
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/005
Judgment No.: UNDT/2022/010/Corr.1
Date: 9 February 2022
Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

MUKHOPADHYAY

Background

1. The

retirement pension.

c. Since 25 November 2021, the Applicant has received no further communication or payment of any kind.

d. This case represents a unique instance in which the Respondent has opted for reinstatement rather than payment of *in lieu* compensation. This was done as a cost saving measure for the Organization, which had no intention of reinstating the Applicant to his post, as evidenced from the delay in notification of their intentions. This approach is contrary to the fundamental principles of the justice system.

e. In addition to prevaricating over the implementation of the Judgment, the Respondent has not addressed the issue of impossibility of performance or apparently considered the practical implications of his decision. The

a. The application for execution of Judgment is not receivable in accordance with art. 11 of the UNDT Statute. The Judgment does not require its execution to be carried out within a certain time.

b. Should the Tribunal find the application receivable, it should be dismissed for lack of merit. It is upon the Organization, not the Applicant or the Dispute Tribunal, to elect rescission or to pay compensation *in lieu* of rescission. The Organization has elected to execute the order of rescission in the Judgment. Execution of that order is ongoing.

c. The Tribunal should not entertain the Applicant's attempts to revise the Judgment through this application. The Applicant has not discovered any decisive fact which was, at the time the Judgment was rendered, unknown to the Tribunal and to the Applicant. To the extent that the Applicant now seeks to introduce the fact of his retirement as a decisive fact, he cannot do so. That fact was known to him at the time of the Judgment. The Applicant was aware of his own decision to retire, and thus received a significant lump sum payment. The Applicant was also aware of the significance of that decision in relation to the remedy he requested in the application, i.e., rescission. If he believed that his retirement frustrated that remedy, he should have disclosed it before now. However, for his own purposes, he chose not to do so. There are no grounds for revising the Judgment.

d. If the Tribunal decides to revise the Judgment to compel the Organization to pay compensation *in lieu* of reinstatement, the compensation award should be offset by income the Applicant received during the two-year damages period, including income he received because of his decision to retire.

e. On 6 October 2021, the Organization elected to rescind the contested decision and to reinstate the Applicant in his position from the date of his separation. MONUSCO informed the Applicant of the decision to reinstate

retirement election and the rescission order on the Applicant's pension entitlements, including calculating the additional amount that the Organization will have to contribute to the Fund to finance the Applicant's re-appointment. This step is necessary to avoid duplicative remunera

13. The Applicant is at liberty to follow up with the Respondent on his reinstatement entitlements from the date of separation to the date of his mandatory retirement from the Organization in accordance with applicable rules, regulations and policies. This function is administrative in nature and does not require the Tribunal's intervention.

JUDGMENT

14. There being no judgment to execute, the application is dismissed.