



UNITED NATIONS DISPUTE TRIBUNAL

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Original: English

**Before:** Judge Adams

**Registry:** New York

Case No. UNDT/NY/2009/054/JAB/2008/103

Judgment No. UNDT/2010/011



to award interest and costs. At its highest, this could only mean that specifying a particular power in these respects was rejected. If it was intended that the Tribunal could not award interest or costs, then it would have been very simple to include a provision to that effect.

10. In my opinion, the question is governed by the meaning of the word “compensation” in art 10.5 of the Statute. If the award of interest in any case is necessary for the purpose of appropriately compensating a staff member for a breach of contract, then such an award must be made, either specifically or by including an amount under this head as part of the overall compensation awarded, reflecting the cost to the staff member of being kept out of his or her money. The very purpose of compensation is to place the applicant, as far as money can do so, in the same position he would have been in had the respondent complied with its contractual obligations. This has long been an inherent part of the notion of compensation<sup>1</sup>. In respect of non-pecuniary loss, of course, there is no debt (although there might be an obligation) until the award is made by the Tribunal and, on the face of it, interest should also be payable on a delay in payment of the sum awarded but, since an award of this kind does not arise in this case, it is unnecessary to resolve this issue.

11. It will be seen from the cited examples of the decisions of the Administrative Tribunal that interest has been awarded in respect of debts payable by the Organization to the staff member, most frequently where there had been some undue delay or in some other particular fashion the Organization had not acted with due care and diligence. There is thus a nuance of punishment in some cases and these judgments must therefore be approached with some caution.

12. In *Kremer and Gourdon* the Administrative Tribunal said –

IV. The Tribunal holds that adding interest to its awards is not an automatic right. It is for the Tribunal to decide, taking into account all the circumstances of the case, whether interest should be awarded.

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<sup>1</sup> There is a useful and comprehensive discussion of the relationship of interest to compensation with reference to both liquidated and unliquidated damage

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way of example, applications to the EU Civil Service Tribunal by staff members for compensation in respect of unpaid entitlements contain a reference to “default interest” which is referred to in judgments and orders of this Tribunal as two points above that set by the European Central Bank for its main refinancing operations<sup>2</sup>. The parties did not tender any evidence on the rates at the relevant time and, accordingly, I have no particular figure with which to inform this discussion. Under the Civil Practice Rules of the State of New York, which was the duty station where the applicant served at the time the payments of the relevant entitlements in this case accrued, the current statutory default rate was 9 per cent per annum<sup>3</sup>.

17. In the cases of the UN Administrative Tribunal referred to by the respondent as cited above, the applicant was awarded 6 per cent in six cases from 1972 to 1981 and 10 per cent in a case from 1981. Since approximately 2006, the Administrative Tribunal has awarded interest at an apparently standard rate of 8 per cent. The basis for this rate is unfortunately not stated, but I note that the ILOAT has been using the same rate in recent years: see, for instance, (2009) Judgment 2762 and (2001) Judgment 2076; cf (1987) Judgment 874 (5 per cent), (1995) Judgment 1461 (10 per cent).

### **Conclusion**

18. Interest shall be payable as part of the award of compensation under art 10.5 of the Statute. It seems likely that the issue of the applicable interest rate will be further discussed in other cases that come before the Tribunal. It is regrettable that I have received no submissions on this point from the respondent. Doing the best I can with the material before me, I determine the applicable interest rate to be 8 per cent per annum in this case. Accordingly, the respondent is to pay interest from the date pgrhe

payment at the rate of 8 per cent per annum. The amount of the grant has not been specified but I assume that it can be readily calculated.

19. The parties are to jointly submit a draft order to the Tribunal awarding the appropriate sum plus interest calculated