



## INTRODUCTION

1. The Applicant is a former staff member of United Nations Interim Force in Lebanon (“UNIFIL”). He filed an application on 28 January 2019 challenging: (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 (Personnel payroll clearance action) (“contested decision”). During the proceedings before the UNDT, in the face of the fact that the Administration satisfied his claims, the Applicant articulated a claim to have his pension recalculated and to be compensated for the delay.

2. On 5 May 2020, the Dispute Tribunal dismissed the application as moot.<sup>1</sup>

3. On appeal, the United Nations Appeals Tribunal (“UNAT”) upheld the Dispute Tribunal’s refusal to examine and correct the amount of pension payments being made to the Applicant because the Applicant had not sought management evaluation of the claim. UNAT found, however, that UNDT’s dismissal of the Applicant’s claim for compensation for delay in making his pension payments, was an error. Consequently, UNAT remanded the case back to UNDT to determine the Applicant’s claims for compensation for wrongful retention by the Respondent of his entitlements upon his resignation.<sup>2</sup> The Appeals Tribunal instructed the Dispute Tribunal to examine: the question of the lawfulness of the withholding of the payments and to not forward the documentation to the pension fund, taking into consideration the amounts withheld and the length of their retention.

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<sup>1</sup> *Azar* UNDT/2020/067.

<sup>2</sup> *Azar* 2021-UNAT-1104.

## **FACTS AND SUBMISSIONS**

4. The fact described below are uncontested, unless otherwise indicated, and/or result from documents.

5. In the period from November 2016 to September 2018, the Applicant had three disciplinary cases. In May 2017, he was disciplined following a finding that he had used his position with the Organization to obtain loans from one or more staff members of the Organization, including a staff member whom he had been purportedly assisting in obtaining medical care for the staff member's daughter suffering from a terminal illness. In July 2018, he was invited to respond to allegations that he had failed to comply with the disciplinary measure imposed on him in May 2017, in that he failed to reimburse the extorted amounts.<sup>3</sup> In July 2018, the Applicant was investigated regarding a new set of allegations that he had engaged in unauthorized outside activities by working for the Alexandre Nehme Medical Centre ("ANMC") from November 2016 until November 2017, while employed by UNIFIL.<sup>4</sup> When interviewed as subject on 6 July 2018, the Applicant admitted that during the relevant period he had been working as the General Manager at ANMC for a monthly salary of USD1,000.<sup>5</sup> The Special Investigations Unit ("SIU") investigation concluded that the Applicant had engaged in unauthorized outside activity and that he had taken 165.5 days of certified sick leave, uncertified sick leave, annual leave and paternity leave, during the same period, in addition to 11 days of unauthorized leave at an estimated cost of USD29,000 to the Organization.<sup>6</sup>

6. Prior to the conclusion of the disciplinary process, the Applicant resigned from the Organization effective 1 September 2018.<sup>7</sup> He was paid his August 2018 salary but a final annual leave computation of 11 days was withheld, because the SIU

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<sup>3</sup> Respondent's response to Order No. 167, annex R/5.

<sup>4</sup> Ibid., annex R/6.

<sup>5</sup> Ibid.

investigation had established that he had taken 11 days' unauthorized leave.<sup>8</sup> Upon the Applicant's query, he was informed on 10 October 2018 that ongoing investigation into the allegation of misconduct required determination whether the case posed a risk of financial liability toward the Organization.<sup>9</sup>

9. In a management evaluation response dated 5 February 2019, the administration decided to uphold the decision to withhold the Applicant's final separation entitlement, including withholding the issuance of relevant documentation to the pension fund.<sup>15</sup>

10. By memorandum dated 1 March 2019, UNIFIL advised the Applicant that the 11 days of unauthorized leave would be recovered as an overpayment<sup>16</sup> and informed him that once he had settled his indebtedness to the Organization, any outstanding payments would be made to him and the relevant document would be released to the UNJSPF.<sup>17</sup> The Applicant settled his indebtedness to the Organization of USD1,195 on 9 March 2019<sup>18</sup> and 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.<sup>19</sup> The Applicant's final remaining emoluments, in the net amount of LBP2,961,318.03, were paid on 26 March 2019.<sup>20</sup> He received his full and final

caused him and his family immense financial distress. He was not informed by UNIFIL during his check out process that there was a case against him, and his entitlements would be withheld. UNIFIL's failure to inform him of this new case against him during his check out was occasioned by a conspiracy between his supervisor, the Chief of Human Resources, and the Chief of Conduct and Discipline to ruin his life. He contests the computation of his pension benefit and the amount paid to him in May 2019; and refutes the Respondent's allegation that he "resigned due to the allegations" because he resigned due to ill health.

*The Respondent*<sup>24</sup>

13. The contested decision was lawful because the Organization complied fully with staff rule 3.18(c)(ii), paragraph 9 of ST/AI/2009/1 (Recovery of overpayments made to staff members), and paragraphs 11, 12 and 13 of ST/AI/155/Rev.2. At the time of the Applicant's separation, UNIFIL was in receipt of information indicating that he had engaged in unauthorized outside activities while being employed by the Organization. He had taken 165.5 days of leave whilst engaged in the unauthorized outside activity, which could have constituted an overpayment to him, resulting in a significant indebtedness to the Organization. UNAT has confirmed that in such circumstances, it is lawful for the Organization to use a staff member's pending entitlements to recover indebtedness to the Organization and that the Organization may also withhold the notification to the UNJSPF.<sup>25</sup>

14. The Respondent submits that the contested decision was proper and reasonable. As evinced by the chronology of events, the Organization was diligent in its handling of the matter and the Applicant was involved in each step of the process. The pending investigation was not conveyed to the then Office of Human Resources Management ("OHRM") until late October 2018 and the Applicant was promptly invited to provide comments in November 2018 which he did in December 2018. The Applicant initiated the management evaluation process which had to run its course. After a careful

consideration of the dossier, the Organization reduced the original figure of more than 165 days of leave owed to 11 days. Immediately after the Applicant settled his debt, the Organization instructed that the Applicant's final payments be processed and that the P.35 form be released to the UNJSPF. The Applicant received a full and final one-time withdrawal from the UNJSPF on 23 May 2019.

15. With respect to the value of the Applicant's pension, the Respondent submits that in 2019, the Applicant elected to receive a one-time withdrawal settlement under article 31 of the UNJSPF Fund Regulations. The amount of this settlement was USD68,445.55. This figure was not dependent on interest. Accordingly, there was no financial loss in this respect to the Applicant. The Applicant has not substantiated any harm in this respect. It was established by the Organization and communicated to the Applicant in May 2019, that his pension settlement had been overpaid by USD8,526.20 due to an administrative oversight. Nonetheless, the Organization did not pursue recovery action, given the hardship that the Applicant had expressed in his e-mail communications. Accordingly, the Applicant has already received more than he is entitled to from the Organization.

16. The Applicant's claim for compensation should be rejected because any argument that he faced financial obstacles because of unreasonable delay in his receipt of the pension settlement, is without merit. The Applicant resigned from service with the Organization effective 1 September 2018, while he still had a fixed-term contract until 30 June 2019. Any predicament he faced was therefore self-inflicted, having





transpire from ST/AI/155/Rev.2. If the question, however, were to be answered in the



**9 March 2019** – the Applicant settled his debt to the Organization.

**11 March 2019** – the administration instructs that the Applicant’s final payments be processed and that the P.35 form be released to the UNJSPF.

**23 May 2019** – The Applicant receives a full and final one-time withdrawal from the UNJSPF.

26. The Tribunal finds that, whereas the period of considering the Applicant’s claim is regularly punctuated by one action or another, the actions of the administration are exclusively reactive to the Applicant’s complaints. It is apparent, starting with the irregularity of not informing the Applicant of the withholding decision for two months following his separation, that the Administration had not seriously undertaken to establish the legal basis for, and, accordingly, the value of, the claimed overpayment. As stated by the Respondent, “at the time of the Applicant’s separation, the Organization was in receipt of information [...] [about] 165.5 days of leave, which could have constituted an overpayment to him.” Yet, at no point did the administration present the Applicant with a reasoned calculation of his actual indebtedness.<sup>35</sup> It should have been obvious to the administration that undertaking unauthorized employment or occupation during a leave, albeit constituting a violation of Staff Rules, does not necessarily create overpayment. Annual leave and paternity leave are accrued by the virtue of work rendered and fathering a child, respectively. A staff member may be disciplined for improperly using these entitlements while engaging in unauthorised activities; absent, however, a legal authorization to withdraw the entitlement in such a situation, this does not mean that the staff member was overpaid. The situation is different with sick leave, which is contingent upon inability to render work for health reasons. Undertaking occupation or employment while on sick leave may indicate that there was no genuine inability to render work, accordingly, the sick leave might have been undue.

27. Instead of making the relevant determination, the administration flouted figures from both ends of the spectrum, from the equivalent of all the leave taken to

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<sup>35</sup> This issue is avoided in both the 9 November 2018 decision and the 5 February 2019 management evaluation, which operate only with the number of leave days and its value.

the 11 days of unauthorized leave, which had been known from the beginning. Eventually, this gives the impression that the administration capitulated in the face of evidentiary difficulty and enforcement futility of the case. The Tribunal appreciates that sorting out the relevant issues across different offices could have required some time; not sorting it out over the period of six months, 1 September 2018 - 1 March 2019, was, by and lart wa





2019 to 23 May 2019.

35. The interest is to be paid to the Applicant within 60 days of the date that this Judgment becomes executable, during which period the US Prime Rate applicable as at that date shall apply. If the total sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

36. All other pleas are dismissed.