



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

Case No. 2010-079

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

**JUDGMENT
ON APPLICATION FOR REVISION**

Before: Judge Sophia Adinyira, Presiding
Judge Kamaljit Singh Garewal
Judge Mark P. Painter

Judgment No.: 2011-UNAT-162

Date: 21 October 2011

Registrar: Weicheng Lin

Counsel for Applicant: Edward Patrick Flaherty

Counsel for Respondent: Wambui Mwangi

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. The underlying Judgment held: “For the reasons given, the appeal is allowed, the UNDT Judgment is set aside and reinstatement is ordered, or if not reinstated, then alternative compensation is fixed in the amount of two years’ net base salary.”
2. Ms. Suheir Mahsi Azzouni requests a revision of the underlying Judgment of the United Nations Appeals Tribunal (Appeals Tribunal) to reflect that the net base salary scale applied to the Judgment should be calculated as of the time of the Judgment (29 October 2010) and not the date of her separation (6 August 2008), or alternatively, that the Appeals Tribunal order the Secretary-General to pay interest on the amounts paid out to her, from the date of her separation through the date of satisfaction of the Judgment.
3. We opt to treat this application as an application for interpretation under Article 11(3) of the Statute of the Appeals Tribunal.
4. The very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations.
5. The application is allowed in part.
6. The compensation in lieu of reinstatement is to be calculated from the date of separation (6 August 2008), with interest on the award of compensation at the US Prime Rate applicable on 6 August 2008, for the period 6 August 2008 to 4 March 2011.

Facts and Procedure

7. On 29 December 2010, the Appeals Tribunal issued Judgment No. 2010-UNAT-081 in the case of *Azzouni v. Secretary-General of the United Nations*. In its Judgment, the Appeals Tribunal ordered that Ms. Azzouni be reinstated “or if not reinstated, then alternative compensation is fixed in the amount of two years’ net base salary”.
8. On 4 March 2011, Ms. Azzouni received a lump sum payment from the United Nations in the amount of USD 152,282.00 in satisfaction of Judgment No. 2010-UNAT-081. Following a query from Ms. Azzouni’s counsel to the

Administrative Services Division, Ms. Azzouni was informed on 10 March 2011, that based on the salary scale in effect at the time of her separation in August 2008, this lump sum was equivalent to two years of her net base salary which was calculated as her gross salary minus the staff assessment.

9. On 7 April, 2011 Ms. Azzouni filed an application for revision of Judgment No. 2010-UNAT-081 on the basis that the Appeals Tribunal failed to specify the date upon which the two years' net base salary was to be calculated and requested that it be set as of the date of the Judgment or, alternatively, that an interest rate be applied to the compensation awarded from the date of separation to that of the Judgment.

10. On 7 April 2011, Ms. Azzouni sought additional time to file a brief supporting her application for revision which, upon being granted, was submitted to the Appeals Tribunal on 30 May 2011.

Submissions

Ms. Azzouni's Application

11. Ms. Azzouni submits that, even though the revision of a final judgment issued by the Appeals Tribunal is an exceptional procedure, the discovery of new essential facts, not imparted to negligence, regarding the means by which the lump sum payment awarded to her was calculated is decisive, and that her application for revision is therefore receivable.

12. Ms. Azzouni further submits that she was unaware of the process that would be used to calculate the relief she was seeking and that, had she known, she would have made her request more specific which would have led the Appeals Tribunal to specify the date, and therefore salary scale, that would be applied in ordering Ms. Azzouni's relief.

13. Ms. Azzouni contends that the Appeals Tribunal's Judgment called for the applicant to be put "in the situation she would have been in had she not been improperly separated" and that using the salary scale in place at the time of her separation rather than the one in place at the time of the Judgment would "frustrate, undercut and pervert the [Appeals] Tribunal's primary judgment".

14. Ms. Azzouni also submits that should the Appeals Tribunal fix the date upon which the compensation is calculated as being the date of separation from service, an interest rate should be applied to the compensation for the period between the time of separation and the satisfaction of the Judgment on 4 March 2011.

Secretary-General's Answer

15. The Secretary-General submits that Ms. Azzouni's application lies outside the scope of Article 11 of the Statute of the Appeals Tribunal as it does not rely on any decisive facts that were unknown to either Ms. Azzouni or the Appeals Tribunal at the time the decision was rendered.

16. The Secretary-General contends that should the Appeals Tribunal decide to treat Ms. Azzouni's appeal as an application for interpretation, the salary scale in place at the time of separation should be applied. Applying the salary scale in place on the date of the issuance of this Tribunal's decision would place Ms. Azzouni in a situation that is over and above the one she would have been in had she not been separated and is therefore inconsistent with the principles applied by the Appeals Tribunal when awarding compensation.

17. The Secretary-General submits that an interest rate could be applied to the compensation awarded to Ms. Azzouni if the payment had not been executed within a reasonable amount of time following the issuance of this Tribunal's Judgment; however, that is not the case here as the Judgment was issued on 31 December 2010 and the compensation was awarded on 4 March 2011.

18. The Secretary-General contrasts this case with that of *Warren* in that in this case, in setting aside the UNDT Judgment and awarding compensation to Ms. Azzouni, the Appeals Tribunal did not order the application of interest. Seeing that judgments from the Appeals Tribunal are final, the application of an interest rate to be calculated from the date of her separation would equate to a new component of compensation and is therefore not justifiable and cannot be awarded at this stage.

Considerations

19. The underlying Judgment held: “For the reasons given, the appeal is allowed, the UNDT Judgment is set aside and reinstatement is ordered, or if not reinstated, then alternative compensation is fixed in the amount of two years’ net base salary.”

20. The Judgment did not specify the date upon which the two years’ net base salary was to be calculated nor the payment of interest.

21. Ms. Azzouni requests a revision of the Judgment of the Appeals Tribunal so that it reflects that the net base salary scale applied to the Judgment be calculated as of the time of Judgment (29 October 2010) and not the date of her separation (6 August 2008), or alternatively, that it order the Secretary-General to pay interest on the amount paid out to her, from the date of her separation through the date of satisfaction of the Judgment.

22. We are treating this application as an application for interpretation under Article 11(3) of the Statute of the Appeals Tribunal.

23. The very purpose of compensation is to place a staff member in the same position he or she would have been in had the Organization complied with its contractual obligations. Accordingly when calculating the quantum of compensation, it must be set as of the date of the breach of the staff member’s contractual rights and not the date of judgment. In many cases, in order for the staff member to be placed in the same position he or she would have been in, but for the breach, the award of interest is to be part of the compensation.¹

24. In this particular case the net base salary scale to be applied to the Judgment should be calculated as of the time of separation - 6 August 2008.

25. The Secretary-General correctly calculated the compensation from the date of separation but failed to add the accrued interest to which Ms. Azzouni is entitled.

26. Accordingly, the Appeals Tribunal upholds Ms. Azzouni’s request for the award of interest.

¹ *Warren v. Secretary-General of the United Nations*, Judgment No. 2010 UNAT-059.

Judgment

27. The application is allowed in part.

28. It is hereby ordered that the Secretary-General add a pre-judgment interest on the compensation already paid; calculated at the US Prime Rate applicable on 6 August 2008 (date of separation) to 4 March 2011 (date of payment).

Original and authoritative version: English

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

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Painter

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

(Signed)

Weicheng Lin, Registrar