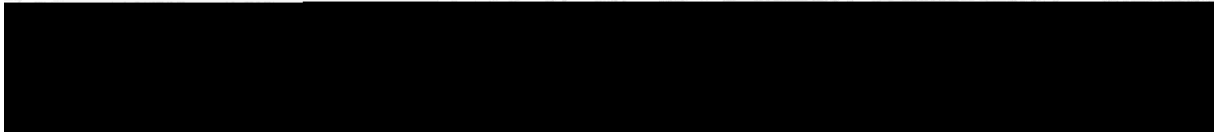




UNITED NATIONS APPEALS TRIBUNAL

Case No. 2010-124



Respondent/Applicant:

Edwin Nhliziyo

Counsel for Appellant/Respondent:

Cristián Gimenez Corte

JUDGE JEAN COURTIAL, Presiding.

Synopsis

1. This Court recalls that, in *Mmata*,¹ it interpreted article 10(5) of the Statute of the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) as limiting the total compensation awarded under subparagraphs (a) or (b), or both, to an amount which shall normally not exceed two years' net base salary of the applicant, unless the Tribunal orders the payment of higher compensation and gives the reasons for that decision. However, if, in lieu of execution of the judgment, the Administration elects to pay compensation in addition to the compensation which the Tribunal ordered it to pay for the damage suffered by the applicant, that election may, depending on the extent of the damage, render the circumstances of the case exceptional within the meaning of article 10(5)(b), of the Statute of the UNDT. In such a situation, the Tribunal is not compelled to state why it considers the circumstances of the case to be exceptional. Incidentally, in the present case, the findings set out in the Dispute Tribunal's Judgment No. UNDT/2010/118 show that the applicant suffered damage resulting from the disciplinary sanction of summary dismissal based on unproven allegations, thereby warranting a higher compensation.

2. That being said, this Court finds the compensation awarded to Ms. Cohen for the loss of salaries and other entitlements to be excessive. We believe that the period of compensation for loss of earnings resulting from the dismissal should be limited to, except where compelling reasons would lead to a different judgment, two years and that the compensation must be calculated taking into account the net base salary and entitlements not related to actual service performance after deducting any salaries and entitlements that the staff member received during the period considered, based on the situation as at the beginning of that period. This Court therefore reduces the compensation awarded to Ms. Cohen and replaces the interest rate of 8 per cent imposed by the contested judgment with the *US Prime rate* in effect on the due date of the entitlement.

¹ *Mmata v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-092.

19. It follows from the foregoing that, when the Administration elects to pay compensation in lieu of the performance of a specific obligation ordered by the Tribunal, in addition to compensation rightly awarded by the Tribunal for damages, that election may result, depending on the extent of the

In the present case, Ms. Cohen was never alleged to have collected any remuneration during the two-year period following her dismissal.

23. With regard to the payment of interest on the compensation awarded, this Court held in *Warren* that interest should be awarded at the US Prime rate applicable on the due date of the entitlement, calculated from the due date of the entitlement to the date of payment of the compensation awarded by the Dispute Tribunal. It further held that if its judgment was not executed within 60 days, 5 per cent should be added from the date of expiry of the 60-day period to the date of payment of the compensation.

24. The Appeals Tribunal therefore replaces the interest rate fixed by the contested judgment with the US Prime rate applicable on the due date of the entitlement, which is the date of dismissal of Ms. Cohen with regard to the compensation for loss of earnings and the date of distribution of the judgment with regard to the two other compensation awards.

25. In view of the foregoing, the Court upholds the judgment of the Dispute Tribunal, subject to the changes set out in paragraphs 22 and 24 above.

