



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

Judgment No. 2023-UNAT-1315

**Afm Badrul Alam
(Respondent/Applicant)**

v.

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

**JUDGMENT
ON APPLICATIONS FOR INTERPRETATION AND EXECUTION**

Before:	Judge Kanwaldeep Sandhu, Presiding Judge John Raymond Murphy Judge Graeme Colgan
Case Nos.:	2022-1701 & 2022-1706
Date of Decision:	24 March 2023
Date of Publication:	3 April 2023
Registrar:	Juliet Johnson

Counsel for Mr. Alam: Sètondji Roland Adjovi

Counsel for Secretary-General: Rupa Mitra and Patricia C. Aragonés

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. In Judgment No. 2022-UNAT-1214¹ (the Judgment), the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) ordered the Administration “to provide [Mr. Afm Badrul Alam] with the sum of USD10,350 as in lieu compensation”.
2. The Secretary-General of the United Nations has filed an application for interpretation of the Judgment as to whether the non-family service allowance (NFSA) of USD 1,650 per month that Mr. Alam received as a monthly entitlement should be deducted from the amount of compensation *in lieu* payable to him pursuant to that Judgment.
3. Mr. Alam has filed an application for execution of the Judgment, requesting that the Appeals Tribunal enforce the full payment of USD 10,350 as *in lieu* compensation.
4. For the reasons set out below, the Appeals Tribunal grants the Secretary-General’s application and partially grants Mr. Alam’s application.

Facts and Procedure²

5. Mr. Alam is retired from the Organization.³ He had served as a Logistics Operations Officer at the P-4 level at the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic.⁴
6. Mr. Alam contested the decision not to select him for the position of Logistics Operations Officer in the Office of Peacekeeping Strategic Partnerships (OPSP) in New York. The United Nations Dispute Tribunal (UNDT) rescinded the contested decision and did not order *in lieu* compensation, finding that the level of the advertised post was the same as that of the post Mr. Alam had encumbered at the time and there was no evidence that he suffered any economic loss.⁵

¹ *Afm Badrul Alam v. Secretary-General of the United Nations*, Judgment ated 18 March 2022.

² Summarized from Judgment No. 2022-UNAT-1214 as relevant to the applications.

³ *Ibid.*, para 4.

⁴ *Ibid.*, para. 1.

⁵ *Ibid.*, para. 9.

The Judgment

7. The Appeals Tribunal granted Mr. Alam’s appeal in part and ordered the Administration “to provide [him] with the sum of USD10,350 as in lieu compensation”.

8. The Appeals Tribunal reasoned that the UNDT had “erred by failing to implement the mandatory obligation set out in Article 10.5(a) that it must award an amount of compensation in lieu of rescission” and that “the quantum of in lieu compensation will depend on the circumstances of each case, but some relevant factors that can be considered, among others, are the nature of the post formerly occupied, the remaining time to be served by a staff member on his or appointment, and their expectancy of renewal”.⁶

9. The Appeals Tribunal calculated the quantum of compensation, based on the finding that the additional cost of maintaining two households amounted to USD 1,725 month per month and “set this in lieu compensation as the most reasonable in the circumstances and the evidence” before the Tribunal.⁷ The Appeals Tribunal found that entitlements and benefits, such as rental subsidies, grants and post adjustments, are designed to cover the actual costs of relocation and living in a certain duty station, are not intended to provide additional remuneration or salary to staff members and “cannot be regarded as considerations in determining in lieu compensation”.⁸

Procedure before the Appeals Tribunal

10. On 6 June 2022, the Secretary-General filed an application for interpretation of the Judgment, to which Mr. Alam responded on 23 June 2022.

11. On 29 June 2022, Mr. Alam filed an application for execution of the Judgment, to which the Secretary-General responded on 29 July 2022.

12. On 26 October 2022, the Appeals Tribunal consolidated the applications.

⁶ *Ibid.*, paras. 26 and 28.

⁷ *Ibid.*, para. 29.

⁸ *Ibid.*, para. 30.

Submissions

The Secretary-General's Application

13. The Secretary-General requests that the Appeals Tribunal provide guidance on how the legal principles articulated in the Judgment may affect the amount of compensation *in lieu* payable to Mr. Alam, in particular, whether the NFSA of USD 1,650 per month that Mr. Alam received as a monthly entitlement for being in a non-family duty station should be deducted from the amount of compensation *in lieu* payable to him.

14. The Secretary-General argues that Mr. Alam received the NFSA to cover the additional cost of separation from family, i.e., the cost of maintaining two households, not to provide additional remuneration or salary. In order to follow all the principles articulated in the Judgment, the sum payable to Mr. Alam would be USD 450, i.e., USD 1,725 per month (costs of a second home) minus USD 1,650 per month (the NFSA), multiplied by 24 months, in turn multiplied by 25 per cent.

Mr. Alam's Comments

15. Mr. Alam requests that the Appeals Tribunal:

(a) reject the Secretary-General's application in its entirety;

(b) award interest from the date of the Judgment;

(c) award compensation of costs in the amount of USD 10,000 for manifest abuse of process; and

(d) consider sanctioning the Counsel for the Secretary-General, including possible referral to their admitted bar associations for attorney code of conduct violations for manifestly and knowingly abusing the provisions of the Appeals Tribunal Statute and rules of procedure.

16. Mr. Alam argues that the Secretary-General, dissatisfied and disagreeing with the outcome, seeks to introduce new facts and evidence and overturn the Judgment. Additional evidence cannot be received in an application for interpretation. There is no ambiguity in the Judgment.

17. Mr. Alam submits that in order to respond to the application, he was compelled to engage legal services. The abuse of process by the Secretary-General has caused him expenses in the amount of USD 10,000.

Mr. Alam's Application

18. Mr. Alam requests execution of the Judgment and submits that, as of the date of the application, he has not received the money, the payment of which the Appeals Tribunal ordered in para. 41 of the Judgment. Absent any timeframe, the Judgment was immediately executable on the date it was rendered.

The Secretary-General's Comments⁹

19. The Secretary-General maintains that Mr. Alam's application should be rejected.

20. The Secretary-General submits that the Judgment was rendered into the Appeals Tribunal Register and transmitted to the parties on 6 May 2022. Mr. Alam's argument that the application for interpretation was purely dilatory in nature, is manifestly inaccurate as the request for interpretation was filed within one month of receiving the Judgment, i.e., within a reasonable time. Mr. Alam's assertion that the application for interpretation seeks to further delay the payment of moneys ordered, is unsubstantiated. The application for interpretation was made in good faith.¹⁰

21. The Secretary-General argues that the application is unjustified in view of the pending adjudication of the application for interpretation. Any overpayment would be against the interests of the Organization, as Mr. Alam is no longer a staff member, and the Organization has no meaningful way to recover the overpayment.

22. The Secretary-General points out that Mr. Alam failed to disclose to the Appeals Tribunal his receipt of the monthly NFSA in the amount of USD 1,650 when submitting that he had incurred additional monthly costs in the amount of USD 1,725 for maintaining two households. Mr. Alam could be seen as engaging in a fraud upon the Appeals Tribunal.

⁹ Summarized as relevant to Mr. Alam's application for execution.

¹⁰ The Secretary-General refers to *Ade Mamonyane Beatrice Lekoetje v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1237, "granting the Secretary-General's application for interpretation" and "modifying the monetary remedy accordingly".

Considerations

23. There are two applications before us, one is an application for interpretation and the other for execution of the Judgment.

24. Regarding the application for interpretation, Article 11(3) of the Appeals Tribunal Statute provides that either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgment. This is particularly the case if the parties disagree on the meaning or scope of a judgment because it is unclear or ambiguous.¹¹

25. In the Judgment, the award for compensation *in lieu* of rescission included the additional cost incurred by Mr. Alam in maintaining two households as a result of the non-selection decision. We denied his request to consider other losses including grants, differences in post adjustments, and “extra costs he incurred as a result of staying in [the Central African Republic]” as they were designed to cover the actual costs of relocation and living in a certain duty station and “not intended to provide additional remuneration or salary” for the purpose of determining *in lieu* compensation. NFSA falls into the latter category.

26. NFSA is intended to cover the additional financial cost of involuntary separation of staff from families and dependents in non-family duty stations, such as the cost of maintaining two households, not to provide additional remuneration or salary. The NFSA provisions provide that this is a special entitlement for staff members serving at designated duty stations, provided they meet the applicable conditions (Staff Rule 3.15, applicable at the relevant time¹²). In addition, NFSA is not payable if the Secretary-General has exceptionally approved the presence of eligible dependants at the duty station or the non-family designation of the duty station changes (Staff Rule 3.15(b), applicable at the relevant time,¹³ and Administrative Instruction

¹¹ *Newland v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-910, para. 18; *Awe v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-827, para. 27.

