

Translated from French

Case No. 2010-080

Mr. Castelli

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before: Judge Jean Courtial, Presiding
 Judge Sophia Adinyira
 Judge Inés Weinberg de Roca

Judgment No.: 2010-TANU-082

Date: 29 October 2010

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Nicholas Christonikos

Counsel for Appellant/Respondent: John Stompor

Judgment No. 2010-UNAT-082

Judge Jean Courtial, Presiding Judge

Synopsis

1. The Appeals Tribunal, in line with its finding of 1 July 2010 in the case *Warren v. Secretary-General of the United Nations* (judgment No. 2010-UNAT-059), finds that the United Nations Dispute Tribunal did not exceed its competence in ordering the payment of interest from the due date of the relocation grant, but that the Dispute Tribunal had erred in setting the interest rate at 8 per cent. The Appeals Tribunal decides to replace that rate with the United States prime rate applicable at the date on which the relocation grant became payable. It finds that interest is due from that date until the date of payment of the relocation grant, which the Appeals Tribunal previously confirmed as due to Mr. Castelli in its judgment No. 2010-UNAT-037 of 1 July 2010.

Facts and procedure

2. Mr. Castelli was assigned to New York to work for the United Nations Mission in Nepal from 4 April 2007 to 17 April 2008. He submitted a claim for a relocation grant,

THE UNITED NATIONS APPEALS TRIBUNAL

which was rejected. Mr. Castelli filed an application with the Dispute Tribunal. In judgment No. 2009/075 of 13 November 2009, the Dispute Tribunal found that Mr. Castelli was entitled to receive a relocation grant as he had worked in New York for the United Nations Mission in Nepal for more than a year and ordered the Administration to pay him that grant. Although the Secretary-General appealed against the judgment, the Appeals Tribunal upheld it in its judgment No. 2010-037 of 1 July 2010.

3. On 27 January 2010, the Dispute Tribunal rendered a second judgment, No. 2010/011, and then on 17 February 2010 issued order No. 30 (NY/2010), in which it granted the request for payment of the interest that Mr. Castelli considered due to him in connection with the relocation grant. The Dispute Tribunal fixed the interest rate at 8 per cent per annum and found that it should apply from 4 May 2008, the due date of the relocation grant, until the date of payment. The Dispute Tribunal ordered the Administration to pay Mr. Castelli the principal (US\$ 13,800), plus US\$ 2,208 in interest, for the two-year period from 4 May 2008 to 3 May 2010.

4. The Secretary-General filed an appeal against judgment No. 2010/011 and order No.

30 (NY/2010) on 15 March 2010. Mr. Castelli's answer was filed on 28 May 2010.

Submissions from parties

Secretary-General

5. The Dispute Tribunal erred on a question of law in finding that it had the power to award interest. It is clear from the legislative history of the statute of the Dispute Tribunal that, although the General Assembly had considered granting the Dispute Tribunal that power, the final version of the statute made no reference to it. The General Assembly had in fact wished to preclude that possibility.

6. It is clear from General Assembly resolution 63/253 that the statute confers only limited powers on the Dispute Tribunal. The lack of explicit exclusion of a given power cannot be used to infer that the General Assembly decided to grant that power.

7. The Dispute Tribunal erred on a question of law in finding that no principle relating to the awarding of interest was observed in the jurisprudence of the former Administrative Tribunal. In its 60 years of existence, the former Administrative Tribunal had only granted

THE UNITED NATIONS APPEALS TRIBUNAL

pre-judgment interest in about 3 per cent of its judgments. That had occurred mainly in relation to undue delay that was prejudicial to the applicant and in just a few cases for some other reason. The case of Mr. Castelli does not involve any of those circumstances.

8. The logic of the Dispute Tribunal is very different in this respect from the jurisprudence of the former Administrative Tribunal, yet no compelling reason is given for departing from the consistent jurisprudence that limited the awarding of pre-judgment interest to certain exceptional circumstances.

9. The delay in payment of the relocation grant to Mr. Castelli is the result of a straightforward disagreement. The unusual nature of the facts of the case quite reasonably led the Secretary-General to question whether Mr. Castelli was entitled to that grant under the Staff Rules and to bring that issue to the Dispute Tribunal. The non-payment of the grant while awaiting a response to that legitimate question could not be a reason for holding the Secretary-General accountable for undue delay.

10. The Dispute Tribunal erred in setting the interest rate at 8 per cent per year. The former Administrative Tribunal had generally set a high interest rate for the post-judgment

THE UNITED NATIONS APPEALS TRIBUNAL

period as a punitive measure to give the Organization an incentive to make the payment within the 90-day period. As the statute of the Dispute Tribunal explicitly excludes punitive measures, the setting of such a high interest rate is a violation of that provision.

11. An interest rate of 8 per cent is excessive. It would be an unexpected windfall for Mr. Castelli, as the returns to be obtained from the safest investments in United States dollars would have been much lower than 8 per cent for the period under consideration.

Mr. Castelli

12. The Secretary-General did not put forward any legal argument to support his claim that the Dispute Tribunal was prohibited from awarding interest by article 10.5 of its statute. Judgment No. 2010/011 should therefore be upheld.

13. The argument that the relocation grant would be used to make private investments rather than to cover the relocation expenses is misleading. The implication that sufficient funds would be available and make a relocation loan unnecessary might well also be challenged. Credit card loans have interest rates of from 15 to 20 per cent, which is much higher than the rate of 8 per cent granted by the Dispute Tribunal. Order No. 30 (NY/2010)

THE UNITED NATIONS APPEALS TRIBUNAL

should therefore be confirmed in principle, but the amount of interest to be paid should take into account the date on which the relocation grant is actually paid.

14. The relocation grant should have been paid more than two years ago and payment of interest is therefore consistent with a number of the former Administrative Tribunal's judgements.

Considerations

15. On 1 July, the Appeals Tribunal rendered a judgment in the case *Warren v. Secretary-General of the United Nations* (No. 2010-UNAT-059) in which it rejected, in plenary session, an argument similar to the one put forward by the Secretary-General in the present case. The Court judged as follows:

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

THE UNITED NATIONS APPEALS TRIBUNAL

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.

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.

THE UNITED NATIONS APPEALS TRIBUNAL

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.¹

¹ The footnote has been omitted.

THE UNITED NATIONS APPEALS TRIBUNAL

16. With regard to the interest rate, the Appeals Tribunal decided in the *Warren* case to award interest at the United States prime rate applicable on the date on which the principal was due, from that date until the date of payment of the grant awarded by the Dispute Tribunal. The Court added that if its judgment was not carried out within 60 days of its notification of the parties, the interest rate would be increased by five percentage points for the period from the date of expiry of the 60-day period to the date of payment.

17. As a result of this reasoning and the conclusions drawn from it, the Appeals Tribunal finds in the present case that, on the one hand, the Dispute Tribunal did not exceed its competence in awarding interest starting from the date on which the relocation grant due to Mr. Castelli became payable, namely on 4 May 2008, while on the other hand, the Dispute Tribunal erred in setting the interest rate at 8 per cent. The Appeals Tribunal decides to replace that rate with the United States prime rate applicable on 4 May 2008 (5 per cent). Interest is due for the period from that date to the date of payment of the relocation grant, which the Appeals Tribunal confirmed as being due to Mr. Castelli in its judgment No. 2010-UNAT-037 of 1 July 2010.

Judgment

18. The Appeals Tribunal confirms judgment No. 2010/011 of 27 January 2010 and order No. 30 (NY/2010) of 17 February 2010 of the Dispute Tribunal to the extent that the Tribunal awarded interest to Mr. Castelli for the period from 4 May 2008 on the amount of the relocation grant that was still due to him on that date. The Appeals Tribunal replaces the interest rate of 8 per cent set by the Dispute Tribunal with the United States prime rate applicable on 4 May 2008 (5 per cent). It decides that this interest rate applies, until the date of payment of the full amount of the relocation grant, to the amount due to Mr. Castelli on that date, with a deduction for any partial payments made previously, without prejudice to the increase of 5 percentage points if the judgment is not executed within a 60-day period from the date of notification of this judgment to the Secretary-General.

Done on this 29th day of October 2010 at New York, United States of America.

Original and authoritative version: French

THE UNITED NATIONS APPEALS TRIBUNAL

(Signed)

Judge Courtial, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 29th day of December 2010 in New York, United States of
America.

(Signed)

Weicheng Lin, Registrar
