



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/005
Judgment No.: UNDT/2020/067
Date: 5 May 2020
Original: English

Before: Judge Margaret Tibulya

Registry: Nairobi

Registrar: Abena Kwakye-Berko

AZAR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Elizabeth Gall, AAS/ALD/OHR
Jonathan Croft, AAS/ALD/OHR

Background

1. The Applicant is a former staff member of the United Nations Interim Force in Lebanon (“UNIFIL”).
2. On 28 January 2019, he filed an application contesting the decision of the Under-Secretary-General for Management (“USG/DM”) to authorise the withholding of his final entitlements to cover indebtedness to the Organization in accordance with staff rule 3.18(c)(ii) and withhold 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 (Personnel Payroll Clearance Action) as amended (“the contested decision”).
3. The Respondent replied to the application on 1 March 2019.
4. The Tribunal held a case management discussion (“CMD”) on 22 April 2020 subsequent to which the Respondent filed a motion requesting the Tribunal to conclude the matter for mootness. The Applicant filed a response to the said motion on 24 April 2020.
5. For the reasons set out further below, the Tribunal finds that the contested decision has been rendered moot. This application is accordingly dismissed.

Summary of the relevant facts

6. On 5 December 2016, the Applicant underwent surgery for multiple benign tumour resection in his lumbar spine area. Between 15 February 2017 and April 2018, he had to return to hospital frequently for various check-ups and underwent several rounds of rehabilitation.¹
7. On 1 September 2018, the Applicant resigned from the United Nations.²

¹ Application, annex 2.

² Reply, annexes 1 and 2.

8. On 5 October 2018, the Applicant was informed that his final separation entitlements had been withheld due to an ongoing investigation into an alleged misconduct.³

9. By memorandum dated 18 October 2018, the Assistant Secretary-General (“ASG”), Department of Field Support (“DFS”) referred allegations of misconduct implicating the Applicant to the ASG, Office of Human Resources Management (“OHRM”) for appropriate action.⁴ It was specifically alleged that the Applicant had engaged in unauthorized outside employment while employed at UNIFIL during the period 5 November 2016 to 1 November 2017, that he took a combination of certified sick leave and annual leave during the same period, that he had misrepresented his academic credentials and that he had failed to disclose that he had received a disciplinary measure following a United Nations disciplinary process.

10. On 29 October 2018, the Applicant sought management evaluation of the decision not to process his separation, including issuing the relevant documents to the United Nations Joint Pension Fund (“UNJSPF”), pending the completion of the ongoing investigation and disciplinary process.⁵

11. On 9 November 2018, the ASG/OHRM sent a memorandum to the Applicant requiring him to respond to the allegations contained in the 18 October 2018 memorandum.⁶ The Applicant was also informed that the USG/DM had taken the contested decision.

12. The Applicant submitted his comments in response to the 9 November 2018 memorandum on 3 December 2018.⁷

13. On 5 December 2018, the UNIFIL Chief, Human Resources Section (“HRS”), informed the Applicant that he was expected to pay the amount of LBP45,186,852.73

³ Reply, annex 4, page 13, email from Ms. Wanda Carter, 10 October 2018.

⁴ Reply, annex 3.

⁵ Reply, annex 4.

⁶ Reply, annex 5.

⁷ Reply, annex 6.

to the Organization and to provide proof of payment so that they could inform United Nations Headquarters accordingly.⁸ However, in a follow up memorandum dated 13 December 2018, the Chief/HRS informed the Applicant to disregard her earlier letter as the matter was still under consideration.⁹

14. On 5 February 2019, the Management Evaluation Unit (“MEU”) decided to uphold the contested decision.¹⁰

15. On 1 March 2019, the Chief/HRS informed the Applicant that as soon as he settled his indebtedness to the Organization, amounting to LBP3,925,649.65, UNIFIL would process his final separation entitlements and would release his P.35 form to the UNJSPF.¹¹

16. After the application was filed, the Applicant settled his indebtedness to the Organization of USD1,195 through a payment by check dated 9 March 2019. He informed the Organization by e-mail on the same date.¹²

17. On 11 March 2019, the Organization instructed that the Applicant’s final payments be processed and that the P.35 form be released to the UNJSPF and the Applicant began receiving pension benefits in May 2019.¹³

Considerations

18. The Applicant’s complaint was against the Respondent’s failure to release to the UNJSPF documents relevant to the processing of his pension and the non-payment of the pension. He requested that the Tribunal orders the Administration to release the documents to the UNJSPF so that his pension benefits could be released.

19. In this regard, the issue the Tribunal had been called to resolve was whether the

⁸ Reply, annex 7.

⁹ Reply, annex 8.

¹⁰ Reply, annex 9.

¹¹ Reply, annex 10.

¹² Respondent’s Motion to Conclude the Matter for Mootness, annex RS/1.

¹³ Ibid., annexes RS/2 and R/3.

Respondent was entitled to withhold any outstanding payments to the Applicant and to delay the release of the separation notification to the UNJSPF.

20. Information obtained at the CMD of 22 April 2020, however, is that the controversy between the parties was resolved during the pendency of this application. At the CMD, the Applicant confirmed that his pension was paid after he refunded monies he had been over paid. He now seeks new reliefs, specifically, compensation for the long period (nine months) it took for him to be paid and in addition he disputes the amount being paid to him as a pension.

21. The Tribunal notes that the complaint about the long period it took for the Applicant to be paid and the dispute over the amount of the pension paid to him are beyond the scope of this application since they were not subjected to management evaluation as required by art. 8.1(c) of the Dispute Tribunal's Statute and staff rule 11.2(a).

22. Turning to the issue of failure to release documents, the Tribunal finds that the Administration had proper legal grounds for refusing to issue the separation notification to the UNJSPF in accordance with staff rule 3.18(c)(ii), ST/AI/2009/1 (Recovery of overpayments made to staff members) and ST/AI/155/Rev.2 as amended. The Organization is permitted to use a staff member's pending entitlements to recover indebtedness to the Organization and it may also withhold the separation notification to the UNJSPF.¹⁴

23. The undisputed facts are that the Respondent promptly released the documents in issue to the UNJSPF after the Applicant met his obligation to settle his indebtedness to the Organization and the Applicant was paid his pension which means that there is no longer a live issue upon which this Tribunal can competently pass judgment. Any remedy issued would have no concrete effect.¹⁵

¹⁴ See for example in *Aliko* 2015-UNAT-539, para. 43.

¹⁵ See for example in *Crotty* 2017-UNAT-763, para. 16 and *Kallon* 2017-UNAT-742, para. 44.

Judgment

24. The Tribunal finds that the contested decision has been rendered moot. This application is accordingly dismissed.

(Signed)

Judge Margaret Tibulya

Dated this 5th day of May 2020

Entered in the Register on this 5th day of May 2020

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi