

# UNDT/2023/103, Kabila

## UNAT Held or UNDT Pronouncements

The Tribunal established that there was no evidence to support the Administration's position. Therefore, the Tribunal held that the contested decision was arbitrary, capricious, and unlawful.

Regarding the Applicant's claim for damages, the Tribunal concluded that no evidence was presented by the Applicant and thus she failed to sustain her burden of both production and proof.

In light of the Tribunal's findings, the Respondent was ordered to pay to the Applicant four months of interest on the money that was due to her, calculated at the US prime rate. The Applicant's claim for financial and moral damages was denied.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision dated 22 August 2022 by the Under-Secretary-General, Department of Management Strategy, Policy and Compliance, to delay the issuance of her Personnel/Payroll Clearance Action Form ("P.35") and the release of her Separation Notification Form ("PF.4") until the conclusion of investigations against her for possible fraud by the Office of Internal Oversight Services.

## Legal Principle(s)

Pursuant to sections 5 and 10 of ST/AI/155/Rev.2 (Personnel payroll clearance action), the Administration is required, amongst others, to provide a staff member preparing to separate with a copy of ST/AI/155/Rev.2, completing form P.35 normally one month in advance of the last regular working day of the staff member, preparing the pension fund separation notification (PF.4) and sending it to the Secretariat of the United Nations Joint Staff Pension Fund.

The appropriate remedy for delays in paying monetary entitlements is the award of damages. The Statute of the Dispute Tribunal expressly authorizes the award of compensation for harm, supported by evidence. The Applicant bears the burden to adduce sufficient evidence proving beyond a balance of probabilities the existence of factors causing harm to the victim's personality rights or dignity. That evidence may take many different forms.

## Outcome

Judgment entered for Applicant in full or in part

Outcome Extra Text

The Respondent was ordered to pay to the Applicant four months of interest on the money that was due to him, calculated at the US prime rate.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kabila

Entity

MONUSCO

Case Number(s)

UNDT/NBI/2023/026

Tribunal  
UNDT  
Registry  
Nairobi  
Date of Judgement  
12 Sep 2023  
Duty Judge  
Judge Wallace  
Language of Judgment  
English  
Issuance Type  
Judgment  
Categories/Subcategories  
Reasons  
Evidence of harm  
Delay  
Non-pecuniary (moral) damages  
Remedies  
United Nations Joint Staff Pension Fund (UNJSPF)  
Administrative decision  
Compensation  
Due process  
Applicable Law  
Administrative Instructions

- ST/AI/155/Rev.2

Related Judgments and Orders  
2017-UNAT-742  
2020-UNAT-1069  
UNDT/2021/125  
UNDT/2017/043  
UNDT/2011/144  
UNDT/2016/100  
2010-UNAT-059