



JUDGE JEAN COURTIAL, Presiding.

Synopsis

1. The Administration withheld payment of amounts owed to Mr. Guido Bertucci upon his retirement based on an administrative instruction regarding the financial responsibility of staff members for gross negligence. Subsequently, the amount due was paid to Mr. Bertucci, as in the end, no negligence was imputed to him. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that the payment had been legally withheld and that Mr. Bertucci had suffered no prejudice. However, he was awarded compensation in the amount of USD 500. This tribunal reiterates that compensation in the absence of actual injury is without legal basis. It finds that the Dispute Tribunal erred in law. However, acceding in part to a cross-appeal by Mr. Bertucci, it finds that when the disciplinary procedure does not confirm the suspicions raised, during the preliminary investigation, with regard to a staff member, the monies whose payment could be legally withheld must be paid in full, along with the interest that has accrued. It is the opinion of this Tribunal that the award of USD 500 in compensation represents a fair assessment of the injury suffered by Mr. Bertucci due to the non-payment of interests. The Appeals Tribunal therefore affirms the judgment based on the substitution of grounds.

responsibility of staff members for gross negligence (ST/AI/2004/3). On 16 January 2009, Mr. Bertucci provided written comments on the charges brought against him.

5. The Administration decided to withhold payment of USD 13,829 of the amount due

9. The appellant maintains that the Dispute Tribunal erred in law by awarding the respondent compensation, whereas, firstly, none of his rights were undermined and, secondly, it pointed out that even if Mr. Bertucci had had access to the documents he would

The Secretary-General's Answer to the Cross-Appeal

14.

Judgment

24. The Secretary-General's appeal and the remainder of the cross-appeal by Mr. Bertucci are denied. Judgement No. UNDT/2010/094 is upheld.

Original and Authoritative Version: French

Dated this 11th day of March 2011 in New York, United States.

(Signed)

Judge Courtial, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Simón

Entered in the Register on this 19th day of April 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar