
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2022/033
Judgment No.: UNDT/2024/032
Date: 10 May 2024
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

AGUILAR VALLE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RELIEF

Counsel for Applicant:

George G. Irving

Counsel for Respondent:

Marcos Zunino, DAS/ALD/OHR, UN Secretariat

Introduction

1. On 26 February 2024, the Tribunal issued Judgment No. UNDT/2024/007 on liability in which the application was granted on liability and whereby the contested decision, namely the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, was found unlawful. It was also decided that the rescissions on remedies and costs would follow.

2. By Order No. 023 (NY/2024) dated 28 February 2024, the Tribunal ordered the parties to file their closing statements on remedies and costs, including certain additional documentation. The parties duly complied with Order No. 023 (NY/2024).

Consideration

The legal framework for relief before the Dispute Tribunal

3. The Statute of the Dispute Tribunal provides in its art. 10.5 an exhaustive list of remedies, which the Tribunal may award:

5. As part of its judgement, the Dispute Tribunal may only order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation for harm, supported by evidence, which shall

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appointment is not to be renewed is to receive a pre-notification concerning the non-extension, at least 30 days before its expiry.

15. The Respondent has not argued or submitted any documentation demonstrating that the Applicant should have been advised that his fixed-term appointment was not to be extended. Considering that the Applicant was separated only 18 days before the expiry of this fixed-term appointment, the Tribunal therefore finds it likely that a non-renewal of the Applicant's fixed-term appointment had not been contemplated; rather, his appointment was planned to be extended. In this regard, it is further noted that nothing in the case file suggests that any possible reason existed for not renewing the Applicant's appointment, such as, for instance, the abolition of his post or him having serious and documented performance issues.

16. Accordingly, the Tribunal finds that if the Applicant's fixed-term appointment would have been renewed for another two years on 23 April 2022. In this hypothetical scenario, he would then have been granted another two-year fixed-term appointment expiring on 22 April 2024. Thereafter, the Tribunal finds that it would be speculative to assume that it would be extended any further.

Offsetting alternative income and mitigation of income loss

17. Any actual income, which an applicant has received during the compensation period for loss of income in accordance with article 32.7 of the Staff Regulations, shall be offset in the compensation amount as, in the hypothetical scenario that the applicant had not lost her/his appointment at stake, s/he would not have obtained this other income (see also the Appeals Tribunal in *Belkhabbaz* 2018-UNAT-895, para. 38). In line herewith, the Appeals Tribunal has also held that an applicant has a duty to mitigate her/his losses in terms of the hypothetical loss.

33. At the same time, at least to some extent, the Applicant also contributed to the situation. In Judgment No. UNDT/2024/007, para. 53(d), the Tribunal found that the Applicant had

37. The Respondent submits that this request was not stated in the application and that it is *ultra petita*. In *Fosse* 2020-UNAT-1008, the Appeals Tribunal held that the Dispute Tribunal was not competent to award compensation where no request for such compensation had been made in the application. Expanding the scope of relief requested in the application, would prejudice due process of law, affecting the ability of the opposing party to effectively answer his petition that failed to explicitly refer to the specific kind of damage or request adequate

