JUDGE ROSE BOYKO, Presiding.

Synopsis

1. This case involved disciplinary proceedings which led to the separation from service of Lawrence Chore Mmata (Mmata) without notice. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that the Secretary-General unfairly dismissed Mmata and that the charge of serious misconduct was not well founded. The UNDT ordered reinstatement of Mmata with loss of earnings up to the date of reinstatement. In the alternative, the UNDT ordered compensation for loss of earnings up to the date of Judgment and an additional amount of compensation of 2 years' net base salary.

2. This Tribunal upholds the total award of compensation in paragraph 66 of the UNDT's Judgment under Article 10(5) of the Statute of the Dispute Tribunal (UNDT Statute) on the grounds that the egregious conduct found by the UNDT surrounding the investigation and dismissal of Mmata justified an award that exceeded two years' net base salary.

3. This Tribunal also affirms the award of interest; however we adjust the amount of

accept severance terms by mentioning that the incident with his UNON identity card could be used against him as a charge of misconduct.

9. The Dispute Tribunal ordered as follows:

> 65. The Tribunal orders rescission of the administrative decision and orders the [Secretary-General] to reinstate [Mmata] and to make good all his lost earnings from the date of his separation from service to the date of his reinstatement with interest at 8%.
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> 66. In the exceptional circumstances of this case, the [Secretary-General is] further ordered, in the event that reinstatement is not possible, to compensate [Mmata] for loss of earnings from the date of his separation from service to the date of this Judgment with interest at 8% thereon. Additionally, the [Secretary-General is] ordered to compensate [Mmata] in the amount of two years' net base salary at the rate in effect on the date of [Mmata's] separation from service with UNICEF with interest thereon at 8% after 45 days from the date of this Judgment.

10. The Secretary-General filed an appeal against the Judgment on 17 May 2010. After

13. The Secretary-General contends that the Dispute Tribunal erred on a question of law and exceeded its competence in awarding interest. The legislative history of the UNDT Statute demonstrates that the General Assembly did not intend to grant the Dispute Tribunal the power to award interest, and, further, it expressly considered and rejected such a proposal.

14. Should the Appeals Tribunal hold that the Dispute Tribunal has the power to award interest, the Secretary-General submits that the Dispute Tribunal failed to provide compelling reasons for departing from the jurisprudence of the former Administrative Tribunal, which limited the award of pre-judgment interest to certain exceptional circumstances. In this case, there are no exceptional circumstances justifying an award of

argues that, for the purposes of the compensation limit in Article 10(5)(b), an order for alternative compensation under Article 10(5)(a) is not to be aggregated with separately ordered compensation under Article 10(5)(b). Alternative compensation awarded under Article 10(5)(a) is subject to a separate compensation limit of two years' net base salary as provided for under Article 10(5)(b). To hold otherwise would allow a respondent to transform an "unexceptional" case into an "exceptional" case merely by electing to pay the alternative compensation which, when aggregated with other compensation ordered by the Dispute Tribunal, exceeds two years' net base salary.

19. Mmata contends that the Dispute Tribunal did not treat the case as an exceptional case under Article 10(5)(b) of the UNDT Statute. Mmata argues that the order for compensation for loss of earnings in paragraph 66 of the Judgment falls under Article 10(5)(b), whereas the award of two years' net base salary in paragraph 66 replaced the order for reinstatement and constitutes the award of alternative compensation under Article 10(5)(a). The award of alternative compensation does not exceed two years' net base salary and therefore the case is not an exceptional case for the purposes of Article 10(5)(b).

20. Mmata contends that the Dispute Tribunal has the power to award interest under the UNDT Statute. Further, the power to award interest is not limited to exceptional circumstances in accordance with the jurisprudence of the former Administrative Tribunal. Mmata also submits that the interest rate of eight per cent per annum is not excessive in the circumstances.

21. Mmata requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

22. Mmata's request for an oral hearing is denied because the issues are largely legal in nature and full arguments have been made by both him and the Secretary-General. It is therefore not necessary to receive oral submissions.

23. This appeal only concerns the amount of compensation awarded by the UNDT and the justification therefor. The findings of the UNDT are not disputed. The Secretary-General contends that the UNDT did not give reasons to justify an award of compensation beyond the limit of two years' net base salary set out in Article 10(5)(b) of the UNDT Statute, there are no grounds to award a higher amount, and to make such an order departs from existing law.

24. As set out in paragraph 9 above, the Dispute Tribunal ordered reinstatement of Mmata and loss of earnings to the date of his reinstatement (paragraph 65 of the Judgment), or, as an alternative to reinstatement, loss of earnings to the date of Judgment plus additional alternative compensation of two years' net base salary (paragraph 66 of the Judgment).

Interpretation of Article 10(5) of the UNDT Statute

25. Article 10(5) of the UNDT Statute provides as follows:

> As part of its judgement, the Dispute Tribunal may order one or both of the following:
>
> (a) Rescission 0172o

Post-judgment compensation may include loss of future earnings taking into account mitigation. These orders are however subject to Article 10(5)(b).

28. Article 10(5) of the UNDT Statute, although poorly drafted, on its face limits the total of all compensation ordered under subparagraphs (a), (b), or both, to the equivalent of two years' net base salary of the applicant, unless higher compensation is warranted and reasons are given to explain what makes the case exceptional.

29. In the instant case judgment was obtained only after seven months and so the length of time to obtain judgment from the UNDT was not a reason for justifying higher compensation for the loss of income to the date of Judgment. The justification arose from the egregious wrongful dismissal conduct of the Organization. There may be cases that take longer to be heard by the UNDT, which may provide a reason justifying compensation beyond the two-year limit.

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Jurisdiction to award interest

34. The Judgment of this Tribunal in Warren

Judgment

36. The appeal is allowed in part.

37. We find no error in law or in fact concerning the UNDT's finding that this is an exceptional case justifying the amount of compensation awarded. This Tribunal upholds the compensation ordered by the UNDT in paragraph 66 of its Judgment.

38. The Appeals Tribunal holds that the UNDT was unreasonable in ordering the payment of interest on the compensation awarded at the rate of eight per cent per annum. The Appeals Tribunal decides to award interest at the US Prime Rate applicable at the date of the UNDT Judgment. If the Judgment of this Tribunal is not executed within 60 days, five per cent shall be added to the US Prime Rate from the date of expiry of the 60-day period to the date of payment of the compensation.

Dated this 29th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)	(Signed)	(Signed)
Judge Boyko, Presiding	Judge Adinyira	Judge Simón

Entered in the Register on this 29th day of December 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar