Judgment No. 2017-UNAT-796

[redacted]

Counsel for Mr. Porter: Monika Ona Bileris

Counsel for Secretary-General: Amy Wood

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/024, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 6 April 2017, in the case of Porter v. Secretary-General of the United Nations. The Secretary-General filed the appeal on 5 June 2017, and Mr. Peter W.C. Porterfiled his answer on 17 July 2017.

Facts and Procedure

2. The following facts as found by the Dispute Tribunal are: [1]

> … On 21 February 2012 the Applicant filed an application challenging three issues that arose from the circumstances of a prolonged medical leave that spanned a period of more than two years. These issues were:
>
> a. A decision taken by [United Nations Mission for Iraq (UNAMI)] administration to keep him on medical leave for more than two years after his doctors had recommended that he was fit to return to work.
>
> b. During the period of his forced medical leave, the Administration ignored his pleas for information and misled him thereby causing him untold stress and hardship.
>
> c. Failure by the Administration to reimburse financial claims that accrued to him as a result of the forced medical leave.
>
> … The Respondent filed a reply to the application on 26 March 2012 contending that the Application was not receivable ratione temporis as the Applicant had not requested management evaluation of the contested decisions within the requisite time limit.
>
> … After considering the submissions on both sides with regard to receivability, the [Dispute] Tribunal ruled on 4 December 2013 that it was indeed receivable. [2]
>
> … Thereafter, the Respondent appealed unsuccessfully to the Appeals Tribunal. [3]
>
> … On 1 July 2016, the [Dispute] Tribunal issued Judgment No. UNDT/2016/096 in favour of the Applicant as follows:
>
> 104. The facts of this case show that the Applicant should

5. The UNDT also erred in law and exceeded its competence by ordering payment of an additional component of compensation in the impugned Judgment. Article 12(3) of the UNDT Statute provides for a statutory exception to the legal principle of finality – which must be interpreted narrowly and in strict accordance with its stated objective, i.e., to allow a party to a case to petition the UNDT to clarify a provision of a judgment that is ambiguous on its face. A judgment on interpretation cannot be used to add relief never in contention in the original litigation on the merits as this would go beyond the scope of Article 12(3) of the UNDT Statute and contravene the principle of finality. 5.

THE UNITED NATIONS APPEALS TRIBUNAL

> 105. The Tribunal is also convinced by the submissions made by the Applicant that the prolonged sick leave caused him anxiety and had a devastating effect on his personal and financial affairs including his failure to meet his mortgage obligations. The Applicant is accordingly entitled to moral damages which the Tribunal awards at USD 5,000.

In the Judgment under appeal, the UNDT did not identify any words or sentences in those paragraphs that are unclear or ambiguous. In fact, the paragraphs are not in any way obscure, uncertain or misleading. They are in plain, unambiguous language which leaves no reasonable doubt as to their meaning. They require no interpretation.

22. The UNDT therefore clearly erred in law in holding that Mr. Porter's application for interpretation was receivable.

23. We reject Mr. Porter's submissions regarding Azzouni.[11] That case is not pertinent to the present case. Ms. Azzouni's case involved the interpretation by the Appeals Tribunal of its own judgment. It set aside the UNDT judgment and ordered Ms. Azzouni's reinstatement or, in lieu, two years' net base salary. The question of an award of interest arose on appeal, when Ms. Azzouni requested interest in her application for revision. The Appeals Tribunal treated Ms. Azzouni's application as an application for interpretation of its award of compensation in lieu and awarded interest accordingly. In the present case, Mr. Porter's claim for interest was part of his case before the UNDT. He had applied for interest in his application to the UNDT filed on 21 February 2012.[12] The UNDT should have dealt with his claim for interest in its Judgment No. UNDT/2016/096, but it omitted to do so.

24. Article 12(3) does not give the UNDT the power to change a final judgment under the cover of interpretation. The UNDT therefore exceeded its competence by wrongly applying Article 12(3) to alter the substance of its final ruling by adding additional relief in the form of an award of interest.

25. Mr. Porter had no grounds for filing an application for interpretation in the UNDT. The proper procedure to challenge the UNDT's Judgment, which clearly failed to adjudicate his claim for interest, was to bring an appeal before the Appeals Tribunal.

[11] Azzouni v. Secretary-General of the United Nations, Judgment No. 2011-UNAT-162.

[12] His application was for "payment of all back pay, benefits, [Monthly Subsistence Allowance], hazard pay, danger pay, pension, and any other emoluments Applicant has been denied since being involuntarily forced into taking sick leave/released from work/SLWOP beginning May 2009, as well as 11 [per cent] interest thereon dating back to the time the Organization failed to pay him".

26. Mr. Porter claims in his answer moral damages of USD 25,000 for "the psychological and emotional suffering he continues to endure over this near decade long appeal". He has not filed a cross-appeal against the UNDT's award of USD 5,000 for moral damages. His claim is therefore dismissed.

27. Mr. Porter also claims USD 10,000 for punitive damages. This claim is without any legal foundation as the Appeals Tribunal is not competent to award punitive damages.[13] This claim is also dismissed.

28. It follows from the foregoing reasons that the appeal succeeds.

[13] Article 9(3) of the Statute provides: "The Appeals Tribunal shall not award exemplary or punitive damages."

Judgment

29. The appeal is allowed and Judgment No. UNDT/2017/024 is vacated.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)	(Signed)	(Signed)
Judge Lussick, Presiding	Judge Thomas-Felix	Judge Murphy

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar