

Case No.: UNDT/GVA/2010/118

Judgment No.: UNDT/2011/203

Date: 30 November 2011

English



Translated from French

account the instrument as a whole. While rule 7.1 of the Staff Rules defines home leave as official travel, rule 7.2(a) provides that: “Eligible family members, for the purposes of official travel, shall be deemed to comprise a spouse and those children recognized as dependants ...”. Thus, only persons recognized as dependants are eligible for official travel;

d. Staff rule 5.2(j) applies to married staff members in the Professional category, whose entitlement to dependency allowances is expressly restricted by the Staff Rules;

e. The case does not relate to the issue of marriage but to that of the status of dependent children. The Applicant must bear the consequences of his choice not to have recognized his child E. as his dependant.

Consideration

15. The Applicant contests the decision of UNCTAD not to pay the travel expenses of his child, E., who was accompanying him to the United States on home leave. The Administration based the contested decision on the fact that E. is not a dependant of his father.

16. To argue against the decision, the Applicant based himself on rule 5.2(j) of the Staff Rules, which specifies that:

... Dependent children whose parents are staff members, each of whom is entitled to home leave, may accompany either parent [on home leave] ...

17. It is not contested that the Applicant has had two children with his partner, who is also a United Nations staff member, and that he has recognized only N. as his dependant, while his partner has recognized only E. as her dependant.

18. The Dispute Tribunal must therefore consider whether the Applicant’s interpretation of the above-mentioned provision can be seriously maintained, particularly with regard to the other provisions applicable in the present case.

19. The rules on home leave are set out in rule 5.2 of the Staff Rules. However, Chapter VII of the Staff Rules, entitled “Travel and removal expenses”,

in rule 7.1, entitled “Official travel of staff members”, specifies the circumstances under which the Organization shall pay the travel expenses of a staff member. In that regard, paragraph (a)(ii)a of rule 7.1 mentions: “On home leave, in accordance with the provisions of staff rule 5.2”.

20. It is therefore very clear from the above-mentioned provisions that the interpretation of rule 5.2 must take account of rule 7.1, entitled “Official travel of staff members”, and that home leave must be regarded as official travel.

21. Paragraph (a) of rule 7.2, entitled “Official travel of eligible family members”, specifies that:

Eligible family members, for the purposes of official travel, shall be deemed to comprise a spouse and those children recognized as dependants under staff rule 3.6 (b) ...

22. It follows that the Administration is required to pay travel expenses for home leave only in respect of a child recognized as a dependant of the staff member with whom he or she is traveling.

23. The provision relied upon by the Applicant can only be interpreted as authorizing dependent children to accompany either parent on home leave, provided, however, that both parents have recognized the children in question as dependants. It is not contested that E. has not been recognized as a dependant of his father, the Applicant, but only of his mother.

24. The fact that the Administration erroneously agreed to pay the travel expenses of E. on two previous occasions, when he accompanied his father on home leave, cannot be used to establish any entitlement in respect of the contested travel, since the Administration is required to end any errors that it might have committed.

25. Lastly, contrary to the Applicant’s assertion, the interpretation of the provision in no way constitutes a violation of the Convention on the Rights of the Child, since the situation to which the Applicant objects is a result of his own choice and no discrimination exists in the present case. All children recognized as dependants of a United Nations staff member are treated in the same way, that is,

they are authorized to travel on home leave with the parent who has recognized them as a dependant.

26. It follows from the foregoing that the Applicant is not justified in requesting the payment of travel expenses for home leave in respect of his child E.

Conclusion

27. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Jean-François Cousin

Dated this 30th day of November 2011

Entered in the Register on this 30th day of November 2011

(Signed)

Anne Coutin, Officer-in-Charge, Geneva Registry