



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

Case No. 2010-065

**Warren
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Jean Courtial
Judge Sophia Adinyira
Judge Mark P. Painter
Judge Kamaljit Singh Garewal
Judge Rose Boyko
Judge Luis María Simón

Judgment No.: 2010-UNAT-059

Date: 1 July 2010

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Self-represented

Counsel for Appellant/Respondent: John Stompor

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. This case concerns the question of whether or not the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) may order pre-judgment and post-judgment interest on compensation and, if so, which interest rate applies. The Secretary-General must pay, within 60 days from the date this Judgment is issued to the parties, interest on the award of compensation at the US Prime Rate applicable on 25 March 2008 (5.25 per cent) calculated from 25 March 2008 to the date of payment of the compensation. If payment of the compensation is not made within 60 days, an additional 5 per cent shall be added to the US Prime Rate of 5.25 per cent from the date of expiry of the 60-day period to the date of payment.

Facts and Procedure

2. In Judgment No. UNDT/2010/015 dated 27 January 2010, the UNDT concluded that the amount paid to Richard Warren (Warren) as his lump sum for home leave travel was incorrectly calculated. The UNDT ordered that the Secretary-General pay Warren the difference between the amount of the lump sum entitlement as determined by the UNDT and the amount already paid pursuant to the Organization's calculation. The UNDT also ordered that the Secretary-General pay Warren interest on the difference at the rate of 8 per cent per year, from 25 March 2008 (due date) to the date of payment.

Submissions

Secretary-General's Appeal

3. The Secretary-General submits that the UNDT erred on a question of law in implicitly finding that it has power to award interest in the normal course of ordering compensation. The General Assembly did not intend to grant the UNDT the power to award interest. Article 10 of the statute of the Dispute Tribunal (UNDT statute) explicitly provides that the UNDT may award compensation, but is silent on the power of the UNDT to award interest. Furthermore, the legislative history of the UNDT statute shows that an explicit grant of power to award interest was considered by the General Assembly,

but it was not included in the final UNDT statute. Also, paragraph 28 of General Assembly resolution 63/253 affirmed that the UNDT and the Appeals Tribunal “shall not have any powers beyond those conferred under their respective statutes”.

4. In the alternative, the Secretary-General submits that the power to award interest is not greater than the power to award interest exercised by the former Administrative Tribunal. The former Administrative Tribunal, which lacked an explicit power to award interest in its statute, awarded pre-judgment interest only in exceptional cases where there had been significant delays from the beginning of the case; where a substantial period of time had passed since the events giving rise to the case; and in a few cases of reimbursement. In recent years, it included in its judgments the following provision: “with interest payable at eight per cent per annum as from 90 days from date of distribution of this Judgment until payment is effected.”

5. In the further alternative, the Secretary-General submits that the UNDT erred on a question of law in setting the interest rate at 8 per cent per year in the present case. This rate is excessively high, particularly in light of significantly lower rates of return on more secure investments in US dollars, the currency in which the Secretary-General was ordered to pay, during the relevant time period. The Secretary-General also observes that punitive damages are expressly prohibited under Article 10(7) of the UNDT statute.

Warren’s Answer

6. Warren argues that the fact that the final UNDT statute contains no provision on the power to award interest does not mean that the UNDT does not have such power. Had the General Assembly intended that the UNDT would have no power to award interest, it could have included a provision to this effect in the UNDT statute. Further, the notion of compensation must by definition include the possibility of ordering the payment of interest. The very purpose of compensation is to place him in the same position he would have been in had the Organization complied with its contractual obligations. Any outstanding sum must therefore be seen as a debt owed to a staff member and not as money of the Organization.

7. The interest rate of eight per cent per year is significantly less than the increase of value that would have accrued to Warren had the correct lump sum amount been paid when due and, therefore, the rate is to the advantage of the Organization.

Considerations

8. The UNDT concluded that the amount paid to Warren as his lump sum entitlement for home leave travel was incorrectly calculated. It ordered that the Secretary-General pay compensation to Warren representing the difference between the amount of the lump sum entitlement as determined by the UNDT and the amount already paid pursuant to the Organization's calculation. This order is not contested on appeal.

9. The issue on appeal is whether the UNDT erred when it also ordered that the Secretary-General pay interest on the compensation at the rate of 8 per cent per year, from 25 March 2008 (the date of the administrative decision concerning the calculation of the lump sum entitlement) until the date of payment. If the Appeals Tribunal finds that the UNDT did not err in awarding interest, the secondary issue which arises is whether the rate of interest awarded is too high.

10. Notwithstanding the absence of express power of the UNDT and the Appeals Tribunal in their respective statutes to award interest, 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. In many cases, interest will be by definition part of compensation. To say that the tribunals have no jurisdiction to order the payment of interest would in many cases mean that the staff member could not be placed in the same position, and that therefore proper "compensation" could not be awarded.

11. Furthermore, the absence of an express power to award interest in the UNDT statute is not decisive. A provision prohibiting the award of interest could have been included in the statutes if it was intended that the tribunals were to have no jurisdiction to award interest. In fact, the statutes of the UNDT and the Appeals Tribunal include several provisions which limit the tribunals' powers to award amounts to applicants:

these provisions include a limitation on the amount of compensation, which can only be exceeded in exceptional cases, and a prohibition on the award of exemplary or punitive damages.¹

12. The Appeals Tribunal considers that any supposed legislative history of the statutes is irrelevant – the words of the statutes are decisive in determining the outcome of this appeal.

