UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2013-UNAT-318

Frechon

(Applicant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT ON APPLICATION FOR EXECUTION

Before:	Judge Mary Faherty, Presiding Judge Sophia Adinyira Judge Jean Courtial
Case No.:	2012-299
Date:	28 March 2013
Registrar:	Weicheng Lin

Counsel for Applicant:	Antonio Bautista/Hugh McCairley
Counsel for Respondent:	Phyllis Hwang/Amy Wood

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for execution of Judgment No. 2011-UNAT-132 issued by this Tribunal on 8 July 2011 in the case of *Frechon v. Secretary-General of the United Nations*, filed by Ms. Carole Frechon.

Facts and Procedure

2. On 18 September 2009, Ms. Frechon challenged before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the Secretary-General's decision dated 31 July 2007 not to renew her fixed-term appointment due to a Medical Board's conclusion that she was not able to resume her professional activities.[1]

3. By Judgment No. UNDT/2010/089, the Dispute Tribunal remanded the case to the Administration in order to implement the appropriate procedure required in cases of termination of appointment for reasons of health. By Judgment No. UNDT/2010/124 (Judgment on the merits), the Dispute Tribunal rescinded the decision to terminate Ms. Frechon's employment and ordered:

> 5.2
> ...
> (i) ... the Respondent to reinstate the Applicant to a position whose duties she is able to carry out given the impairment she suffers;
> (ii) ... the Respondent to make good the Applicant's lost earnings from the date of termination of her fixed-term appointment to the date of her reinstatement with interest at 8% per month for the said period;
> (iii) ... that the Applicant be paid her entitlement for the period from 28 March 2007 to 31 July 2007 during which period she was entitled to special sick leave;

The UNDT

> (iv) fixe[d] the compensation to be paid to the Applicant, should the Secretary-General decide, in the interest of the Administration, not to perform the obligation to reinstate the Applicant, at two years' net base salary at the rate in effect on the date of the Applicant's termination from service, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgment until payment is effected[.]

[1] In Judgment No. UNDT/2010/089, the Dispute Tribunal qualified that Ms. Frechon's case was one of termination of appointment, not of non-renewal.

4. On 30 August 2010, the Secretary-General filed an appeal against both UNDT Judgments. On 8 July 2011, the Appeals Tribunal issued Judgment No. 2011-UNAT-132, by which it upheld the rescission of the contested decision but varied the orders made by the Dispute Tribunal under 5.2(i) and (ii) in the Judgment on the merits. The Appeals Tribunal ordered Ms. Frechon's reinstatement for the sole purpose of the Administration initiating the correct procedures set out in ST/AI/1999/16, entitled "Termination of appointment for reasons of health". Having considered the Dispute Tribunal's finding that Ms. Frechon was incapable of working for reasons of health, the Appeals Tribunal found no basis for the order in paragraph 5.2(ii).

5. On 2 December 2011, Ms. Frechon filed an application for execution of the Appeals Tribunal Judgment. At that time, Ms. Frechon had already received payment for special sick leave, compensation equivalent to three months' net base salary complying with ST/AI/1999/16 and one month's salary in lieu of notice. The Secretary-General filed his comments on 12 January 2012. On 6 February 2012, Ms. Frechon filed a motion for leave to file a reply to the Secretary-General's comments. By Order No. 79 (2012) dated 23 February 2012, the Appeals Tribunal denied her motion.

Submissions

Ms. Frechon

6. Ms. Frechon contends that the Secretary-General has to pay her two years' net base salary as compensation in lieu of an effective reinstatement, pursuant to the meaning of paragraph 5.2(iv) in the UNDT Judgment on the merits. By reinstating her for the sole purpose of the Administration initiating the procedures pursuant to ST/AI/1999/16, the Secretary-General did not execute the order of the UNDT as affirmed by this Court.

7. Ms. Frechon submits that her termination indemnity was wrongly calculated as the Secretary-General erroneously applied the Staff Regulations and Rules promulgated in 2009, rather than those in effect in 2007 at the time of her termination. She requests that she be paid termination indemnity according to the former Staff Regulations and Rules in force in 2007.

8. Ms. Frechon requests reimbursement of her airline ticket and travel expenses at the time of her separation.

Secretary-General

9. The Secretary-General submits that Ms. Frechon's understanding that she is entitled to both reinstatement and two years' net base salary is mistaken. He contends that the Organization has fully implemented the obligation to reinstate Ms. Frechon in light of the modification of the order made by the Appeals Tribunal and, therefore, she is not entitled to compensation in lieu of reinstatement.

