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## **Introduction**

1. On 6 March 2014<sup>1</sup>, the Applicant, a staff member of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), filed the current Application seeking interpretation of Judgment No. UNDT/2014/007, which was rendered by the United Nations Dispute Tribunal (the Tribunal) in Nairobi on 28 January 2014.

2.



Assistant. The fax highlighted that as UNAMSIL could not maintain her status beyond expiration of her accumulated leave, she should be given the Offer of Appointment with MONUC at the earliest time to avoid a break-in-service.

14. On 17 May 2006, the Applicant signed a contract offer for a fixed-term appointment as Administrative Assistant at the FS-4, step 10 level. The Applicant joined MONUC on 1 June 2006.

15. On 7 September 2006, the Programme Manager/RAO wrote to the then Chief Civilian Personnel Officer (CCPO), MONUC, requesting advice on the steps to be followed in order to rectify the Applicant's recruitment level from FS-4 to FS-5.

16. On 26 September 2006, the Programme Manager/RAO was informed by

21. In a facsimile dated 22 February 2009, the Director of Mission Support (DMS), MONUC, requested that the Chief of Operations, FPD/DFS, revisit the case based on new evidence that was adduced by the Applicant from archived files of individuals involved in her recruitment process that suggested there was an administrative error in her recruitment.

22. An unsigned facsimile dated 27 February 2009 from FPD/DFS to the DMS/MONUC states that after careful review of the relevant recruitment material, FPD could not grant the Applicant's request as she had been properly recruited at the FS-4 level.

23. According to the Applicant, while MONUC was pursuing her case with FPD/DFS in 2009, she authorized the former Panel of Counsel to also raise the

recommended and informed of her selection for a post at the FS-5 level. The Tribunal concluded that the decision to appoint her at the FS-4 level was erroneous and ordered: either rescission of the contested decision or payment for

### **Considerations**

32. This is an Application for the interpretation of Judgment No. UNDT/2014/007 issued by the Tribunal on 28 January 2014. Article 12.3 of the UNDT Statute reads:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.

33. Article 30 of the UNDT Rules of Procedure sets out the procedural requirements for such an application and it reads:

given so that a party has a proper grasp of a judgment or parts of it that are not clear to that party, leaving him/her to choose whether to go on appeal or not. A party who has procrastinated may well fall foul of the deadline for an appeal. That party would be well advised to file the appeal even if he/she has filed a request for interpretation.

36. Should the filing of an appeal be taken to mean that it is under consideration and therefore debar an applicant from an interpretation? When an appeal is filed it lies with the registry of the appellate court and may be withdrawn at any moment by the appellant. The filing of an appeal itself comprises of the notice of appeal stating the grounds on which a final judgment of a first instance court is being appealed. It is the initial step in the appeals process. And there can be no appeal if a notice of such an appeal has not been filed according to existing procedural requirements. At that stage therefore the appeal is not being considered by the appellate court. The filing of an appeal is only a procedural requirement imposed on a party whereas the consideration of the appeal is the stage at which the appeal is being reviewed substantively by the appellate court. It would be a mockery of the right conferred on a party to request for an interpretation of a judgment if the mere filing of an appeal by the other party would result in the denial of the right to ask for an interpretation. This could not have been the intention of the framers of the law on requests for interpretation and appeals.

37. The Tribunal therefore holds that the mere filing of an appeal against a judgment by one party to a case constitutes no legal impediment to the other party filing for an interpretation. The objection of the Respondent is ill-conceived and is rejected.

38.

85. Pursuant to Article 10 of its Statute, the Tribunal may rescind a contested administrative decision and order specific performance. In cases of appointment, promotion or termination it must set an amount of compensation the Respondent may pay in lieu of rescission or specific performance. Article 10.5(b) provides for an order of compensation which, in exceptional cases, may exceed the equivalent of two years net base salary.

86. The Tribunal orders rescission of the decision to appoint the Applicant at the FS-4 level and orders the Respondent to re-appoint her at the FS-5 level with immediate effect and also orders that the Respondent pay the Applicant the difference between the salary and entitlements of an FS-4 and FS-5 from 1 June 2006 to the date of this judgment.

87. In the event that rescission of the decision is not possible, the Respondent is to pay the Applicant for loss of earnings at the FS-5 level from 1 June 2006 to the date of this Judgment.

40. In relation to the direction of the Tribunal at paragraph 86 of the judgment the Applicant requests the Tribunal to confirm whether the following emoluments are included in the entitlements namely:

a. Earnings:

Gross Salary

Post Adjustment

Dependency Allowance

Hardship element of mobility and hardship allowance

Mobility element of mobility and hardship allowance

Non-removal element of mobility and hardship allowance

Non-Family hardship element of Mobility and Hardship Allowance

Entitlements will be adjusted commensurate to steps in grade starting at the appropriate step level for FS5 that should have been in place since 1 June 2006

b. Deductions Benefits:

Rental Subsidy

Staff Assessment

Staff Member's Pension

Medical Insurance Contribution

c. Pension Entitlements

d. Whether paragraph 86 entails payment of contributions to the Pension Fund for the period covered. The Applicant will retire at the FS-5 level, at the appropriate step adjusted for time in service, and the monthly pensionable remuneration will be based on the past 8 years on re-calculated FS5 monthly pension contribution.

41. In relation to paragraph 87 the Applicant seeks confirmation from the Tribunal that this paragraph is intended to include the term “loss of earnings” in all the entitlements listed above.

42. In relation to paragraph 90 of the Judgment where the Tribunal made an award of USD 10,000 as moral damages the Applicant wants clarification whether the amount relates specifically to stress.

43. In paragraphs 86 and 87 the Tribunal has made a finding, general in nature, on the entitlements that should be paid to the Applicant. In paragraph 86 the Tribunal states clearly that what should be paid to the Applicant is the difference between the salary and entitlements of an FS-4 and FS-5 from 1 June 2006 until the date of the judgment. That presupposes that the Applicant will be reinstated as a FS-5. If rescission is not possible it is the duty of the Tribunal to make an alternative award and that is encompassed in paragraph 87 where the Tribunal orders payment of loss of earnings from 1 June 2006 until the date of the judgment.

44. It is not within the purview of this judgment for the Tribunal to work out the details of how the amount awarded should be computed. No evidence was adduced on this aspect of the case and the pleadings did not specify any of the issues raised in the application for interpretation. At any rate it is not for the Tribunal to embark on an exercise that entails administrative accounting issues. This is best left to the Administration. The Tribunal concludes that the findings and awards are clear enough and the modalities for their implementation are within the province of the Administration.

45. Lastly, in paragraph 90 of the judgment the award of moral damages relate to the stress that the Applicant suffered. The Tribunal uses the word stress and considers that there is nothing else to add or interpret.

**Decision**

46. In view of the foregoing, the Application for interpretation of Judgment No. UNDT/2014/007 is rejected subject to the finding at paragraph 43.

*(Signed)*

Judge Vinod Boolell

Dated this 19<sup>th</sup> day of June 2014

Entered in the Register on this 19<sup>th</sup> day of June 2014

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi