



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

Case No. 2010-093

**Iannelli
(Respondent/Applicant)**

v.

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

JUDGMENT

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| Before: | Judge Inés Weinberg de Roca, Presiding Judge Mark P. Painter Judge Rose Boyko |
| Judgment No.: | 2010-UNAT-093 |
| Date: | 28 October 2010 |
| Registrar: | Weicheng Lin |

Counsel for Respondent/Applicant: Katya Melliush

Counsel for Appellant/Respondent: Melanie Shannon

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. The Secretary-General was ordered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) to pay Ivano Iannelli (Iannelli) his assignment and relocation grants, at the rate established for a staff member who is at the duty station with his spouse, including interest at the rate of eight per cent per annum from the date the payments fell due. The Secretary-General argues on appeal that the UNDT erred on a question of law and exceeded its competence in awarding interest.
2. The Appeals Tribunal holds that the UNDT has the power to award the payment of interest but erred in ordering the payment of interest at the rate of eight per cent per annum and decides to award interest at the US Prime Rate applicable at the due date of the entitlements. An extra five per cent is to be added to the US Prime Rate if the judgment of the Appeals Tribunal is not executed within 60 days of its issuance to the parties.

Facts and Procedure

3. Iannelli joined the United Nations Office for Project Services (UNOPS) in October 2004. On 23 November 2007, Iannelli commenced a fixed-term appointment with UNOPS under the 100 series of the former Staff Rules. Iannelli challenged the decision not to pay him the assignment grant and relocation grant due to internationally recruited staff members upon initial appointment under the Staff Rules. Iannelli's appeal to the Joint Appeals Board was transferred to the Dispute Tribunal after the introduction of the new internal justice system.
4. On 7 April 2010, the Dispute Tribunal rendered Judgment No. UNDT/2010/057, which found in favour of Iannelli. The Secretary-General was ordered to pay Iannelli his assignment and relocation grants, at the rate established for a staff member who is at the duty station with his spouse, including interest at the rate of eight per cent per annum from the date the payments fell due.
5. After receiving the Judgment on 8 April 2010, the Secretary-General filed an appeal on 24 May 2010. Iannelli filed an answer to the appeal on 7 July 2010.

Submissions

Secretary-General's Appeal

6. The Secretary-General submits that the Dispute Tribunal erred on a question of law and exceeded its competence in awarding interest. The legislative history of the Statute of the Dispute Tribunal (UNDT Statute) demonstrates that the General Assembly did not intend to grant the Dispute Tribunal the power to award interest.

7. Should the Appeals Tribunal hold that the Dispute Tribunal has the power to award interest, the Secretary-General submits that the Dispute Tribunal failed to provide compelling reasons for departing from the jurisprudence of the former Administrative Tribunal, which limited the award of pre-judgment interest to certain exceptional circumstances. In this case, there are no exceptional circumstances justifying an award of interest.

8. The Secretary-General also submits that the Dispute Tribunal erred on a question of law in setting the interest rate at eight per cent per annum, as the rate is excessive.

9. The Secretary-General requests that the Appeals Tribunal make a number of findings and reverse the order to pay interest in the Judgment of the Dispute Tribunal.

Iannelli's Answer

10. Iannelli submits that the Dispute Tribunal has the power to award interest under the UNDT Statute. Further, the power to award interest is not limited to exceptional circumstances in accordance with the jurisprudence of the former Administrative Tribunal. In the event that the Dispute Tribunal's power to award interest is considered to be limited to cases involving undue or unconscionable delay, the instant case would satisfy these requirements.

11. Iannelli argues that the interest rate of eight per cent per annum is not excessive in the circumstances.

12. Iannelli requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

13. The issue on appeal was decided by the full bench of this Tribunal in the *Warren* Judgment,¹ which held that the UNDT does have the power to award interest on compensation.

14. As this Tribunal decided in *Warren*, 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 obligations. To say that the UNDT or this 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 therefore proper “compensation” could not be awarded.

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

16. Turning to the second question, namely whether the rate of interest awarded by the UNDT is too high, this Tribunal holds that the award of interest at the rate of eight per cent per annum was unreasonable, and interest is to be awarded in accordance with the Judgment of this Tribunal in *Warren*.

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

Judgment

17. For the foregoing reasons, the appeal is allowed in part and the award of interest in the Judgment of the UNDT is set aside.

18. The Appeals Tribunal decides to award interest at the US Prime Rate applicable at the date that the entitlement to the assignment and relocation grants became due. The Appeals Tribunal further holds that this Judgment shall be executed within 60 days from the date of its issuance to the parties. If this Judgment is not executed within 60 days, five 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 assignment and relocation grants.

Dated this 28th day of October 2010 in New York, United States.

Original and authoritative version: English

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Painter

(Signed)

Judge Boyko

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

(Signed)

Weicheng Lin, Registrar