¹² Secretary-General’s Bulletin ST/SGB/2018/1 (Staff Regulations and Rules of the United Nations). Rule 3.15(b) stated as follows: “Staff in the Professional and higher categories and in the Field Service category and staff in the General Service category considered internationally recruited pursuant to staff rule 4.5 (c) who are appointed or reassigned to a non-family duty station may be paid a non-pensionable non-family service allowance. The amount and conditions under which the allowance will be paid shall be determined by the Secretary-General. (...)”.

¹³ *Ibid.* Staff Rule 3.15(b) additionally specified as follows: “(...) In no event shall the allowance be payable if the Secretary-General has exceptionally approved the presence of eligible dependants of the staff member at the duty station pursuant to staff rule 3.15 (a).”

ST/AI/2019/3/Rev.1 (Special entitlements for staff members serving at designated duty stations)¹⁴).

27. Therefore, we agree that continued payment of this NFSA in addition to the awarded compensation *in lieu* of rescission, which was calculated based on the additional cost of maintaining two households as a result of the unlawful selection decision, would be duplicative.

28. In conclusion, we find that the NFSA of USD 1650 per month that Mr. Alam received from the Administration over the relevant period (i.e., the date of the unlawful decision to the date of his early retirement, which was calculated in the Judgment to be 24 months) should be deducted from the USD 10,350 awarded in the Judgment. This would provide Mr. Alam with a total of USD 450.¹⁵

29. Turning to the application for execution, Article 11(4) of the Appeals Tribunal Statute provides that where the judgment requires execution within a certain period of time and such execution has not been carried out, either party may apply to the Appeals Tribunal for an order for execution.

30. Mr. Alam says that the Administration has not provided him with the compensation awarded in the Judgment. Given the application for interpretation, it was reasonable for the Administration to await the Appeals Tribunal determination on the application. However, we order the Secretary-General to fully execute and pay to Mr. Alam USD 450 within 30 calendar days from the issuance of this judgment.

¹⁴ Section 2.5 of ST/AI/2019/3/Rev.1 provides as follows: “If any eligible dependant is installed at the duty station or the staff member no longer has an eligible dependant, the allowance shall be discontinued”; section 2.9 specifies as follows: “If there is a change in the designation of a non-family duty station whereby the family restrictions are lifted during the course of a staff member’s appointment or assignment to the duty station, and the staff member was in receipt of the non-family service allowance, the allowance shall be discontinued following a transition period of three months (...)”; section 2.10 further specifies as follows: “In the event of a change in the designation of the duty station to non-family during a staff member’s appointment or assignment to the duty station, the payment of a reduced non-family service allowance shall be discontinued as of the date of the change in designation. (...)”.

¹⁵ See the calculation in para. 14 of this judgment.

31. Mr. Alam also seeks interest from the date of the Judgment. We previously determined that 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 compensation¹⁶.

32. However, given the delay in execution and in the interest of fairness, we find that interest should be awarded on this sum from the date of the original Judgment (18 March 2022) to the date of payment. The interest should be at the US Prime Rate applicable at the date of the original Judgment (3.25 per cent) and if this judgment is not executed within 30 days, 5 per cent shall be added to the US Prime Rate from the date of expiry of the 30-day period to the date of payment of the compensation.

33. There is no basis for Mr. Alam's request to sanction counsel for the Secretary-General including possible referral to their admitted bar associations, or to award costs for abuse of process. There is no evidence of abuse of process or violation of any code of conduct by counsel. Under Article 9(2) of the Appeals Tribunal Statute, this Tribunal may award costs against a party who has manifestly abused the appeals process. The Secretary General's conduct falls well short of an abuse of process.

¹⁶ *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059, para. 10.

Judgment

34. The Secretary-General's application for interpretation of Judgment No. 2022-UNAT-1214 is granted and Mr. Alam's application for execution of Judgment No. 2022-UNAT-1214 is partially granted.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Colgan

Judgment published and entered in the Register on this 3rd day of April 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar