



Before: Judge Rowan Downing

Registry: Geneva

Registrar: René M. Vargas M.

VALENTINE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT
ON AN APPLICATION FOR
INTERPRETATION**

Counsel for Applicant:

Shazia Akhtar

Counsel for Respondent:

Bettina Gerber, UNOG

Introduction

1. On 1 June 2017, the Applicant filed an application for interpretation of Judgment *Valentine* UNDT/2017/004, dated 27 January 2017, in which the Tribunal rescinded the selection decision for the position of Chief of Transport Section (P-5), UNCTAD, advertised under Job Opening Number 13-ECO-UNCTAD-28179-R-Geneva and awarded the Applicant, *inter alia*, compensation for harm pursuant to art. 10.5(b) of the United Nations Dispute Tribunal Statute.

Consideration

2. Specifically, the Applicant requests interpretation of paragraph 124(c) of the Judgment whereby the Tribunal decided that:

The Respondent shall pay the Applicant material damages equivalent to the difference of the net base salary the Applicant would have received at the P-5 level and his current salary at the P-4 level, from the time of the implementation of the contested decision until issuance of the present judgment.

3. The Applicant asserts that this paragraph should have been interpreted and applied in such a manner as to compensate him for what he did not receive, but would have received, had he actually been selected for the position.

4. The Applicant was paid loss of earnings calculated on the basis of his current salary, namely that of a P-4, step VIII, and the lowest level of the contested post, namely P-5, step I, and without applying step increments nor post adjustment. The Applicant asserts that he would have received step increments and that such should have been taken into consideration in the calculation of the payment made to him. He also asserts that the calculation should have included post adjustment.

5. In his reply of 6 July 2017, the Respondent submits that as the Judgment is clear and comprehensible, there is no issue for interpretation and the application is not receivable.

6. The application for interpretation is based upon art. 30 of the Rules of Procedure of the Dispute Tribunal, which provides:

Interpretation of judgements

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or scope of a judgement, provided that it is not under consideration by the Appeals Tribunal. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application. The Dispute Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

7. In *Porter* UNDT/2017/024 (see also *Sidell* 2014-UNAT-489 and *Abbasi* 2013-UNAT-315), the Tribunal noted:

15. The purpose of interpretation as set out in the Statute and Rules of the Appeals Tribunal is not to determine the disagreement of an applicant with a judgment who wishes to reargue an appeal. Interpretation is only needed to clarify the meaning of a judgment where there are reasonable doubts about the will of the Tribunal or the arguments leading to a decision. But if the judgment is comprehensible, whatever the opinion the parties may have about it or its reasoning, an application for interpretation is not admissible.

8. At the outset, the Tribunal stresses that the Applicant, contrary to his assertion, was not awarded compensation for loss of earnings. He was awarded material damages for his loss of opportunity to earn a salary at the P-5 level for the period between the appointment of the selected candidate and the conclusion of an eventual new selection procedure, as clearly expressed in para. 113 of the Judgment. Calculation for loss of opportunity is different from that of an actual loss of earning and, in this respect, the Tribunal noted at para. 114 of its Judgment that it was “extremely difficult to calculate the quantum of damages to compensate the Applicant’s loss of opportunity”.

9. The Tribunal has reviewed the paragraph sought to be interpreted and is of the view that the Judgment is comprehensible and clear. The expression “net base salary” is clear and unambiguous and refers to gross salary minus staff assessment (see *Lloret Alcaniz et al.* UNDT/2017/097). It does not include a post adjustment

component. The Tribunal also clearly did not provide for the taking into consideration of a possible step increment in the calculation of the quantum of material damages.

10. The Applicant is, in fact arguing for additional damages to be awarded, or, in the alternative seeks to appeal the decision under the guise of an application for interpretation. The purpose of an application for interpretation is not to seek an alteration to the Judgment but to obtain clarification of the decision itself (see International Labour Organization Administrative Tribunal, Judgment No. 2483).

11. Therefore, the Tribunal finds that the application for interpretation is not receivable.

12. The Tribunal notes that a number of additional matters have been raised in the application indicating that the selected candidate for the contested post remains in the post despite the fact that the Tribunal found in its Judgment that she was ineligible for it and, therefore, that her selection was void (see para. 102). The Tribunal indicated that the selection decision in these circumstances had to be rescinded as the selected candidate remaining on the post would otherwise perpetuate the illegality of her appointment. The Tribunal also referred the matter for accountability pursuant to art. 10.8 of its Statute.

13. The situation disclosed in the application for interpretation raises very serious issues in respect of the application of the rule of law within the Organization. Action must be taken by the Organization to redress an illegality, irrespective of the considerations of any referral to the Secretary-General. Non-compliance with the laws of the Organization is an independent issue relating to the application of the most basic and fundamental precepts of the rule of law within the Organization, which is distinct from actions to enforce accountability of managers for their actions.

Conclusion

14. In view of the foregoing, the Tribunal DECIDES that the application for interpretation is not receivable and is, therefore, rejected.

(Signed)

Judge Rowan Downing

Dated this 23^d day of April 2018

Entered in the Register on this 23^d day of April 2018

(Signed)

René M. Vargas M., Registrar, Geneva