Judgment No. 2016-

Before

Case N

Date:

Regist

Counse

Counse

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it a Motion for Execution of Appeals Tribunal Judgment No. 2015-UNAT-516 in the matter of *Fiala v. Secretary-General of the United Nations*, which was decided in New York on 26 February 2015 and issued on 17 April 2015.

Facts and Procedure

2. On 1 April 2010, Ms. Fiala, a staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), filed an application with the United Nations Dispute Tribunal (Dispute Tribunal or UNDT), contesting the decision not to revise her recruitment level from FS-4 to FS-5 with effect from 1 June 2006, the date she had been appointed to the then United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUC).

3. On 28 January 2014, the UNDT handed down Judgment No. UNDT/2014/007. The UNDT found that the circumstances of Ms. Fiala's case were "exceptional" in that not only had she been technically cleared and

5. On 26 February 2015, the Appeals Tribunal rejected the Secretary-General's appeal and affirmed the UNDT Judgment and on 17 April 2015, the Appeals Tribunal issued its written reasons in Judgment No. 2015-UNAT-516.

6. On 10 July 2015, Ms. Fiala filed a Motion for Execution of the Appeals Tribunal Judgment, which had affirmed the UNDT Judgment, and the Secretary-General filed his observations on 24 July 2015.

7. According to the Respondent, on 22 July 2015, the Administration effected payment of the sum ordered under the UNDT Judgment to Ms. Fiala.

Submissions

Ms. Fiala's Motion for Execution of Judgment

8. Ms. Fiala submits that the UNDT Judgment became executable on 17 April 2015, upon issuance of the Appeals Tribunal's Judgment. As both the UNDT and Appeals Tribunal Judgments were silent as to the issue of execution within 60 days and the payment of interest, Ms. Fiala requests that the Appeals Tribunal order execution of the Judgment, pursuant to Article 11(4) of the Appeals Tribunal Statute, as well as payment of interest for the period starting after the 60th day on which payment fell due.

The Secretary-General's Observations

9. The Secretary-General submits that the Appeals Tribunal should dismiss the Motion for Execution as Ms. Fiala's request for execution has been satisfied. The UNDT ordered the Administration to either rescind the contested decision, or compensate Ms. Fiala for her loss of earnings. Since the Administration determined that it was not possible to rescind the contested decision as Ms. Fiala had retired from service on 30 June 2014, the Administration chose to compensate Ms. Fiala monetarily and effected payment of the sum ordered under the UNDT Judgment on 22 July 2015. Insofar as Ms. Fiala relies upon Article 11(4) of the Appeals Tribunal Statute, that article only applies "where the judgement requires execution within a certain period of time and such execution has not been carried out". The Office of Legal Affairs had informed

10. Insofar as Ms. Fiala seeks interest, the UNDT Judgment did not make reference to either execution of its Judgment within a specified period or any finding related to interest falling due after 60 days. In requesting the Appeals Tribunal to award interest, Ms. Fiala effectively requests the Appeals Tribunal to amend the UNDT Judgment, which can only properly be sought by a motion requesting revision pursuant to Article 11 of the Appeals Tribunal Statute.

11. The Secretary-General requests that the Appeals Tribunal dismiss the Motion in its entirety.

Considerations

12. The Dispute Tribunal issued Judgment No. UNDT/2014/007 on 28 January 2014. Following the filing of the Secretary-General's appeal against, among other things, Judgment No. UNDT/2014/007, execution of that Judgment was suspended pursuant to Article 7(5) of the Appeals Tribunal's Statute.

13. The UNDT Judgment became duly executable upon the issuing to the parties of Judgment No. 2015-UNAT-516 on 17 April 2015 wherein the Appeals Tribunal dismissed the Secretary-General's appeal against UNDT Judgment No. UNDT/2014/007.

14. Ms. Fiala brings the present Motion, dated 10 July 2015, seeking execution of the Judgment of the Appeals Tribunal which in turn ordered execution of the UNDT Judgment.

"judgments shall be executed within 60 days of the date the judgment is issued to the parties".[1] Therefore, for the avoidance of doubt, Ms. Fiala's Motion seeking execution is properly before us. However, the question is whether there remains merit in her argument that an order for execution should be issued.

17. In his Observations dated 24 July 2015, the Secretary-General opposes the Motion for Execution on the basis that the payments ordered by the Dispute Tribunal have been disbursed. The Appeals Tribunal has been advised that payment to Ms. Fiala was effected on 22 July 2015. Accordingly, we are of the view that the request for execution of the Appeals Tribunal Judgment has thereby been rendered moot by the events of 22 July 2015.

18. In her Motion, Ms. Fiala also seeks interest on the payments ordered by the UNDT Judgment and submits that interest should be payable for the period starting after 60 days from the date of issuance of the Appeals Tribunal's Judgment.

19. As neither the UNDT Judgment nor the Appeals Tribunal's Judgment specifically provided for the period in which their respective Judgments became executable, it follows that neither Tribunal made any provision for the award of interest. The issue now to be considered is whether it is open to the Appeals Tribunal in a motion for execution of judgment to make provision for an interest payment.

20. Given that payment of the sum ordered by the Dispute Tribunal was made on 22 July 2015 what is effectively being sought by Ms. Fiala is a retrospective award of interest on the payment made to her for the period starting from the date by which the UNDT's order as affirmed by the Appeals Tribunal Judgment should ordinarily have been effected as per our jurisprudence in *Warren*, being 17 June 2015, to 22 July 2015, the date the Administration disbursed the payment.

21. I( )T effectively being sought by

Judgment

23. The Motion for Execution is rejected.

THE UNITED NATIONS APPEALS TRIBUNAL