

Judgement No. 217

(Original: French)

Case No. 210:
Vandersypen

Against: The Secretary-General of
the International Civil
Aviation Organization

Request of a former staff member of ICAO for payment of compensation for education travel and home leave.

Request for compensation relating to education travel.—The conduct of the Applicant is not of the kind to be expected of a staff member concerned with asserting his right.—Argument based on the alleged parallel between the situation of the Applicant and that of an itinerant technical assistance expert.—Nature of the duties of an itinerant expert.—Different conditions of employment of the Applicant.—Rejection of the argument and of the Applicant's allegation of discriminatory treatment.—Argument based on the fact that the amount budgeted for such travel was not disbursed and request for cash compensation.—Absence of any practice or rule authorizing payment of such compensation.—Principle that there is no right to payment of the cost of travel not performed.

Request for compensation relating to home leave.—Procedure prescribed for the granting of home leave.—The Applicant did not fill out the required form.—Conclusion of the Tribunal that it has not been established that the Applicant's loss of home leave benefit was attributable to the Organization.—Applicability of the considerations concerning reimbursement in relation to education travel.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Madame Paul Bastid, Vice-President, presiding; Mr. Francisco A. Forteza; Mr. T. Mutuale; Sir Roger Stevens, alternate member;

Whereas, on 13 December 1976, Paul Albert Vandersypen, a former staff member of the International Civil Aviation Organization, hereinafter called ICAO, filed an application the pleas of which read as follows:

“ . . .

“(b) [I request rescission of] The Secretary-General's decision dated 27 September 1976.

“(c) The International Civil Aviation Organization (ICAO) did not perform the following obligations:

“1. Education travel for my children An and Walter.

“2. Home leave for myself, my wife and my son Paul Stephen.

“(d) The amount of compensation claimed is \$US 2,216.87, which amount ICAO budgeted for the purpose described in (c) above and failed to disburse. This amount will allow me to make up for the two reunions with my family missed through ICAO's responsibility.”

Whereas the Respondent filed his answer on 31 January 1977;

Whereas the Applicant filed written observations on 14 February 1977;

Whereas additional observations were submitted by the Respondent on 4 March 1977 and by the Applicant on 19 March 1977;

Whereas the facts in the case are as follows:

The Applicant was employed by ICAO from 11 November 1969 to 4 June 1976. His last assignment was as technical assistance officer at the ICAO Middle East and Eastern African Office in Cairo. He had four dependants: his wife and three children, two of whom were attending school in Belgium. On 11 February 1975, in a memorandum sent to the Chief of the Staff Administration Section, the Applicant requested that under the education travel entitlement his two children residing in Belgium should be authorized to travel from Brussels to Tunis and back during the Easter vacation, at which time he himself was to be sent to Tunis on mission. In a letter dated 24 February 1975, the Chief of the Staff Administration Section replied that under the provisions of article IV of part IV of the Service Code the Applicant was entitled to payment of the travel expenses of his children only between the place of their education and his duty station, which was Cairo, and suggested that he should have his children visit him in Cairo during the summer vacation. On 22 December 1975, the Applicant sent the Chief of the Personnel Branch a memorandum in which, after explaining that he had not wished to bring his children to Cairo during the summer because of the unbearable heat there at that time, and that he saw no way to benefit from the travel entitlement for his children in the brief period which remained before his scheduled separation from ICAO on 4 June 1976, he asked whether the Organization was prepared to compensate him for the fact that he had been unable to benefit from the entitlement in question. On the same day, the Applicant sent the Chief of the Personnel Branch another memorandum explaining that he had been entitled to home leave in Belgium with his wife and his third child as of 11 November 1975, that he would have had to return to Cairo by 4 December 1975 at the latest—that is, six months before his separation from ICAO—but that in effect he had been deprived of the opportunity to take home leave because he had been sent on official assignment to Morocco and Algeria from 13 to 29 November 1975; seeing no way in which he could benefit from his home leave entitlement before 4 June 1976, he asked whether the Organization was prepared to compensate him for the fact that he had been unable to benefit from the entitlement in question. On 8 January 1976, the Chief of the Personnel Branch sent him the following reply:

“With regard to home leave travel, such travel could have been undertaken, as stated in your memorandum, between 11 November and 4 December 1975. It is unfortunate that a mission was scheduled for this period. How was it that you did not raise this matter with ICAOREP at the time when the mission was arranged? It might have been possible then to reschedule the period of the mission or, alternatively, to approve advance home leave to permit you to return to Cairo in time for the mission or undertake the mission on the return trip from home leave.

“Regarding the travel of your children, your request for them to travel to Tunisia was denied because education travel is permissible only between the place of education and the duty station which, in your case, is Cairo.

“I regret that although you have not been able to benefit from the above travel there is no possibility of compensating you for this. It is not the policy of the Organization to give financial compensation for travel entitlements not utilized.”

On 26 January 1976, the Applicant asked the Secretary-General to review that decision. On 12 February 1976, the Secretary-General confirmed the decision and, on 17 February 1976, the Applicant filed an appeal with the Advisory Joint Appeals Board, which gave its Opinion (No. 60) on 20 September 1976. The conclusions and recommendation of the Board read as follows:

“Findings and conclusion

“ . . .

“9.1 From the record it seems clear, and the Board so finds, that, apart from

the allegations made by the Appellant, there is no evidence to show that he ever raised the question of availing himself of his home leave entitlement either with the ICAOREP in Cairo or with Headquarters. He never filled out a Form 100-1 for this purpose, which is essential before a member of the staff is authorized to travel on home leave. In fact, the Appellant admits this in paragraph 3 of the attachment to his letter of 20 May 1976. No evidence has been produced to show that he, at any time, had asked for leave during the period 11 November to 4 December 1975. From Appendix D in Exhibit 9 it will be seen that the Appellant had not been named amongst the staff members due for leave during the period 1 October 1975 to 31 March 1976, although he had been shown as due to go on a mission during the same period commencing on 13 November 1975 (see page 2 of Appendix A in Exhibit 9), and had received an even earlier indication to this effect, namely in the tentative mission programme planned before 21 March 1975 (see Appendix B to Exhibit 8). Consequently, the allegation that the Appellant was prevented from taking his home leave by the action of the administration had not been substantiated since in the Board's view the onus was on the Appellant to prove that he had made known in advance his home leave plans and that his application for home leave had been refused. Nor has it been established, by adducing precedence or otherwise, that there is a 'cash value' to the home leave travel entitlement not utilized by a staff member. In fact the only entitlement in this respect is that a staff member's actual expenses on travel to his home have to be met by the Organization in accordance with set procedure, namely the completion of Form 100-1, the approval of the application as indicated on that form, and so forth.

"9.2 As to the allegation of discrimination by the Organization in regard to the denial of education grant travel of the Appellant's two children from Belgium to his duty station, the Board finds that the entitlement of the Appellant for education travel of his children was to and from his duty station, namely, Cairo. There was no parallel between the situation of the Appellant and that of Mr. Cabral, cited by the Appellant, because the latter was an itinerant staff member and was governed by the ICAO Field Service Staff Rules and special regulations contained in PI No. J.3 under which 'the Secretary General has authorized special conditions of service for personnel employed in regional projects within the Technical Assistance Programme, in recognition of the fact that their terms of reference involve continuous travel on short term assignments in various countries of the regions' (para. 1.1 of PI No. J.3). The Board furthermore finds that the Appellant did not choose to exercise the said entitlement due to reasons of his own, for which the Organization is not responsible in any way.

"Recommendation

"10. In view of the findings described above, it is recommended that the appeal be rejected."

On 27 September 1976, the Secretary-General accepted the conclusions and recommendation of the Advisory Joint Appeals Board and, on 13 December 1976, the Applicant submitted the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. With respect to education travel:

(a) The Respondent stated that the reason for the contested decision was that the Organization reimburses only the costs of travel by children to the duty station. However, Tunis was the place to which the Organization had sent the Applicant during the 1975 Easter vacation. The Applicant had had to decline the suggestion that he

should have his children sent to Cairo during the summer vacation, because the stifling heat made that city unsuitable for a family reunion at that time of year;

(b) By virtue of a concession afforded them, itinerant technical assistance experts are permitted education travel for their children to the place where they are on assignment. It is true that technical assistance personnel are not governed by the same rules as Secretariat personnel, but the rule regarding education travel for all ICAO personnel, whether technical assistance or Secretariat, is that the travel of children is to the duty station. It is also true that the experts in question are continuously itinerant, but the concession afforded to them must be viewed within the whole context of their conditions of employment. This concession is justified because it permits family reunions. The Applicant's request was justified for the same reason, and in rejecting it the Organization committed an act of discrimination.

2. With respect to home leave: the Organization arranged its mission and leave schedule in such a way as to make it impossible for the Applicant to take leave between 11 November and 4 December 1975, that is, during the only allowable period for such leave to be enjoyed, and the Organization's only defence was to argue that the Applicant should have appealed the wrong arrangements imposed by it.

Whereas the Respondent's principal contentions are:

1. With respect to education travel:

(a) After receiving the letter of 24 February 1975, the Applicant made no request for payment of his children's travel expenses and did not raise the matter again until 22 December 1975. It was his privilege not to use his entitlement for reasons of personal convenience. However, the Organization has no obligation to pay him any monetary compensation for a travel entitlement not utilized;

(b) The Organization committed no act of discrimination against the Applicant because he was not governed by the special provisions applicable to itinerant technical assistance experts. Education travel entitlements for ICAO Secretariat personnel (and for non-itinerant experts) are rigidly restricted to journeys to and from the duty station. No exception has ever been authorized and no staff member has ever been compensated for an entitlement not utilized.

2. With respect to home leave: in order to receive home leave travel authorization, staff members must make a request by filling out a form which has to be approved by different levels of administration. There is nothing to indicate that the Applicant submitted such a request. It has to be concluded that the Applicant did not avail himself of his travel entitlement for reasons of personal convenience. Such a situation, which is not uncommon, does not oblige the Organization to pay the person concerned the cash value of the entitlement, and the Organization has never paid any staff member any compensation for travel entitlements not utilized for whatever reason.

The Tribunal, having deliberated from 4 to 15 April 1977, now pronounces the following judgement:

I. The Tribunal has before it a request for compensation in the amount budgeted by ICAO for education travel and home leave, benefits which the Applicant did not enjoy.

II. With respect to education travel, the Tribunal observes, first, that there is no dispute concerning the Applicant's duty station (Cairo), and second, that the Administration's suggestion that the Applicant should have his children come to Cairo for the summer vacation elicited no reply from the Applicant until much later, several months after the period envisaged. In the Tribunal's opinion, that is not the kind of conduct to be expected of a staff member concerned with asserting his right, especially since a specific proposal had been submitted to him.

III. The principal argument put forward by the Applicant to claim payment for round-trip travel by his two children from Brussels to Tunis, where he was on assignment, is based on the alleged parallel between his situation and that of an itinerant technical assistance expert. The Tribunal notes in that connexion that whether in the case of Secretariat personnel or technical assistance personnel, the rules governing the Administration's obligations with respect to education travel are analogous and provide, *inter alia*, for the travel of children to duty stations.

In the Applicant's case, however, there is no doubt that the duty station is Cairo and not Tunis, whereas in the case of an itinerant expert, the Administration must, under paragraph 1.1 of PI No. J.3, take into account the fact that his duties involve constant travelling and short-term assignments in various countries of the region; it is therefore because of the very nature of his duties, characterized by mobility and shortness of stay at his places of assignment, that the place to which an itinerant expert is attached cannot be fixed but varies constantly. Hence, since his conditions of employment are different, the Applicant cannot avail himself of the interpretation given to the expression "duty station" in the case of an itinerant expert; his allegation of discriminatory treatment is therefore unfounded.

IV. The Applicant also claims that the amount budgeted by ICAO for such travel was not disbursed and requests the Tribunal to order that in lieu of the travel expenses of his two children the Administration should pay him cash compensation to make up for his having been unable to benefit from this entitlement. Without prejudice to what has been said above, the Tribunal notes that the Applicant has not established that any practice or rule authorizes the payment of such compensation. In a previous judgement (No. 144, *Samaan*), the Tribunal, in comparable circumstances, ruled that in principle there is no right to payment of the cost of travel not performed.

V. With respect to home leave, the Tribunal is of the opinion that concern for proper administration requires that the Organization take into consideration all pertinent facts before it arranges its mission and leave schedule.

VI. The Tribunal notes in that connexion that home leave is granted by means of a procedure, familiar to the Applicant, which, if followed, enables the staff member to inform the Organization of any facts which he feels might deprive him of his leave entitlement or interfere with his enjoyment of it. However, the file shows that at no time did the applicant fill out Form 100-1, a document required to request home leave travel authorization, even though he was scheduled for a mission and had known for several weeks that the period of his assignment to Morocco and Algeria coincided with the only period in which he could take such leave.

VII. The Tribunal therefore holds that it has not been established that the Applicant's loss of home leave benefit was attributable to the Organization.

VIII. The considerations concerning compensation set forth in paragraph IV above regarding education travel apply equally to home leave.

IX. For the foregoing reasons, the application is rejected.

(Signatures)

S. BASTID
Vice-President, presiding
Francisco A. FORTEZA
Member

T. MUTUALE
Member

Geneva, 15 April 1977

Roger STEVENS
Alternate Member
Jean HARDY
Executive Secretary