
United Nations Dispute Tribunal

Case No.: UNDT/NBI/2017/012

Judgment No.: UNDT/2017/024

Date: 6 April 2017

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

PORTER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT ON INTERPRETATION
OF JUDGMENT**

Counsel for the Applicant:

Monica Ona Bileris, Esq.

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. On 21 February 2012 the Applicant filed an application challenging three issues that arose from the circumstances of a prolonged medical leave that spanned a period of more than two years. These issues were:

a. A decision taken by UNAMI administration to keep him on medical leave for more than two years after his doctors had recommended that he was fit to return to work.

b. During the period of his forced medical leave, the Administration ignored his pleas for information and misled him thereby causing him untold stress and hardship.

c. Failure by the Administration to reimburse financial claims that accrued to him as a result of the forced medical leave.

2. The Respondent filed a reply to the application on 26 March 2012 contending that the Application was not receivable *rationae temporis* as the Applicant had not requested management evaluation of the contested decisions within the requisite time limit.

3. After considering the submissions on both sides with regard to receivability, the Tribunal ruled on 4 December 2013 that it was indeed receivable.¹

4. Thereafter, the Respondent appealed unsuccessfully to the Appeals Tribunal.²

5. On 1 July 2016, the Tribunal issued Judgment No. UNDT/2016/096 in favour of the Applicant as follows:

104. The facts of this case show that the Applicant should have returned to work upon receiving medical clearance on 30 November 2009. The Tribunal therefore orders the Respondent to

¹ Porter UNDT/2013/156 inrT8ref*EMC q0.00125 -0.121346 Tm[() TJBT1 0 0 1 133.7 85.8 2-5(.)139.919(Tr)-5(ibunag

pay the Applicant his full salary from 30 November 2009 to 1 August 2011 (less any payments that had been made to him such as full salary and half salary during the said period.) In calculating payments due to the Applicant, the hazard pay component of his salary is not to be included since he was in fact outside of the mission area during the period.

105. The Tribunal is also convinced by the submissions made by

c. At the time that Judgment No. UNDT/2016/096 was issued, he was unaware that the Respondent would use a mistaken calculation in satisfying the financial award as ordered by the Tribunal, the discovery of which he was unable to rely upon in the original proceeding or else he would have spelled out the reliefs he sought more clearly. The discovery of the fact would necessarily have led the Tribunal to specify in its Judgment the dates upon which it relied in ordering relief.

d. The new fact that he is pleading is the fact that the Respondent paid him according to the pay scale in place at the time of his separation from the Organization not the salary scale in effect at the time of the Tribunal's judgment. Such fact was not known to him at the time of Judgment and his ignorance was not due to negligence on his part.

e. Before receiving the lump sum payment on 9 December 2016, he promptly inquired with the Respondent about the nature and breakdown of the payment on 7 December 2016 and 17 January 2017 only to find out that the Administration based the calculation on his old salary scale in effect at the time of his separation and not on the salary scale in effect on the date of judgment.

f. Had he known that the Respondent planned to use the said salary scale, he would have requested that he be granted payment of salary using the salary scale in effect at the time of judgment.

g. Allowing the Respondent to use the net base salary scale in effect at the time of his separation obstructs justice as Judgment No.

Tribunal to interpret its Judgment No. UNDT/2016/096 to reflect that the said date be used. He also requests the Tribunal to clarify whether or not the Organization should retroactively credit him for the purposes of his pension and any other emoluments for which he was qualified for were it not for the Respondent's wrongdoing, he would have been in a higher earning bracket.

i. Alternatively, should the Tribunal clarify its Judgment and fix his date of separation as the date to be used when calculating the 21 months' net base salary, he requests the Tribunal to interpret its Judgment to provide that he be paid interest on the base salary at the rate of eight percent per annum from the date of separation through to the date of the Respondent's satisfaction of the said Judgment.

Respondent's case

9. The Respondent's submissions are summarized below.

a. An application for interpretation of judgment is receivable only if

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(Signed)