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Case No.: UNDT/NBI/2010/018/UNAT/1631

Judgment No.: UNDT/2012/150

Date: 11 October 2012

## **Introduction**

1. The Applicant's indefinite contract with the United Nations High Commission for Refugees (UNHCR) was terminated on 30 June 2004.
2. The Joint Appeals Board (JAB) found that there was a link between the decision not to renew his assignment and an investigation concerning him that was not closed until March 2005. This investigation eventually exonerated him from any allegations for misconduct.
3. On 13 May 2008, the JAB recommended that the Applicant be paid nine (9) month's net salary as compensation for the termination of his indefinite contract but after waiting several months and receiving no response from the Secretary-General, on 8 September 2008 he filed an appeal with the former United Nations Administrative Tribunal. In that Appeal he sought:
  - a. The implementation of the findings and recommendations of the JAB.
  - b. Payment of an additional compensation in the amount of six month's salary at the FS-5 level to take account of the successive delays (four years) in proceedings that the organization has caused throughout this matter.
  - c. Compensation in the amount of 5000 Swiss Francs for expenses incurred in preparing and submitting the case both to the JAB and to the former UN Administrative Tribunal.
4. Further to the recommendations of the JAB, on 29 December 2008 the Secretary General paid the Applicant USD 34,677.
5. On 3 January 2012 the Applicant responded to the Tribunal's case management order, outlining his claims as follows:
  - a. whether the Applicant was entitled to receive from UNHCR USD 70,200 instead of USD 34,677 for loss of income;

- b. whether the Applicant was also entitled to pension contributions for six (6) months and insurance premiums;
- c. whether the Applicant was entitled to the interests accrued on this amount since the date of separation.

### **Issues**

- 6. The issues for determination by the Tribunal are:
  - a. What was the correct amount of compensation due to the Applicant?
  - b. Is the Applicant entitled to pension contributions and insurance premiums for six months?
  - c. Is the Applicant entitled to interest accrued on the compensation ordered since the date of his separation?
  - d. Is the Applicant entitled to an award of costs?

### **Facts**

- 7. The Applicant joined the service of the UNHCR on 4 February 1991 as an Administrative/Finance Assistant at the GL-7 level, for the sub-office in Tabou (Côte d'Ivoire). On 1 August 2000 he was assigned for two years to the Emergency Preparedness and Response Section in Geneva on an FS-5 (Field Service) post where he was responsible for administration and finance.
- 8. On 15 October 2002 the Applicant was redeployed to Angola. This redeployment was initially intended for three months, but was extended for a further nine (9) months to 15 October 2003.
- 9. On 15 October 2003, the Applicant was appointed to the sub-office in M'banza Congo (Angola). His assignment was due to end on 31 March 2004, but was extended to 30 June 2004.

10. On 23 April 2004, upon returning from leave, the Applicant was informed that his services would not be required after 30 June 2004. The letter stated that:

due to the fact that [he] d[id] not have a post to go to and no comparative review can be undertaken as no posts at [his] level/functions are available at [his] old duty station, [his] appointment w[ould] cease effective 30 June 2004.

11. The Applicant was separated from service on 30 June 2004.

12. The Assistant High Commissioner from whom the Applicant sought help on 6 July 2004 asked the Applicant's former office in Angola whether he could return to his post, but this request was denied.

13. The Applicant then approached the Director of Human Resources on two occasions, following which he was given a two-month temporary assistance

investigation strongly influenced the decision not to renew the Applicant's assignment in M'banza Congo. The JAB stated that there was a set of disturbing and mutually corroborating clues that tipped the balance in favour of the Applicant's contention that there was indeed a link between the decision not to renew his assignment and the investigation concerning him that was not closed until March 2005.

18. The JAB held that it could not presume that had the misuse of procedure not been committed, the Applicant would still hold an indefinite contract. In light of the information in the Inspector-General's report, it was clear the Applicant would have remained in M'banza Congo for at least the last six months of 2004.

19. The JAB awarded the Applicant compensation equivalent to six month's

effect on 30 June 2004 in respect of the Field Service post [the Applicant] held at the time.”

23. The Respondent replied to the Applicant’s submission to the former UN Administrative Tribunal on 30 March 2009. It advised that the issue of nine month’s salary compensation was no longer disputed as the Respondent had taken a decision to accept the JAB recommendations. The Applicant submitted additional observations on the Respondent’s answer on 6 April 2009. He requested an additional six month’s salary in compensation, as the compensation paid to him was substantially less than the salary due to him based on the JAB report. The Applicant further claimed costs to compensate him for UNHCR’s deliberate actions to cause him to engage in lengthy and interminable proceedings to ‘wear him down’.

24. The case was transferred to the United Nations Dispute Tribunal (“the Tribunal”) Registry in Nairobi as of 1 January 2010 in accordance with ST/SGB/2009/11.

#### **Applicant’s submissions**

25. The Applicant’s submissions to the Tribunal were amended from those in his original submissions in N2J-recintdndoaccomm( )-5..4(n)-4( -1.7r)-7.2



## **Considerations**

### **Compensation due to the Applicant**

30. The Applicant received the amount of compensation awarded by the JAB which, when quantified, amounted to USD 34,677. There is no practical difference between the terms 'net pay' and 'net base salary'. Both refer to a



34. The Applicant's claim for the Organisation's pension contributions is refused.

**Interest**

35. The Tribunal may award a payment of interest pursuant to art. 10.5 of the Statute of the Dispute Tribunal.

36. The Respondent claims that the delays suffered by the Applicant are of his own making. However, the Tribunal finds that whatever the reason for delays in a case, including attempts to informally resolve a case, where an award of compensation is made it is open to the Tribunal to award interest from the date of the breach. The Applicant should not be penalised for his attempts to resolve his case by informal means, nor for the lethargy with which the Administration responded to his efforts. The Applicant's access to relief was protracted from June 2004 when his contract was terminated until the actual payment of compensation in December 2008, a total of four years.

37. The Tribunal notes that it was not until the Applicant filed a claim with the former UN Administrative Tribunal on 8 September 2008 that the Secretary-General finally addressed and accepted the JAB recommendations on 24 October 2008, and even then there was a further 3 month delay before

40. The Respondent shall have 60 days from the date the judgment becomes executable to pay the sum ordered, during which period the US Prime Rate applicable as at that date shall apply. If the sum is not paid within this 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

### **Costs**

41. Art. 10.6 of the Statute of the Dispute Tribunal provides that: '[w]here the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may award costs against that party.'

42. The term "costs" in Article 10.6 refers to the reimbursement of part or all of the costs of litigation that have been actually expended by a party. Although costs may be awarded where the Tribunal finds that a party has manifestly abused the proceedings, it is not a means by which a party can be punished. That would offend against article 10(7) of the Statute which prohibits the award of exemplary or punitive damages.

43. In the Applicant's letter of 6 April 2009, he requested reimbursement of costs for the UNHCR's attempt to 'deliberately' cause him to 'engage in lengthy and interminable proceedings'. He thus requested the Tribunal to 'do whatever it can to help me obtain reparation that is fair and equitable.' The Applicant requested compensation in the amount of 5,000 (five thousand) Swiss Francs for expenses incurred in preparing and submitting the case both to JAB and to the Administrative Tribunal.

44. If the Respondent had reacted without delay to the JAB report, the Applicant would not have been put to the expense of filing a claim. In the absence of any reason given by the Respondent for the delay, the Tribunal finds that it was a manifest abuse of the proceedings which entitles the Applicant to an award of costs.

45. The Tribunal awards the Applicant the Sum of 5,000 Swiss Francs in reimbursement of his costs.

**Conclusions**

46. In light of the foregoing the Tribunal DECIDES:

- a. The amount of compensation awarded to the Applicant by the JAB was correctly paid by the Administration, therefore the request for additional compensation is denied;
- b. The Applicant's request for pension contributions is denied;
- c. The Applicant is awarded interest on the sum of USD 23,118 from 30 June 2004 until 29 December 2008 at the US Prime Rate applicable on 30 June 2004, and on the sum of USD 11,559 from 13 May 2008 until 29 December 2008 at the US Prime Rate applicable on 13 May 2008;
- d. The Applicant is awarded costs in the amount of CHF 5,000.

*(Signed)*

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Judge Coral Shaw

Dated this 11<sup>th</sup> day of October 2012

Entered in the Register on this 11<sup>th</sup> day of October 2012

*(Signed)*

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Jean-Pelé Fomété, Registrar, Nairobi