



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

A faint, grayscale background image of a large assembly hall, likely the United Nations General Assembly, with a prominent dome structure.

Delaunay
(Appellant)

v.

Registrar of the International Court of Justice
(Respondent)

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Deborah Thomas-Felix Judge Martha Halfeld
Case No.:	2017-1091
Date:	26 October 2018
Registrar:	Weicheng Lin

JUDGE SABINE KNIERIM , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application against the Registrar of the International Court of Justice (ICJ Registrar and ICJ, respectively) filed by Ms. Nathalie Isabelle Eliane Dutertre-Delaunay. Ms. Delaunay filed her application on 29 June 2017 and the ICJ Registrar filed his answer on 28 August 2017.

Facts and Procedure

2. On 1 May 2009, Ms. Delaunay joined the ICJ as a Senior Medical Officer. Her initial contract and subsequent contract renewals provided for a 25 per cent part-time arrangement and stipulated, *inter alia*, that by virtue of her appointment she became a participant in the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund). Her contributions to the UNJSPF were deducted from her salary throughout her service at the ICJ.

3. In response to an e-mail dated 13 July 2015 from the ICJ regarding Ms. Delaunay's participation in the UNJSPF as a staff member on a part-time employment basis, the UNJSPF informed the ICJ Registry on 15 December 2015 that under Supplementary Article A of the UNJSPF Regulations, staff members who work on a part-time basis of less than 50 per cent may not enroll in the Pension Fund.

4. At the end of 2015, Ms. Delaunay was recruited by the European Space Agency (ESA) and informed the ICJ of her resignation from service effective 31 December 2015. She requested her pension rights to be transferred from the UNJSPF to the ESA pension scheme based on the Agreement on the transfer of pension rights between the UNJSPF and the ESA of 1 January 2007.

5. Following several months of negotiations with the ICJ and ESA, the UNJSPF suggested to allow, on an exceptional basis, a transfer of Ms. Delaunay's pension contributions to ESA

UNJSPF to ESA (on 7 July 2017). On 5 July 2017, the ICJ Registrar informed the UNJSPF of the ICJ's decision to allow the transfer of Ms. Delaunay's pension contributions to ESA on an exceptional basis.

pension contributions being included in the computation of the package to be transferred to ESA and asked the UNJSPF to reconsider its decision not to include them.

6. As the UNJSPF subsequently confirmed its refusal to transfer the organization's contributions, Ms. Delaunay informed the ICJ Registrar, by e-mail dated 3 October 2016, that she wished to pursue her request from 1 February 2016 by which she had asked for compensation from the ICJ for the injury she claimed to have suffered from having contributed to the Pension Fund (UNJSPF) (hereinafter "the Pension Fund") (hereinafter "the Pension Fund").

8. The ICJ contacted the UNJSPF on 2 June 2017 inviting it to communicate a definitive decision, in accordance with the Conciliation Committee's recommendation, directly to Ms. Delaunay.

9. On 29 June 2017, Ms. Delaunay filed an application with the Appeals Tribunal.

10. In response to the ICJ's 2 June 2017 request, the UNJSPF reaffirmed its position in a letter dated 28 July 2017 which Ms. Delaunay subsequently requested to be admitted as new evidence.

11. On 27 October 2017, the Appeals Tribunal issued Order No. 301 (2017) granting Ms. Delaunay's motion for leave to file the 28 July 2017 letter as additional evidence. The Appeals Tribunal further considered that the appropriate solution at that point was for Ms. Delaunay to file a request with the UNJSPF to review the decision to convert her six-year eight-month 25 per cent part-time employment in to one-year eight-month full-time employment. in Tc .1474 Tw [

following meeting in July 2018. On 30 November 2017, Ms. Delaunay also notified the Appeals Tribunal Registry of her appeal with the Pension Fund.

