

# **UNDT/2023/104, Ngoie Mwenge**

## **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 he failed to sustain his 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 him, 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 his Personnel/Payroll Clearance Action Form ("P.35") and the release of her Separation Notification Form ("PF.4") until the conclusion of investigations against him 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

Ngoie Mwenge

## Entity

MONUSCO

## Case Number(s)

UNDT/NBI/2023/027

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

12 Sep 2023

## Duty Judge

Judge Wallace

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Reasons

Non-pecuniary (moral) damages

Delay

Evidence of harm

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