10. The Secretary-General admits that he erroneously referred to Annex III of the 2009 Staff Rules for the calculation of the termination indemnity, but notes that the 2002 version, which is applicable to Ms. Frechon's case, and the 2009 version do not differ substantively. Having considered the correct version, the Secretary-General contends that because Ms. Frechon's appointment was not terminated before its expiration, she did not have any period of uncompleted service for which she would have been entitled to receive termination indemnity.

11. Finally, the Secretary-General notes that the Administration has already reimbursed her expenses with regards to her repatriation.

Considerations

12. Ms. Frechon seeks execution of what she maintains is the order of this Tribunal, namely, that the Secretary-General pay her two years' salary in lieu of an effective reinstatement pursuant to the meaning of paragraph 5.2(iv) of UNDT Judgment No. 2010/124.

13. In the aforesaid UNDT Judgment, the Dispute Tribunal directed as follows:

> 5.2 In light of its findings above, the Tribunal **rescinds** the decision to terminate the Applicant's employment which means that the Applicant is hereby deemed to have been in the employment of the Organization from the date of termination of her appointment to the date of issuance of this judgment, and **ORDERS**:
> (i) the Respondent to reinstate the Applicant to a position whose duties she is able to carry out given the impairment she suffers;

> (ii) Orders the Respondent to make good the Applicant's lost earnings from the date of termination of her fixed-term appointment to the date of her reinstatement with interest 8 % per month for the said month;
> (iii) Orders that the Applicant be paid her entitlement for the period from 28 March 2007 to 31 July 2007 during which period she was entitled to special sick leave;
> (iv) Fixes the compensation to be paid to the Applicant, should the Secretary-General decide, in the interest of the Administration, not to perform the obligation to reinstate the Applicant, at two years' net base salary at the rate in effect on the date of the Applicant's termination from service, with interest payable at eight per cent per annum as from 90 days from the date of distribution of this Judgment until payment is effected; and
> (v) Rejects all other pleas.[2]

14. The Appeals Tribunal, as recited at paragraph 61 of its Judgment No. 2011-UNAT-132, ordered as follows:

> We uphold the Order reinstating Frechon, but hereby vary the Orders made under 5.2(i) and (ii) in the Dispute Tribunal Judgment to an Order reinstating Frechon for the purpose of the Administration initiating the procedures pursuant to ST/AI 1999/16 ...

Thus, the Appeals Tribunal upheld the UNDT Order reinstating Ms. Frechon but did so, as recited above, "for the purpose of the Administration initiating the procedures pursuant to ST/AI/1999/16".

15. The Dispute Tribunal's direction for payment to Ms. Frechon of compensation in lieu of reinstatement, as recited at paragraph 5.2(iv) of its Order, was premised on the Secretary-General failing to implement reinstatement in the terms of paragraph 5.2(i) of its Order, the Order duly varied by this Tribunal, as recited at paragraph 61 of the Appeals Tribunal Judgment.

16. Therefore, the Order of the Appeals Tribunal upholding paragraph 5.2(iv) of the UNDT Judgment is an Order to be read in conjunction with paragraph 61 of the Appeals Tribunal Judgment.

[2] Emphasis in original.

17. In such circumstances, the Order in respect of which Ms. Frechon now seeks execution is not an Order which was affirmed by this Tribunal.

18. Therefore, insofar as Ms. Frechon can seek execution of this Tribunal's Order, as recited at paragraph 63, it is to the extent that the Secretary-General has failed to reinstate her "for the purpose of the Administration initiating the procedures pursuant to ST/AI/1999/16", thereby entitling her to the remedy provided in the alternative, namely, two years' net base pay.

19. However, the Secretary-General did reinstate her in accordance with this Tribunal's Order, as set out at paragraph 61 of Judgment No. 2011-UNAT-132.

20. Ms. Frechon's application for execution is thus rejected.

21. The further matters raised in the present application to this Tribunal do not meet the criteria for review as set out in Article 11 of the Statute of the Appeals Tribunal.

Judgment

22. The application for execution is rejected.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States, and Paris, France.

(*Signed*)	(*Signed*)	(*Signed*)
Judge Faherty, Presiding	Judge Adinyira	Judge Courtial

Entered in the Register on this 19th day of April 2013 in New York, United States.

(*Signed*)

Weicheng Lin, Registrar