13. On 3 July 2018, the UNJSPF informed Ms. Delaunay that the Pension Fund had decided to act in accordance with option (ii) as contained in Order No. 301 (2017) and added as follows:

In that regard the [Pension] Fund will return the entirety of the contributions paid to [the] ICJ, and it would be for [the] ICJ to determine further action in regard to its contributions. [The] ICJ has confirmed that they are in agreement with the return of all contributions by the [Pension] Fund. As the return of the contributions would be in accordance with the [Pension] Fund's policy in cases of erroneous participation in the [Pension] Fund, there is no need to submit your case to the Standing Committee. I note that you included this option in your appeal to the Standing Committee.

Please confirm that you are ready for the [Pension] Fund to proceed with the return [of] all contributions to [the] ICJ.

14. In an ensuing e-mail exchange, the Pension Fund informed Ms. Delaunay that as far as contributions by participating organizations and participants are concerned, the Pension Fund

amount of USD 72,849.96 to Ms. Delaunay. The ICJ Deputy-Registrar added that the ICJ, having obtained Ms. Delaunay's concurrence, had instructed its bank on 20 July 2018 to transfer the equivalent in Euros of the above-mentioned amount into Ms. Delaunay's bank account.

17. On 10 August 2018, the Appeals Tribunal Registry notified Ms. Delaunay that in view of the 24 July 2018 letter, her case against the ICJ Registrar would be closed administratively.

18. By e-mail dated 13 August 2018, Ms. Delaunay informed the Appeals Tribunal Registry that she did not consider the matter to be resolved as she had asked for compensation which would also cover the "two years and a half during which [she] was unable to make the amount that she was due grow"? Ms. Delaunay further expressed her understanding that all her claims would now be adjudicated.

19. On 17 August 2018, the Appeals Tribunal issued Order No. 330 (2018) ordering Ms. Delaunay to provide clarification as to which claims contained in her original appeal she sought to pursue and to produce any relevant documents, including the decision of the Standing Committee, if any. The ICJ Registrar was ordered to produce a document, if any, containing the agreement between the Pension Fund and the ICJ on the transfer of USD 72,849.96 to Ms. Delaunay.

20. On 6 September 2018, Ms. Delaunay provided submissions in response to Order No. 330 (2018) and on 24 September 2018, the ICJ Registrar submitted his answer.

Submissions

Ms. Delaunay's Appeal

21. In her original appeal, Ms. Delaunay submitted that the ICJ had negligently led her to believe that she was entitled to pension benefits and since the solution proposed by the UNJSPF was unacceptable, she was entitled to compensation from the ICJ for not having acquired any pension rights. She further asserted that the

the ICJ Registrar argues that the ICJ has demonstrated its good faith in bringing about an arrangement favourable to Ms. Delaunay and has repeatedly expressed its hope that the ICJ's contributions could be paid to Ms. Delaunay.

26. Regarding Ms. Delaunay's claim for costs, the ICJ Registrar submits that, in the absence of a manifest abuse of the appeals process by a party as required by Article 9(2) of the Appeals Tribunal Statute, the relevant general principle before international courts applies, namely that each party bears his or her own costs.

27. As to Ms. Delaunay's request for payment of interest, the ICJ Registrar contends that by e-mail dated 6 July 2018, Ms. Delaunay agreed to the payment of the amount computed by the Pension Fund without any interest. Moreover, Ms. Delaunay has already been adequately compensated or even over-compensated. In this regard, the ICJ Registrar observes that a staff member working 50 per cent part-time and thus double Ms. Delaunay's time during the same period at the same grade and level would have received an estimated withdrawal settlement of USD 60,479.28 which is significantly less than what Ms. Delaunay obtained.

Considerations

Compensation for moral damages

28. Ms. Delaunay's request for compensation in the amount of USD 3,500 is rejected. Regardless of whether there was any illegality impu

Compensation for costs for legal representation

29. Ms. Delaunay's request for USD 2,000 as compensation for the time and money she spent for her legal self-representation is also denied. Under Article 9(2) of the Statute, the Appeals Tribunal may only award costs against a party when that party has manifestly abused the appeals process. In the present case, we do not find that the ICJ Registrar manifestly abused the appeals process such as to merit an award of costs.

Interest

30. Finally, Ms. Delaunay's request for interest on the amount of USD 72,849.96 for the

Judgment

31. The application is dismissed.

Original and Authoritative Version: English

Dated this 26th