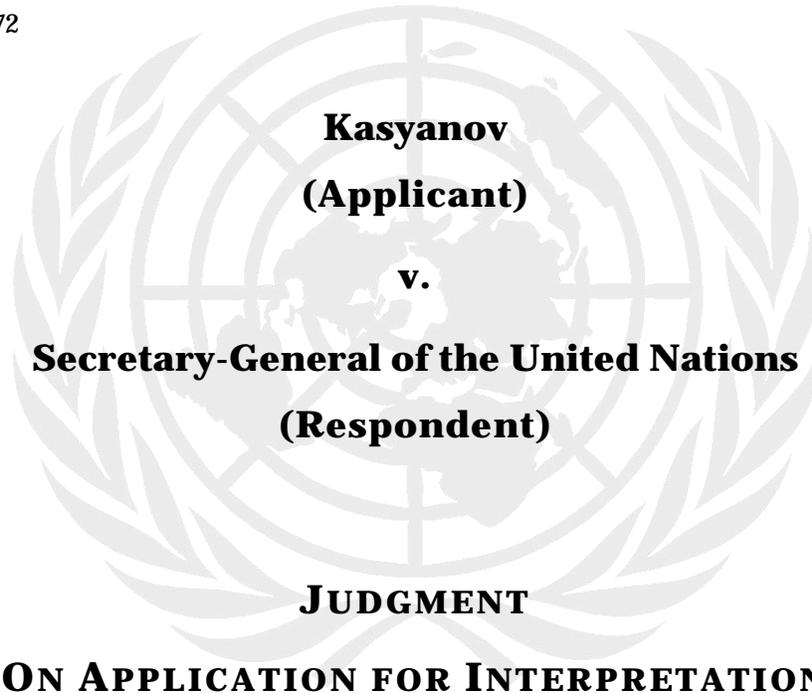




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-072

A large, faint watermark of the United Nations logo is centered in the background of the page.

**Kasyanov
(Applicant)**
v.
**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

ON APPLICATION FOR INTERPRETATION

Before:	Judge Inés Weinberg de Roca, Presiding Judge Sophia Adinyira Judge Mark P. Painter
Judgment No.:	2011-UNAT-161
Date:	21 October 2011
Registrar:	Weicheng Lin

Counsel for Applicant:	Self-Represented
Counsel for Respondent:	John Stompor

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. Mr. Kirill Kasyanov requests that the United Nations Appeals Tribunal (Appeals Tribunal) determine the applicable date (breach v. judgment date) and interest to be applied in the quantum of compensation awarded in its Judgment No. 2010-UNAT-076.
2. The application for interpretation is receivable and the award of two months' net base salary is set as of the date of the United Nations Appeals Tribunal's Judgment of 28 October 2010.

Facts and Procedure

3. Mr. Kasyanov applied for a position of Russian interpreter in the Conference Services Division in the United Nations Office at Geneva. Upon being informed by letter dated 3 March 2008 of his non-selection, Mr. Kasyanov contested the decision before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).
4. On 23 September 2009, the Dispute Tribunal issued Judgment No. UNDT/2009/22 in which it found in favour of Mr. Kasyanov on the merits of the case and on 9 February 2010 in Judgment No. UNDT/2010/126, the Dispute Tribunal awarded Mr. Kasyanov compensation in the amount of USD 79,932. Following the Secretary-General's appeal of Judgment No. UNDT/2010/126, the Appeals Tribunal issued Judgment No. 2010-UNAT-076 in which it reduced the compensation awarded to Mr. Kasyanov to the equivalent of two months' net base salary.
5. On 7 April 2011, Mr. Kasyanov filed an Application for Interpretation of Judgment 2010-UNAT-076.

Submissions

Mr. Kasyanov's Application

6. Mr. Kasyanov submits that upon issuing Judgment No. 2010-UNAT-076, the Appeals Tribunal fixed the quantum of compensation without specifying the time-frame for the execution of the Judgment, the date upon which the salary level should be calculated (breach date v. Judgment date), or the date from which the accrual of interest should be applied.

7. Mr. Kasyanov submits that the 25 February 2011 payment of compensation effectuated by the Secretary-General was calculated as of the breach date, without the application of interest. However, in the case of *Wu*¹ - which this Tribunal referred to in determining that the relief of two months' net base salary was adequate compensation – it was decided that the compensation should be calculated from the date of the judgment.

8. Mr. Kasyanov requests that this Tribunal interpret the applicable date and interest to be applied to the quantum of compensation.

Secretary-General's Response

9. The Secretary-General submits that the award of two months' net base salary was “simply [to establish] a defined sum to compensate [Mr. Kasyanov] for the ‘non-pecuniary damage’ resulting from the non-compliance with the staff selection process” and not to place Mr. Kasyanov in the position he “would have been in had the Organization complied with its contractual obligations”.²

10. The Secretary-General contends that using the date of the Judgment to calculate Mr. Kasyanov's compensation award would equate to applying a penalty against the Secretary-General's due process rights to formulate an appeal. The Secretary-General therefore requests that this Tribunal clarify that the quantum of compensation should be calculated from the date of the breach of Mr. Kasyanov's procedural rights.

11. The Secretary-General submits that the time-limit for the execution of the Judgment does not warrant clarification seeing that, in accordance with the jurisprudence in *Warren*, it was executed on 25 February 2011 which was within 60 days of the issuance of this Tribunal's Judgment. Similarly, seeing that the Judgment was executed within a reasonable amount of time, the accrual of interest does not apply to the period following the issuance of the Judgment.

12. The Secretary-General finally submits that neither the Dispute Tribunal nor the Appeals Tribunal ordered the application of interest and that seeing that judgments from

¹ *Wu v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-042.

² *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.

the Appeals Tribunal are final, “a new component of compensation such as interest cannot be awarded at this stage”.

Considerations

13. Article 11(3) of the Statute of the Appeals Tribunal allows for an application for interpretation. It provides as follows: “Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement.”

14. The underlying Judgment held:

31. In *Wu*, this Tribunal affirmed the UNDT decision to award compensation in the amount of two months’ net base salary. Both cases, *Kasyanov* and *Wu*, decide the same issue. The UNDT in the *Wu* Judgment made its findings based on the UNDT Judgment on the merits in *Kasyanov*, that the decision to choose a 30-day candidate instead of the applicant, a 15-day candidate, violated Section 7.1 of ST/AI/2006/3 and that, therefore, the decision not to appoint the applicant was procedurally flawed.

32. This Tribunal determined in *Wu* that the relief of two months’ net base salary was adequate. The same quantum of compensation should be awarded in this case.

15. What Mr. Kasyanov requests is a clarification as to whether this Tribunal’s compensation award of two months’ net base salary is to be determined as of the date the breach occurred or as of the date the Judgment was issued.

16. In line with the Appeals Tribunal’s Judgment to award the same relief as in *Wu*, this Tribunal intended that the same methodology be used in determining the date upon which the quantum of compensation was to be calculated. Namely, that Mr. Kasyanov, as stated in the UNDT judgment in *Wu* that was affirmed by the Appeals Tribunal, “be paid two months net base salary calculated at his salary level at the date of this judgment”.

Judgment

17. The application for interpretation is accepted and the two months' net base salary award is to be calculated as of the date of the Appeals Tribunal's Judgment of 28 October 2010.

Original and authoritative version: English

Dated this 21st day of October 2011 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Painter

Entered in the Register on this 2nd day of December 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar