



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/168

Judgment No.: UNDT/2020/045

Date: 27 March 2020

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Introduction

1. The Applicant is a former staff member who served at the United Nations Mission in South Sudan (“UNMISS”) as a National Professional Officer with the C.0 1.0 471.12 624.96

executable Afterwards, an additional five percent should be added to the US Prime Rate until the date of the payment.⁵

6. On 6 April 2015, the Respondent filed an appeal against the judgment of 30 October 2015, the United Nations Appeals Tribunal (“UNAT”) dismissed the appeal as late.⁶

7. On 2 March 2016 and on 13 November 2017, the Respondent paid the Applicant the sum of USD94,324.16 and USD5,972.12 respectively. The amount paid covered the total amount of the compensation awarded by the Tribunal with the UNAT judgment taken as the enforceability date for the purpose of calculating interest.

Submissions

Applicant’s submissions

8. The Applicant contends that she is still a staff member of UNMISS on the ground that she never checked out of the Organization or did she authorize any other person to check her out. Accordingly, she requests the Tribunal to direct the Respondent to release her withheld salary from 1 August 2012 until present. In this connection, she claims compensation for harm suffered.

9. The Applicant also requests the Tribunal to direct the Respondent to reinstate her so that she continues to earn a salary, enjoy other emoluments and have access to the United Nations official email account.

Respondent’s submissions

10. The Respondent submits that the Judgment has been fully executed. The Respondent elected to pay the Applicant the awarded compensation in lieu of

⁵ Ibid, paras 131, 132, 133 and 134.

⁶ Application, annex 7 Judgment No. 2015/UNAT-604

⁷ Reply, R/2

⁸ Application, para 6.

reinstatement. The Applicant is not entitled to reinstatement and compensation in lieu.

11. Contrary to her claim, the Applicant separated from the Organization on 31 July 2012. The fact that the Judgment ordered reinstatement as an elective remedy reflects the Tribunal's finding that the Applicant had been separated. Since 31 July 2012, there has been no employment contract between the Applicant and the Organization. Therefore, the Applicant is not entitled to any salaries or other requested payments other than the payment she has received as compensation as ordered in the Judgment.

12. The Respondent, however, acknowledges that he made an error in calculation

alternative The Respondent opted to compensate in lieu of reinstatement and this decision of the Respondent is dispositive of the matter. The Respondent also paid compensation for damages on account of two other awards granted by the Judgment No. UNDT/2015/004. The Applicant neither disputes the fact that she was compensated nor the calculation.

15. Regarding the Applicant's requests for compensation and damages for the time spent since she separated from the organization, salary arrears from 1 August 2012 to present, interest of 15% on the same and reimbursement of expenses on medical bills, these claims were not awarded by UNDT Judgment and as such cannot be claimed as part of the execution.

16. The only issue that is relevant to the execution of UNDT Judgment and still pending is the interest due on awards granted therein. This matter depends on determining when the Judgment became executable.

17. Article 7(5) of the Appeals Tribunal Statute states "filing of the appeals shall have the effect of suspending the execution of the judgment or order contested. The suspensive effect of the filing of an appeal, however, occurs only where the appeal is filed timely. In the present case, the Secretary General appealed the UNDT Judgment but did it out of time, as confirmed by the Appeals Tribunal's finding of non-receivability.¹¹ As such, the UNDT judgment became final and enforceable as of 17 March 2015. The Tribunal concurs with the Respondent that he needs to make the calculation of the outstanding interest owed to the Applicant accordingly and make necessary payments without further delay.

18. In light of the above, the Tribunal renders a declaratory judgment as below. All other pleas for execution are lacking basis.

¹¹ *Ocokoru* 2018 UNAT-826

JUDGMENT

19. The Respondent shall calculate and pay Applicant the difference between any interest previously paid and the outstanding compounded interest on the compensation awarded by Judgment No. UNDT/2015/004, taking as basis the prime US rate from 18 March 2015 until 17 May 2015 and with additional 5% counted from 18 May 2015 until the day of payment.

20. The application is rejected on all other grounds.

(Signed)

Judge Agnieszka Klonowiecka Milart

Dated this 27th day of March 2020

Entered in the Register on this 27th day of March 2020

(Signed)

Abena Kwakye Berko, Registrar, Nairobi