
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/019

Judgment No.: UNDT/2017/092

Date: 13

Introduction

1. The Applicant is a former Communication Specialist with the United Nations Children's Fund (UNICEF).
2. In her 8 March 2016 application, she is contesting the amount of separation entitlements she received following her resignation from the Organization.
3. The Respondent filed a reply on 30 March 2016.
4. The Tribunal held a case management discussion on 12 October 2017 and a hearing on the merits on 31 October 2017. During the hearing, the Tribunal received oral evidence from the Applicant.

Facts

5. The facts stated below are admitted and/or result from documents on file. Facts established upon the Applicant's application as such.
6. The Applicant joined UNICEF on 1 September 1999 on a fixed-term appointment. On 18 April 2012, she was granted a permanent appointment effective 30 June 2009.¹ She was a Communication Specialist at the rank of P-3 Step 13 when she separated from UNICEF on 19 October 2014.
7. In July 2013, the Applicant was granted special leave without pay (SLWOP) in order to undertake an advanced degree programme. She did not retain a lien against her post while on SLWOP.² The Applicant explained that she had been aware of the associated employment risk, she nevertheless had had no intent to remain or return to UNICEF Benin because of the intolerable working environment, where 7 out of 10 staff members had resigned and the Applicant had filed a complaint for

¹ Annex 2 to the application.

² Annex 4 to the application.

abuse of authority against the Country Representative which had eventually been settled within the Country Office.³

8. Once the training completed, the Applicant sought an extension of her SLWOP for another year in order to take another professional course and continue looking for positions matching her qualification and experience.⁴ She sought advice from WPKEGHøu" J w o cp" Tguqwtegu" Fkxkukqp, applied for several positions within the Organization as early as January 2014 but was never shortlisted for any.⁵ Mainly, she applied for several positions at the P-4 and P-5 level.⁶ In October 2014, the Applicant got an opportunity for a job with Oxfam. She wrote to the Human Resources Department to seek approval to take up the position while on SLWOP but this was denied.⁷ S

11. On 29 January 2015, the Applicant received an email informing her of her

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queried about termination indemnity.¹⁸ On 16 September 2015, she received a response acknowledging an oversight regarding the sum to be paid, namely, failure to pay her lump sum *en lieu* of unaccompanied shipment in the amount of USD15,000, due to an oversight by the Finance Unit.¹⁹ That email informed that the lump-sum of USD15,000 had been paid into her bank account.

15. By email dated 25 October 2015, the Applicant sought management evaluation of the decision to not pay her termination indemnity and compensation for delay in other payments.

16.

24. In response to Order No. 171 (NBI/2017) which required the Applicant to file submissions substantiating her claims for damages caused by the delay in the payments made to her, the Applicant submits that during the period of delay she was only able to pay small amounts on account of her education loan. On 30 December 2015, the bank deducted from the relocation grant what she owed in the amount of over USD12,000. Had the UNICEF Administration paid what was due to her at a

Termination indemnity may only be paid to staff members whose contracts have been terminated, not staff who resigned, such a payment is unavailable under the Staff Regulations and Rules.

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33. As concerns salary in lieu of annual leave and repatriation grant, the Applicant was paid within approximately 30 days after the submission of the required documentation. Thus, there was no undue delay on the part of the Respondent in processing these amounts.

34. In response to Order No. 171 (NBI/2017), by which the Tribunal directed the

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be noted that she had defined her preferences narrowly, applying mainly for posts outside her practical experience to-date and above her grade. On her own admission²², she was *a limine* rejecting a return to UNICEF Benin; was not, at least initially, even looking for posts in the central and western African region; and she was not, until recently before resignation, looking for jobs in communications and in peacekeeping.

Crrnkecpvøu" tgukipcvkqp" ycu" ceegrvgf" okf-January 2015 and a letter containing instructions about the separation process was transmitted to her on 29 January 2015. The actions of the UNICEF Administration were all within the period of the applicable notice.

53. In conclusion, the Tribunal finds that the UNICEF Administration failed to fulfil its obligation to make a timely payment of the Applicant by making the payment of relocation grant four months after it should have been effected had normal workflows been respected, all despite the various follow-ups sent by the Applicant. The Tribunal, on the other hand,

UNFCU, interest at US prime rate is quite appropriate. Accordingly, the Tribunal will grant interest at the US prime rate for the periods of undue delay, which at the time was 3.25%.

58. It is undisputed that interest was due on the amount corresponding to the unaccompanied shipment lump sum of USD15,000 for the period of delay from 5 May till 16 September 2015 at the US prime rate; this has already been paid by the Tgurqpfgpvø" Cu" vq" vjg" tgo ckpkpi" rctv." vjg" Vtkdwpcn" cr rtgekcvgu" vjg" Tgurqpfgpvø" readiness to pay interest calculated, as in the submission of 6 November 2017, as a gesture of goodwill and procedural efficiency and not as admission of regular processing time and liability.

59. While the Applicant claimed, in addition, vjcv" vjg" Tgurqpfgpvø" hcknwtg" vq" make timely payments had entailed levying punitive interest on her education loan from UNFCU, she adduced no documents to demonstrate that any such interest had been charged, despite having been specifically requested to do so by the Tribunal. Eqpvctct{" vq" vjg" Cr rnkcepvø" enck o" that the totality of interest charged by the bank should be presumed to result from arrears on her side, such presumption is untenable - loans are granted by banks precisely in exchange of interest; without more, an interest charged on a loan is, in all likelihood, a regular contractual interest rate. The Tribunal notes, moreover, that UNFCU deducted their dues in May 2015, that is, before a delay in the payment by UNICEF occurred. The Tribunal, therefore, has no basis permitting it to accept, let alone anchor in time and quantify, any expense incurred by the Applicant toward UNFCU in causal relation with the arrears on the part of the Respondent.

60. In conclusion, the Tribunal considers that the material damage suffered is sufficiently compensated by the award of interest as stated above.

61. As concerns compensation for moral injury the Tribunal recalls UNATøu full bench holding in *Kallon* according to which proving moral injury requires showing dg{ qpf" c" dcncpeg" qh" rtqdcdknkvgu" vjg" gzkuvpeg" qh" hcevqtu" ecwukpi" jct o" vq" vjg" xkevko øu"

personality rights or dignity.²⁶ Among other, the loss of a positive state of emotional gratification or emotional balance is harm deserving of compensation.²⁷ For a breach or infringement to give rise to moral damages, especially in a contractual setting, where normally a pecuniary satisfaction for a patrimonial injury is regarded as sufficient to compensate a complainant for actual loss as well as the vexation or inconvenience caused by the breach, then, either the contract or the infringing conduct must be attended by peculiar features, or must occur in a context of peculiar circumstances.²⁸

62. The Tribunal finds that, although the matter at hand arises from a contractual setting, *i.e.*, payment of entitlements, the breach was attended by peculiar features, rendering it capable of causing moral injury.

63. First, as pointed out by the Applicant, the delay was lengthy and unduly. The process took overall 11 months and the time used to make the last due payment exceeded three times the norm established by the Respondent. No explanation was given for the delay even though this was not an unusual or complicated operation for the administration, including that payment of a lump sum *en lieu* of unaccompanied shipment does not require calculation. A specific enquiry in this matter by the Applicant did not trigger a corrective response for four months.

64. Second, the delay was inflicted on the Applicant in the context of a relative vulnerability on her part, of which the Respondent was aware given the known indebtedness to UNFCU and that in her correspondence the Applicant had conveyed on several occasions the difficulties that she was facing. As the Applicant

Separation entitlements for most of the employees constitute a significant position in the budget. For the Applicant

64. The Tribunal recalls that, as confirmed by UNAT in *Kallon*, the presence of certain circumstances may lead to the presumption of moral injury *ó res ipsa loquitur*. Circumstances of a certain case may permit the application of the evidentiary presumption that such damages will normally follow as a consequence to an average person being placed in the same situation of the applicant.²⁹ Further, UNAT in *Kallon* endorses after *Asariotis*³⁰ two types of situations giving rise to claim for compensation for moral injury: first, breach of a fundamental nature, whereupon occurrence of moral injury in the form of harm to *dignitas* is presumed, and second, where the nature of the breach is not automatically leading to a moral injury, or the injury is of such dimension or nature that would usually need to be proven through evidence of particular stress or anxiety. As further elaborated by UNAT:

The evidence to prove moral injury of the first kind may take different forms. The harm to *dignitas* or to reputation and career potential may thus be established on the totality of the evidence; or it may cons 0 0 ,34()-79(of)-6()-79(the)-87

and amounting to frustration, helplessness and indignity. This for the Applicant was compounded by anguish and uncertainty related to the financial aspects. Her correspondence with the Respondent reveals anxiety and indignation at the treatment that she considered unfair. It also reveals that her trust in the Organization was undermined to the point that she suspected that the Af o k p k u v t c v k q p ø u " t g n w e v c p e g " v q " effect her payments was a form of harassment in retaliation for her earlier a complaint of abuse of office which she had made in 2013. In totality of these circumstances the Tribunal finds, based on v j g " C r r n k e c p v ø u " testimony and correspondence, in light of common experience and common sense, that a moral injury of a mild degree has been sufficiently proven.

66. Cu " h c e v q t u " o k v k i c v k p i " v j g " C r r n k e c p v ø u " o q t c n " k p l w t { . " v j g " Tribunal weighs in that at the core of it was the delay in payment of entitlements which has since been effected, that UNICEF HR official and the Counsel for the Respondent offered her apologies; and that before the Tribunal the Respondent demonstrated amenability to satisfy the claim for compensation for the delay. Considering the foregoing, and taking into account existing jurisprudence on comparable cases³², the Tribunal awards USD1,500 as compensation for the C r r n k e c p v ø u " moral injury.

Judgment

68. In view of the foregoing, the Tribunal awards the Applicant USD1,500 as compensation for moral damage.

69. This amount is to be paid within 60 days from the date the judgment becomes executable, during which period interest at the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional 5% shall be added to the US Prime Rate until the date of payment.

70. All other claims are rejected.

³² *Kings* UNDT/2017/043; *Ho* 2017-UNAT-791.

