

# UNDT/2021/125, AZAR

## UNAT Held or UNDT Pronouncements

The Applicant was not notified of any indebtedness to the Organization or called upon to settle it, as required by ST/AI/155/Rev.2. The initial withholding did not have the required authorization in the USG/Management's decision; rather, it was applied in an arbitrary and obscure fashion, with the Applicant learning of it only by the fact that the pension was not forthcoming. It was apparent that, starting with the irregularity of not informing the Applicant of the withholding decision for two months following his separation, the Administration had not seriously undertaken to establish either the legal basis for or the value of the claimed overpayment. The withholding of the Applicant's notification of separation was irregular and not proportionate. It was applied without sufficient determination of the basis and value of the alleged overpayment, as well as for an excessive amount of time. Procedural irregularity and unjustified delay occurred over 119 days. Consequently, the Respondent was ordered to pay interest on the Applicant's pension benefit for 119 days. The Applicant's claim for moral damages was dismissed. The Applicant's contention about improper calculation of his pension was found irreceivable.

## Decision Contested or Judgment/Order Appealed

The Applicant contested: (i) the withholding of his final entitlements to cover indebtedness to the Organization in accordance with staff rule 3.18(c)(ii); and (ii) withholding of the issuance of any notification to the pension fund of his separation until he had satisfactorily settled all indebtedness to the Organization in accordance with paragraph 12 of ST/AI/155/Rev.2.

## Legal Principle(s)

The purpose of ST/AI/155/Rev.2 is to enforce compliance with a financial obligation, the extent of which is defined, although it may be disputed. A separating staff member is put before the alternative between paying or having his pension disbursement delayed, while he can dispute the obligation in the appropriate fora. There must be a sufficient level of probability of the indebtedness, the value of it estimated and the notice given to the separating staff member, in order to enable him/her to take an informed decision whether to offer a kind of surety in exchange of the release of the documents while the determination is being made. It further results from staff rule 3.18(c)(ii) and ST/AI/2009/1 that the main tool for recovery of money owed to the Organization is offsetting against a staff member's salary and entitlements. It is more effective and quantifiable and does not undermine the provisional function of the entitlement as does withholding of the notification to UNJSPF. The latter, therefore, is rather an extraordinary measure, the resort to which should be reserved to situations where execution against the salary and entitlements is impossible or insufficient.

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

Full judgment

[Full judgment](#)

Applicants/Appellants

AZAR

Entity

UNIFIL

Case Number(s)

UNDT/NBI/2019/5/R1

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

31 Oct 2021

Duty Judge

Judge Milart

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45

Pension (see also, UNJSPF)

Applicable Law

Administrative Instructions

- ST/AI/155/Rev.2
- ST/AI/2009/1

Staff Rules

- Rule 3.18(c)(ii)

Related Judgments and Orders

UNDT/2020/067

2021-UNAT-1104