



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nations against Judgment No. UNDT/2012/186, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 30 November 2012 in the case of *Ahmed v. Secretary-General of the United Nations*. The Secretary-General appealed on 29 January 2013 and Mr. Amin Ahmed answered on 16 March 2013.

2. On 25 April 2013, the Appeals Tribunal issued Order No. 132 (2013), rejecting a “Motion for Confidentiality” filed by Mr. Ahmed in which he appeared to seek that his answer be “restricted” from the Secretary-General until the Appeals Tribunal had ruled on the receivability of his appeal, as well as the redaction of his name.

Facts and Procedure

3. The facts established by the Dispute Tribunal in this case, which are not contested, read as follows:¹

... [Mr. Ahmed], a former staff member with the United Nations Information Centre (“UNIC”) in Islamabad, Pakistan, contests the non-payment, upon his separation, of “termination indemnity”, of interest on his reimbursement for unused annual leave days, and of three months’ salary in lieu of notice promised to him by the Organization.

... The present case arises from the same background described in *Ahmed [v. Secretary-General of the United Nations]*, Judgment No. UNDT/2010/161, rendered on 9 September 2010. In that case, the Dispute Tribunal found no basis to support [Mr. Ahmed’s] allegation that his due process rights had been violated when the Administration decided not to renew his contract on the basis of poor performance appraisals. [Mr. Ahmed’s] appeal before the United Nations Appeals Tribunal ... was unsuccessful. In *Ahmed [v. Secretary-General of the United Nations]*, Judgment No. 2011-UNAT-153, published on 29 August 2011, the [Appeals Tribunal] affirmed ... UNDT/2010/161. The [Appeals Tribunal] held that the Dispute Tribunal did not err in limiting the scope of the application to the non-renewal of [Mr. Ahmed’s] fixed-term appointment. Following the promulgation of the [Appeals Tribunal] Judgment, the Administration processed [his] final separation payments, which give rise to the dispute in this case.

¹ The facts here are taken from Judgment No. UNDT/2012/186, paragraphs 1–18.

...

Factual background

... Although the facts pertaining to [Mr. Ahmed's] separation are set out in detail in the Dispute Tribunal's and the [Appeals Tribunal's] judgments, it is necessary for the purposes of consideration of the present application to include additional facts specifically relevant to the issues raised in this case.

Communication regarding post-separation payments

... On 20 December 2005, the Chief of the Centres Operations Section, Department of Public Information ("DPI"), sent a memorandum to [the Office of Human Resources Management ("OHRM")], with copies to other senior officials in DPI. The memorandum stated that, due to [Mr. Ahmed's] poor performance, his contract would not be extended beyond 31 December 2005. However, it stated that to afford [him] time to seek alternative employment and, taking into account the length of his service, consideration should be given to providing him with "a three-month extension [which] would serve as notice of non-renewal". The Chief further requested that "in view of security considerations that have been raised concerning his performance and continued presence at the UNIC, we would request that his extension be granted as special leave with pay and that the local security coordinator be requested to prevent [Mr. Ahmed] henceforth from visiting the centre". [Mr. Ahmed] was not copied in on this memorandum.

... OHRM disagreed with the suggestion to place [Mr. Ahmed] on special leave with full pay ("SLWFP"). An internal OHRM memorandum from [an] Associate Human Resources Officer to the Director of Operational Services Division, OHRM, dated 29 December 2005, expressed the view that the best resolution to this matter was not to place [Mr. Ahmed] on SLWFP but "to separate [him] effective 31 December 2005 at the close of business, and pay him three months' salary in lieu of notice in recognition of his 19 years of service". The memorandum stated that thus any security threat would be minimized since [Mr. Ahmed] would not have access to the Centre with effect from 1 January 2006. The Associate Human Resources Officer,

three months' salary in lieu of notice, which should be reflected in his separation personnel action [form]". [Mr. Ahmed] was not copied in on this communication.

... On 3 January 2006, [Mr. Ahmed] was informed by email from the Chief of Programme Support Section, DPI, that his contract would not be renewed beyond 31 December 2005. He was further informed that OHRM had approved the payment of "three months' full salary in lieu of termination notice, in recognition of many years of service with the Organization". The email contained no references to [his] being placed on SLWFP.

... However, despite the communications described above, [Mr. Ahmed] was placed on SLWFP for the period of 1 January to 31 March 2006. As a staff member on SLWFP, [he] was paid salary between January and March 2006 on a monthly basis. In total, during the period of January and March 2006 [Mr. Ahmed] was paid 487,649 Pakistani rupees. The [Secretary-General] now submits that this was the payment in lieu of notice in recognition of many years of service with the Organization.

... On 10 April 2006, the Administration wrote to [Mr. Ahmed] requesting his signature on paperwork related to his separation from service. Although the email mentioned his placement on SLWFP, it did not state that it was equivalent to his payment in lieu of notice in recognition of many years of service with the Organization. The email simply stated that "[a]s you know 31st March 2006 was your last day (special leave with full pay) at the UNIC Islamabad" ...

... [Mr. Ahmed] did not sign the forms that were attached to the email because he believed that by doing so he would be acquiescing in what he considered to be an unlawful separation from service.

... On 16 June 2006, the Executive Officer, DPI, sent a memorandum to OHRM, explaining that "taking into consideration [Mr. Ahmed's] length of service and to afford him sufficient time to seek alternative employment, DPI

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sign any document which he may feel, albeit mistakenly, would jeopardize his rights”³
and found that there was “no evidence that the [Administration] reminded [him], at any
point after April 2006, to sign the papers or 3... w /TT7.8688 TJ 1 0d th251173 Tc .4 w /T6.10 1 Tf 12 0 0 .803-.0

Accordingly, the Dispute Tribunal found that Mr. Ahmed was entitled to receive three months' salary in lieu of notice, as promised by the Organization in recognition of his long service, with interest at the U.S. Prime Rate from 1 April 2006 to 13 September 2011 and the State Bank of Pakistan rate from 13 September 2011 to the date of payment.

Submissions

The Secretary-General's Appeal

9. The Secretary-General argues that, as the delay in payment in respect of his unused leave was "entirely attributable" to Mr. Ahmed, the Dispute Tribunal erred in awarding him interest on the sum.

10. He also argues that the UNDT erred in finding that there was no legal basis for the Administration's delay in payment or that the Organization was unjustly enriched. Indeed, he asserts that the interest awarded by the UNDT (which significantly exceeds interest actually payable on savings accounts) would create unjust enrichment on the part of Mr. Ahmed and, if sustained, "would create an inappropriate financial incentive for staff members to delay administrative procedures necessary to finalize the disbursement of payments".

11. The Secretary-General submits that the Dispute Tribunal erred in finding receivable Mr. Ahmed's claim in respect of compensation in lieu of notice. He claims that Mr. Ahmed first raised this issue, albeit unsuccessfully, before the former Joint Appeals Board in 2006, and that he proceeded to include it in his application to the former United Nations Administrative Tribunal, which was transferred to the UNDT. Accordingly, the claim is *res judicata*.

12. The Secretary-General requests the Appeals Tribunal to vacate the findings of the UNDT that (a) Mr. Ahmed was entitled to interest on the compensation he received for his unused annual leave; and (b) his claim in respect of payment in lieu of notice was receivable.

Mr. Ahmed's Answer

13. Mr. Ahmed submits that the Secretary-General has shown no reversible error on the part of the Dispute Tribunal.

14. He argues that the Dispute Tribunal did not err in awarding interest on the payment in respect of unused annual leave. He avers that there was no reason he could have known that signing the necessary forms would not prejudice his right to appeal, as such information is not disseminated to the staff. Furthermore, he argues that the payment of interest does not harm the Organization, which has already benefited from receipt of such interest whilst the funds remained in its accounts.

15. Mr. Ahmed contends that the Dispute Tribunal correctly found in his favour with respect to the payment of compensation in lieu of notice and that the Secretary-General "is erroneously taking shelter on technical grounds".

16. He asks the Appeals Tribunal to consider the issue of his termination indemnity

separation formalities was entirely attributable to him. As such, he cannot be compensated for the delay in payment, by way of interest or in any other manner. There is no question of *mala fides* on the part of the Administration, nor does the UNDT's analysis that the Organization was unjustly enriched stand scrutiny. The Dispute Tribunal Judgment is, therefore, vacated in this respect.

21. Mr. Ahmed's reluctance to sign the paperwork was apparently due to a

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Dated this 17th day of October 2013 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Lussick

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