13. The Appeals Tribunal acknowledges that General Assembly resolution 63/253 affirmed that the tribunals “shall not have any powers beyond those conferred under their respective statutes”. The same resolution, however, also emphasized that the new system of administration of justice is “independent, transparent, professionalized, adequately resourced and decentralized” and is “consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members”. For the Appeals Tribunal to hold that no interest can be awarded would not be reconcilable with the tribunals’ mandates. Moreover, the award of interest by the tribunals is necessary to ensure that payments to staff are made by the Organization.

14. It follows from the foregoing considerations that both the UNDT and the Appeals Tribunal must have the power to award interest in the normal course of ordering compensation.

15. Turning to the second question, namely whether the rate of interest awarded by the UNDT is too high, the Appeals Tribunal notes that the Administrative Tribunal of the International Labour Organization (ILOAT) has been using the same interest rate as the former Administrative Tribunal, namely 8 per cent per year.

16. The UNDT has so far not adopted a uniform approach with respect to applicable pre- and post-judgment interest rates. In some cases, no interest was ordered; in other cases interest at an annual rate of 8 per cent, starting 45 days² or 90 days after the

¹ UNDT statute, Articles 10(5)(b) and 10(7); Appeals Tribunal Statute, Articles 9(1)(b) and 9(3).

² *Abbassi v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/055 (8 per cent per annum as from 45 days from the date of receipt of the judgment until payment is effected).

issuance (or sometimes the notification) of the UNDT judgment was awarded;³ or retroactive interest of 8 per cent was ordered from the date the payment of an entitlement was due.⁴

17. The Appeals Tribunal holds that the UNDT erred in ordering the payment of interest on the compensation awarded (the difference between the calculation of the lump sum entitlement fixed by the UNDT and the amount of the entitlement as calculated by the Organization) at the rate of 8 per cent per year from 25 March 2008 (due date) to the date of payment. The Appeals Tribunal decides to award interest at the US Prime Rate applicable at the due date of the entitlement (5.25 per cent), calculated from the due date of the entitlement (25 May 2008) to the date of payment of the compensation awarded by the UNDT. The Appeals Tribunal further holds that its judgments shall be executed within 60 days of the date the judgment is issued to the parties. If this Judgment is not executed within 60 days, 5 per cent shall be added to the US Prime Rate from the date of expiry of the 60-day period to the date of payment of the compensation.

³*Ardisson v. Secretary-General of the United Nations*, Judgment No. UNDT/2009/040 (90 days after notification of judgment); *Masri v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/056 (8 per cent from the date of summary dismissal to the date of reinstatement); *Sanwidi v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/061 (8 per cent from date of summary dismissal to date of reinstatement).

⁴*Ianelli v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/057 (8 per cent per annum from the date the payment fell due); *Castelli v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/011 (8 per cent per annum from date the payment became due until payment).

Judgment

18. With Judge Boyko dissenting, the Appeals Tribunal holds that the UNDT did not err in finding that it had the power to order the payment of interest on compensation awarded to Warren. The Appeals Tribunal, however, holds that the UNDT erred in its determination of the applicable interest rate. The Appeals Tribunal therefore vacates the UNDT's order on the payment of interest. It orders that the Secretary-General pay, within 60 days from the date this Judgment is issued to the parties, interest on the award of compensation at the US Prime Rate applicable on 25 March 2008 (5.25 per cent) calculated from 25 March 2008 to the date of payment of the compensation. If payment of the compensation is not made within 60 days, an additional 5 per cent shall be added to the US Prime Rate of 5.25 per cent from the date of expiry of the 60-day period to the date of payment.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Courtial

(Signed)

Judge Adinyira

(Signed)

Judge Painter

(Signed)

Judge Garewal

(Signed)

Judge Simón

Entered in the Register on this 20th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal

Dissenting Opinion of Judge Boyko

1. I would allow the appeal on the grounds that the UNDT did not have the statutory authority to impose interest and therefore erred in making an award of interest. Accordingly I would strike the portion of the judgment awarding interest.

2. The UNDT statute is silent on the issue of payment of interest and General Assembly resolution 63/253 expressly affirmed that the UNDT and the Appeals Tribunal “shall not have any powers beyond those conferred under their respective statutes”.

3. A review of the preparatory work undertaken in drafting the law may be relied upon to confirm the meaning resulting from literal, systematic, and teleological interpretation, or to determine the meaning when the interpretation based on those criteria either leaves the text “ambiguous or obscure” or “leads to a result which is manifestly absurd or unreasonable”.

4. Where the statute is silent on the matter, the Tribunal may consider the *travaux préparatoires* of the statutes to determine the matter. The legislative history of the UNDT statute shows that an explicit grant of power to award interest was considered by the General Assembly, but it was not included in the final statute. A review of the earlier drafts of the statute in question that were considered by the Fifth and Sixth Committees supports the view that the General Assembly did not intend to grant the UNDT the power to award interest.

5. Article 10 of the UNDT statute explicitly uses the term “compensation”, but is silent on the power of the UNDT to award interest. While it was the practice of the former Administrative Tribunal to order interest, I find that the power to impose interest was deliberately and specifically excluded from the UNDT draft statute.

6. It is clear that the exclusion of any provision to impose interest was not a mere oversight by the drafters of the UNDT statute who deliberately excluded it from the final draft of the UNDT statute adopted by the General Assembly. An earlier draft of the proposed statute did have a provision conferring the specific power to order the payment of interest but that provision was subsequently removed. It would follow that the drafters’ intention was not to confer the power to order payment of interest to the UNDT or the Appeals Tribunal.

7. In my view the UNDT exceeded its jurisdiction and therefore erred in imposing interest. I would strike this portion of the judgment.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Boyko

Entered in the Register on this 20th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal