



**Before:** Judge Teresa Bravo

**Registry:** Geneva

**Registrar:** René M. Vargas M.

ELMORE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alan Gutman, AAS/ALD/OHR, UN Secretariat

Clementine Foizel, AAS/ALD/OHR, UN Secretariat

## **Introduction**

1. The Applicant filed an application against the United Nations' Tax Unit ("UN Tax Unit") seeking the full reimbursement of her 2019 tax liability.

## **Facts**

2. On 3 March 2021, the Applicant received a cheque from the UN Tax Unit made out to the US Treasury in the amount of USD15,136 as reimbursement for her 2019 tax liability.

3. On 6 March 2021, the Applicant requested management evaluation of the 28 February 2021 decision from the UN Tax Unit.

4. On 31 May 2021, the Applicant filed an application before this Tribunal contesting the 28 February 2021 decision from the UN Tax Unit informing her that her 2019 tax reimbursement claims would only be reviewed in July 2021, claiming that she had neither yet been reimbursed for her 2019 tax liability nor received a formal response to her management evaluation request.

5. On 1 June 2021, the Applicant received a cheque from the UN Tax Unit in the amount of USD14,197.

6. On 17 June 2021, the Management Evaluation Unit ("MEU") informed the Applicant that her management evaluation request had been found moot because the UN Tax Unit confirmed having fully reimbursed her for its share of the Applicant's 2019 tax liability on 1 June 2021 and in the amount of USD14,197.

7. On 2 July 2021, the Respondent filed his reply arguing that the application is moot and lacks legal basis.

8. On 18 September 2021, the Applicant filed a "Motion to Strike Reply", claiming the Respondent's arguments were incorrect and misleading.

9. On 12 November 2021, the case was assigned to the undersigned Judge.

10. By Order No. 172 (GVA/2021) of 18 November 2021, the Tribunal instructed both parties to submit proof of and clarification on the Applicant's 2019 tax claims and reimbursements to understand the amount of taxes due to the Applicant and the UN Tax Unit's calculations, as well as to confirm the amount already reimbursed to the Applicant. The Tribunal also requested the Respondent to clarify the issuance of the two different cheques on 3 March 2021 and 1 June 2021 with two different amounts.

11. On 25 November 2021, the Applicant responded to Order No. 172 providing proof of her 2019 payment to the US Treasury, her 2019 tax returns and her 2019 claims for reimbursement. She also confirmed not having received any cheques or corrections from the UN Tax Unit regarding her 2019 tax claims besides a cheque of 1 June 2021 for USD14,197.

12. On 29 November 2021, the Respondent responded to Order No. 172 submitting a copy of the Applicant's 2019 tax claims, of the final settlement statement from 26 April 2021 prepared by the UN Tax Unit and the UN Tax Unit's calculation of the final settlement amount. Additionally, the Respondent explained the UN Tax Unit's calculation sheet, how it arrived at the net tax liability for each entity that had employed the Applicant and the error that occurred with the initial issuance of two different cheques in two different amounts.

13. On 8 December 2021, the Respondent filed a motion for leave to submit new evidence informing the Tribunal that the Special Tribunal for Lebanon ("STL") reported having reimbursed USD10,208 to the Applicant on 6 June 2021. The Respondent further explained that this amount equalled the full tax liability associated with the Applicant's 2019 earnings from the United Nations and STL as per the division of tax liability calculated by the UN Tax Unit.

14. By Order No. 179 (GVA/2021), the Tribunal accepted the Respondent's motion above and requested further proof of its allegation. Concurrently, the Tribunal advised the Applicant to submit comments on the new evidence entered into the record.

15. On 13 December 2021, the Applicant responded to Order No. 179 denying having omitted a material fact and confirming having received a reimbursement from the STL in the amount of USD10,208 on 6 June 2021.

16. On 14 December 2021, the Respondent submitted a response to Order No. 179 providing proof of payment by the STL.

17. On 10 January 2022, the Applicant filed a motion requesting leave to submit new evidence in relation to Order No. 179.

**Parties' submissions**

18. The Applicant's principal contentions are:

a. The UN Tax Unit has refused to share the basis for their accounting methodology over which the UN and the STL shares were calculated. Notwithstanding, the division of each entity's share appears to be wrong. The UN Tax Unit calculated its share of the Applicant's tax liability based on the proportion of income for which it was responsible (i.e., 72%), but calculated its share of tax credit based on the proportion of days worked (i.e., 89%). This led to the STL being held responsible for 42% of the Applicant's tax liability, even though it was only responsible for 28% of her income and 11% of the employment period;

b. The error made by the UN Tax Unit in calculating each entity's share of the Applicant's tax liability led to the STL paying more than it should have. In this sense, the Applicant still has not been fully reimbursed for the tax liability attributable to her UN earnings;

c. The STL acted in good faith when relying on the UN Tax Unit's calculation to reimburse the Applicant. This, however, does neither change nor relieve the UN Tax Unit of its obligations. The fact that the STL has paid the Applicant is irrelevant to the discussion of whether the United Nations has fully reimbursed the Applicant its tax liability share; and

d. The Applicant is not trying to be compensated twice for any portion of her tax liability. On the contrary, the Applicant has informed the STL that if she were to be successful in this application, she would reimburse them for the overpayment.

19. The Respondent's principal contentions are:

a. The UN Tax Unit calculated a division of the Applicant's 2019 tax liability between the UN and the STL by which the UN was to pay USD 14,197 and the STL, USD10,208. The UN and the STL paid their share on 1 and 6 June 2021 respectively. Thus, the Applicant has been fully reimbursed for her 2019 tax claims;

b. Since the Applicant has been reimbursed for the full tax liability associated with her earnings from the UN and the STL in the total amount of USD24,405 her application is moot and without merit; and

c. The Applicant failed to disclose a material fact in her application, i.e., the tax reimbursement she received from the STL, which shows an abuse of the process pursuant to art. 10.6 of the Dispute Tribunal's Statute.

### **Consideration**

#### *The Applicant's motion of 10 January 2022*

20. On 10 January 2022, the Applicant sought leave to submit new evidence concerning the Respondent's argument that the STL calculation of its tax liability accorded with the division of tax liability calculated by the UN Tax Unit. The correspondence submitted by the Applicant shows that the STL relied in good faith on the Tax Unit's calculation to determine its share.

21. The Tribunal considers the new evidence relevant to the Applicant's main arguments and pertinent for the fair and expeditious disposal of this case. Accordingly, the motion is granted, and the evidence attached thereto is entered into the record.

*Whether the Applicant has abused proceedings*

22. The Respondent requested the Tribunal to consider under art. 10.6 of the Dispute Tribunal's Statute whether the Applicant has abused proceedings due to her failure to disclose a material fact of this case, i.e., the tax reimbursement she received from the STL. In response, the Applicant claims not having disclosed this fact due to its irrelevance, since the issue at hand is the UN not having fully reimbursed her.

23. Although the Tribunal disagrees with the Applicant regarding the relevance of this evidence, it finds that it is clear from the record that she was not trying to deceive or mislead the Tribunal but merely acting accordingly with her line of thought. In this sense, there was no malicious intent that could amount to an abuse of proceedings.

*Whether the Applicant has been fully reimbursed for her 2019 tax liability*

24. The total amount due to the Applicant on account of her 2019 tax liability is undisputed by both parties. The problem raised by the Applicant concerns the division of liability share between the UN and the STL calculated by the UN Tax Unit. The Applicant believes that the STL paid her more than it should have and that, as a result, the UN has not still reimbursed her for the total amount attributable to it.

25. However, the question at hand is whether the Applicant has been fully reimbursed for her 2019 tax liability, regardless of tax liability share. What affects the Applicant's terms of employment is the payment of her *total* tax liability and not how different entities are to cover it. Any issue concerning the division of tax liability is to be dealt with by the Organizations involved, not by the Applicant.

26. The Applicant confirmed that it received USD14,197 from the UN and USD10,208 from the STL. The total amount she received equals the undisputed total amount that she was entitled to receive for her 2019 tax liability.

27. Consequently, it is clear from the evidence on record that the Applicant has been reimbursed in full for her 2019 tax liability and, accordingly, the application stands to be dismissed for lack of merit on the grounds presented.

**Conclusion**

28. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

*(Signed)*

Judge Teresa Bravo

Dated this 2<sup>nd</sup> day of February 2022

Entered in the Register on this 2<sup>nd</sup> day of February 2022

*(Signed)*

René M. Vargas M., Registrar, Geneva