



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

Judgment No. 2019-UNAT-910

**Newland
(Applicant)**

v.

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

**JUDGMENT ON APPLICATION FOR INTERPRETATION
OF JUDGMENT**

Before:	Judge John Raymond Murphy, Presiding Judge Sabine Knierim Judge Martha Halfeld
Case No.:	2018-1204
Date:	29 March 2019
Registrar:	Weicheng Lin

Counsel for Applicant:	Self-represented
Counsel for Respondent:	Wambui Mwangi

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an Application for Interpretation of Judgment No. 2018-UNAT-820 rendered by the Appeals Tribunal in New York on 22 March 2018. Mr. Percy Junior Newland filed the application on 29 October 2018 and the Secretary-General submitted his comments on 29 November 2018.

Facts and Procedure

2. Mr. Newland joined the Organization in 1988 and served in various functions, the last of which was as Chief Transport Officer at the P-4 level with the United Nations Support Office in Somalia (UNSOS).

3. By memorandum dated 11 July 2016 from the UNSOS Chief Human Resources Officer, Mr. Newland was advised that he would reach his mandatory retirement age of 60 on 22 November 2016 and would thus be required to separate from the Organization on 30 November 2016.

4. On 30 November 2016, Mr. Newland filed two applications with the United Nations Dispute Tribunal (UNDT). One was a substantive application challenging the decision to retire him at the age of 60 instead of 62. The second application sought a suspension of action under Article 14 of the UNDT Rules of Procedure in respect of the decision to separate him from service on the same day.

5. By Order No. 494 (NBI/2016) (hereafter, the suspension order), the UNDT granted Mr. Newland's application for suspension of action pending informal consultation and resolution between the parties or the determination of the substantive application if mediation failed.

6. On 12 April 2017, Mr. Newland filed an application alleging that the Secretary-General was in non-compliance with the suspension order and seeking appropriate relief.

7. On 27 June 2017, the UNDT issued Judgment No. UNDT/2017/046, holding that Mr. Newland's application contesting the decision to retire him at the age of 60 was not receivable due to his failure to request management evaluation timeously. It accordingly did not consider the merits of the case and made no finding in relation to Mr. Newland's urgent

request regarding the Secretary-General's alleged contemptuous non-compliance with the suspension order.

8. Mr. Newland subsequently appealed the UNDT Judgment and also appealed the UNDT's failure to exercise the jurisdiction vested in it to enforce the Secretary-General's compliance with the suspension order. By Judgment No. 2018-UNAT-820, the Appeals Tribunal dismissed Mr. Newland's appeal against the decision of the UNDT on the receivability of the application and affirmed the UNDT Judgment to that extent. Nonetheless, the Appeals Tribunal held that Mr. Newland's appeal against the UNDT's failure to determine if the Secretary-General was in non-compliance with the suspension order was well-founded. The UNDT had granted the relief with the express intention of staying Mr. Newland's separation from service until the dispute was resolved. Accordingly, the Appeals Tribunal ordered that Mr. Newland be paid his full salary and all associated entitlements and benefits for the period 1 December 2016 to 27 June 2017, being the period from the date of the suspension order until the UNDT's Judgment, together with interest at the United States prime rate from 27 June 2017 to the date of payment, within 30 days of the issuance of Judgment No. 2018-UNAT-820.

9. On 13 August and 14 September 2018, the Administration made two payments to Mr. Newland as part of the execution of Judgment No. 2018-UNAT-820, without the interest mandated by the Appeals Tribunal. On 28 September 2018, another payment was made, again without interest. The Administration also denied Mr. Newland's request for relocation grant for his relocation from Nairobi to Mogadishu in 2014. Mr. Newland has since requested this outstanding payment. However, the Administration responded that he was not entitled, without providing any explanations.

10. Mr. Newland accordingly filed an application for interpretation of judgment with the Appeals Tribunal on 29 October 2018 in respect of which the Secretary-General filed his comments on 29 November 2018.

Submissions

Mr. Newland's Application

11. In addition to the three payments he received, Mr. Newland believes that had he not separated from service on 30 November 2016 he would have been entitled to: a) Special Post Allowance (SPA) which he was in receipt of, for performing the functions of a P-5 post, at the

time the Administration stopped him from working; b) Hazard Pay; and c) Rest and Recuperation (R&R) leave days which he would have accrued, as well as a free ticket each month to the designated place of R&R. Moreover, in 2016, the UNDT, in a series of cases, ruled that the Administration had no authority to deny staff their relocation grant as the Office of Human Resources Guidelines on Relocation Grant, relied on by the Administration, lacked legal authority to overrule Administrative Instruction ST/AI/2006/5 (Excess baggage, shipments and insurance) applicable at the time.

12. Accordingly, Mr. Newland seeks the Appeals Tribunal's clarification on whether the entitlements and benefits he did not receive fell within the Judgment as part of "all associated entitlements and benefits" to be paid.¹

The Secretary-General's Comments

13. As of 29 November 2018, the Administration has been in the process of finalising its execution of Judgment No. 2018-UNAT-820, including the payment of all interest due to Mr. Newland on his salary and associated benefits and entitlements from 27 June 2017 to the dates of payment. Mr. Newland was paid SPA and Hazard Pay on 29 November 2018. Accordingly, Mr. Newland's claims for SPA, Hazard Pay and all interest payments are now moot.

14. However, the Secretary-General still maintains that Mr. Newland is not entitled to the payment of R&R. In accordance with Administrative Instruction ST/AI/2011/7 (Rest and recuperation) that was in force in 2016, R&R is intended to provide a staff member "regular authorized time off to leave the duty station... to be given a break from the dangerous, stressful, isolated working and living conditions under which [he or she] serve[s]". ST/AI/2011/7 stresses that "[r]est and recuperation is not additional leave entitlement or financial compensation for the degree of hardship and insecurity of a duty station". Accordingly, in the event that the staff member did not take R&R, he or she would not be entitled to additional annual leave or financial compensation.

15. Likewise, Mr. Newland would not have received a free ticket from the Organization each month to the designated place of R&R. Section 3.18 of ST/AI/2011/7 provides that where United Nations transportation for R&R purposes is available, it will be provided free of charge and no payment for travel costs will apply. Mr. Newland was stationed in Mogadishu at the time

¹ *Newland v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-820, para. 46.

that he was separated. The designated place for R&R was Nairobi. The Organization provided transportation from Mogadishu to Nairobi for all eligible staff members serving in that duty station free of charge. Accordingly, no payment for travel costs is applicable. Had Mr. Newland remained in service from 1 December 2016 to 27 June 2017, he would have had to avail himself of the free transportation provided by the Organization to the designated place of R&R. Mr. Newland has endured no loss in this regard.

16. As for Mr. Newland's claim of non-payment of his relocation grant in 2014, the Secretary-General submits that this is a new matter that Mr. Newland seeks to litigate before the Appeals Tribunal. Mr. Newland did not request management evaluation of the alleged denial of his relocation grant in 2014, and neither did he raise this issue before the UNDT nor in his appeal before the Appeals Tribunal. As this was a payment that would have been paid in 2014 had Mr. Newland been eligible for it and had yet to be paid at the time that he was separated from the Organization on 30 November 2016, the non-payment of this grant was not a consequence of, or related to, his separation on 30 November 2016. Accordingly, the 2014 relocation grant does not form part of the execution of Judgment No. 2018-UNAT-820.

17. The Secretary-General requests the Appeals Tribunal to find that the Administration has finalized its execution of Judgment No. 2018-UNAT-820.

Considerations

18. In terms of Article 11(3) of the Appeals Tribunal Statute, either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgment. An application for interpretation will be admitted, if the parties disagree on the meaning or scope of a judgment because it is unclear or ambiguous.²

19. Accepting that Mr. Newland has now been paid SPA, Hazard Pay and outstanding interest, the only questions requiring determination are whether Mr. Newland was entitled to payment of R&R, free tickets and the relocation grant. We accept that there is a degree of uncertainty in this regard.

² *Awe v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-827, para. 27.

20. The purpose of R&R is to provide a staff member regular authorized time off to leave the duty station to be given a break from the dangerous, stressful, isolated working and living conditions under which he or she serves. Paragraph 1.1 of ST/AI/2011/7 (Rest and recuperation) provides:

Staff members required to work for extended periods at duty stations under hazardous, stressful and difficult conditions shall be granted regular periods of rest and recuperation under the terms of the present instruction, in order to protect their health and well-being and to ensure optimal work performance upon the resumption of their duties, while preserving the operational readiness of the Organization. Rest and recuperation is a means by which staff members and other eligible individuals can take regular authorized time off to leave the duty station approved for rest and recuperation purposes in order to be given a break from the dangerous, stressful, isolated working and living conditions under which they serve. Rest and recuperation is not an additional annual leave entitlement or financial compensation for the degree of hardship and insecurity of a duty station.

21. Mr. Newland's claim that he is entitled to the payment of R&R since he would have accrued R&R leave days had he not separated from service on 30 November 2016 is thus not sustainable. Paragraph 1.1 of ST/AI/2011/7 clearly states that R&R is not an additional annual leave entitlement or financial compensation. Therefore, unlike annual leave, he would not have accrued R&R leave days for which he was entitled to compensation.

22. Mr. Newland's claim for a free ticket from the Organization each month to the designated place of R&R is equally unsustainable. Paragraph 3.18 of ST/AI/2011/7 provides that whenever United Nations transportation is available, it will be provided free of charge and no payment for travel costs will apply. Should a staff member or other eligible individual choose for his or her own convenience to travel on a date when United Nations transportation is not available, no payment for travel costs will apply. Mr. Newland was stationed in Mogadishu at the time of his separation and the designated place for R&R was Nairobi. The Organization provided transportation from Mogadishu to Nairobi free of charge. Payment for travel costs is therefore not applicable. In any event, given that Mr. Newland was not working in Mogadishu during the period between 1 December 2016 to 27 June 2017, R&R and related entitlements were not applicable and he enjoyed no entitlement in that regard.

23. Mr. Newland's claim for relocation grant for his relocation from Nairobi to Mogadishu in 2014 does not form part of the execution of the Judgment. The Administration denied his request for relocation grant for his relocation from Nairobi to Mogadishu in 2014. He did not request management evaluation of the non-payment of his relocation grant in 2014, and neither raised it before the UNDT nor in his appeal before the Appeals Tribunal. The non-payment of his relocation grant in 2014 is a new matter and did not form part of the execution of Judgment (i.e. payment of his "full salary and all associated entitlements and benefits for the period 1 December 2016 to 27 June 2017 together with interest").

Judgment

24. It is declared that the Administration has finalized its execution of Judgment No. 2018-UNAT-820.

Original and Authoritative Version: English

Dated this 29th day of March 2019 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Knierim

(Signed)

Judge Halfeld

Entered in the Register on this 29th day of May 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar