideration of the case.

Whereas the Respondent's principal contentions are:

1. The Applicant was correctly paid the unforfeited portion of her repatriation grant in respect of her qualifying period of service (23 August 1967 until 1 July 1979).

2. The Applicant has failed to prove that she was entitled to an air ticket from the Organization.

The Tribunal, having deliberated from 3 to 21 July 2003, now pronounces the following Judgement:

I. The Applicant requests the Tribunal to reject the decision of the Respondent refusing to pay her full repatriation grant for the period of 1 December 1970 to July 1979, as well as denying to provide her with an airline ticket for travel to Germany. She also claims compensation for the anxiety, grievances and troubles allegedly inflicted upon her as a result of the Respondent’s decision.

II. On 25 April 1968, the Applicant requested that her designated country of home leave be changed to Chile from Germany on the grounds that all members of her family were permanent residents of Santiago and that she no longer retained close family or personal ties to Germany. On 27 September 1968, the Applicant’s

request was approved as an exception under Staff Rule 105.3 (d) (iii) a. and her place of home leave was changed to Santiago, Chile.

III. The Applicant separated from service on 30 April 1998 and was paid a repatriation grant for the period of 23 August 1967 to 30 November 1970. The Applicant claimed that she was entitled to a full repatriation grant since she was residing at the time of separation outside of her country of nationality which she designated as Germany. Since the time of her approved change of residence to Santiago, the Applicant never requested an alteration of that designation.

IV. Staff regulation 9.4 and staff rule 109.5 provide that the staff member may be entitled to a repatriation grant upon his or her separation from service. However, the staff member must fulfil specific conditions to receive a repatriation grant. Annex IV to the Staff Regulations and Rules states that: "in principle the repatriation grant shall be payable to staff members whom the Organization is obligated to repatriate and who at the time of separation are residing outside their country of nationality".

Staff Rule 109.5 (b) (iv) provides that the Organization has "the obligation to return a staff member and his or her spouse, and dependent children, upon separation, at the expense of the United Nations, to a place outside the country of the last duty station". In this regard, the staff member must provide evidence of relocation away from the country of the last duty station.

V. The JAB noted that the Applicant requested in 1968, that Chile and not Germany be recognized as her home country for home leave purposes and that her request was granted, on an exceptional basis, under staff rule 105.3. At the same time, her record did not show that she had taken home leave to Germany since her reassignment to Chile in 1982. Furthermore, the Applicant failed to provide evidence of relocation away from the country of last duty station in conformity with administrative instruction ST/AI/300, paragraph 4.

VI. The Applicant argues that it is not necessary, according to paragraph 5 of ST/AI/300, to provide evidence of relocation. Paragraph 5 provides that,

> "the requirement for the evidence of relocation set out in paragraph … shall not apply to any qualifying service for repatriation grant that accrued prior to 1 July 1979. As a consequence, the grant will be payable with respect to such qualifying service without the provision by the former staff member of evidence of relocation."

The Applicant claims that she is entitled to repatriation grant as of 23 August 1967. The Tribunal notes that the Respondent is in agreement with the Applicant in respect of the above-referenced paragraph 4. Therefore, it remains for the Tribunal to determine whether the Applicant received the correct entitlement with respect of the period from 23 August 1967 to 1 July 1979 under the Organization's rules and policy.

VII. The Respondent maintains that the Applicant had been paid the full amount of repatriation grant and that the net amount paid reflects a required reduction pursuant to the formula used for the calculation of the entitlement. This was based on the fact that the Applicant served outside Chile for 15 years and three months from 23 August 1969 to 30 November 1982 and for 12 years in Chile from 1 December 1982 until her separation on 30 April 1998.

VIII. In accordance with the formula approved by the Consultative Council on Administrative Questions, ECLAC, one year is deducted from the staff member's accrued qualifying period of service for each period of six months of subsequent service in his or her home country, up to a maximum deductible period of 12 years. Thus, in the Applicant case, the maximum deductible period of 12 years (served in Chile) was deducted from the fifteen years and three months she had served outside Chile, representing a net accrued period of three years and three months. This was reflected in the Applicant's final pay statement. Consequently, the Applicant was paid a repatriation grant of $8007,07 corresponding to 6.25 weeks of her gross salary, less staff assessment, representing the period from 23 August 1967 to 30 November 1970.

IX. Therefore, the Tribunal finds that the Applicant was neither entitled to a repatriation grant for the qualifying service nor to an airline ticket to Germany.

X. In view of the foregoing, the Application is rejected in its entirety.

(Signatures)

Mayer **Gabay**
Vice-President, presiding

Omer Yousif **Bireedo**
Member

Brigitte **Stern**
Member

Geneva, 21 July 2003

Maritza **Struyvenberg**
Executive Secretary

...?WOLLSTEIN