



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-322

**Shkurtaj
(Applicant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT ON APPLICATION FOR INTERPRETATION

Before: Judge Sophia Adinyira, Presiding
Judge Luis María Simón
Judge Mary Faherty

Case Nos.: 2010-146 & 147

Date: 28 March 2013

Registrar: Weicheng Lin

Counsel for Applicant: George G. Irving

Counsel for Respondent: Amy Wood

1. The United Nations Appeals Tribunal (UNAT or Appeals Tribunal) has before it an application for interpretation of Judgment No. 2011-UNAT-148 dated 8 July 2011, filed by Mr. Artjon Shkurtaaj on 29 September 2011. The Secretary-General of the United Nations filed his comments on 10 November 2011.

Facts and Procedure

2. Mr. Shkurtaaj worked for the United Nations Development Programme (UNDP) in the Democratic People's Republic of Korea (DPRK) from 2005 to 2006 on a Special Services Agreement (SSA) as a consultant. During the course of his employment in the DPRK, Mr. Shkurtaaj reported issues concerning financial and administrative aspects of UNDP's operations in the DPRK. At the end of September 2006, Mr. Shkurtaaj was relocated to New York, where he continued his service as an SSA consultant until 26 March 2007. After the expiry of his SSA contract, in June 2007, Mr. Shkurtaaj contacted the United Nations Ethics Office (Ethics Office) and requested protection against retaliation. He claimed that his contract with UNDP expired in March 2007 because of his report on the alleged misconduct.

3. In July 2009, Mr. Shkurtaaj filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), contesting, among other things, the decision not to apply the Secretary General's Bulletin on Retaliation.

4. On 31 August 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/156, awarding Mr. Shkurtaaj 14 months' net base salary as compensation for the violation of his due process rights. The UNDT found that Mr. Shkurtaaj had neither been informed of the External Independent Review Panel's adverse findings nor had he been allowed to respond before the findings went public. The Dispute Tribunal awarded an additional payment of USD 5,000 for the Administration's failure to timely consider, act on, and communicate to Mr. Shkurtaaj, the Ethics Office's decision and recommendations. The UNDT found no basis for Mr. Shkurtaaj's claims regarding UNDP's failure to apply the Secretary-General's Bulletin on Retaliation.

5. Both parties appealed. Mr. Shkurtaaj also cross-appealed.

6. In Judgment No. 2011-UNAT-148 dated 8 July 2011, the Appeals Tribunal dismissed Mr. Shkurtaaj's appeal and his cross-appeal in their entirety and granted the Secretary-General's appeal in part. The Appeals Tribunal affirmed the UNDT Judgment, but

reduced the compensation for the violation of Mr. Shkurtaĵ's due process rights from 14 months' to six months' net base salary. The Appeals Tribunal affirmed the award of USD 5,000 compensation for delay.

Submissions

Mr. Shkurtaĵ

7. Mr. Shkurtaĵ seeks an interpretation of the Appeals Tribunal's Judgment with respect to the award of interest. He submits that the wording implies more than the interest generally attached to awards that are not executed within 60 days from the Judgment. Mr. Shkurtaĵ contends that the Appeals Tribunal has recognized that interest can be awarded as of the date of judgment or as of the date when an entitlement was payable.

Secretary-General

8. The Secretary-General maintains that Mr. Shkurtaĵ is not entitled to any interest because the payment of compensation was timely. The Secretary-General notes that the payment of compensation was required by 14 October 2011 and that the Administration paid the total amount of compensation ordered by the Appeals Tribunal, on 23 September 2011, before the deadline.

9. The Secretary-General submits that Mr. Shkurtaĵ's claim, that the payment of compensation and interest should be calculated from the date of the UNDT Judgment, is legally unsustainable as it would penalize the Secretary-General for exercising his right of appeal. The Secretary-General contends that filing an appeal of a judgment has the effect of suspending the execution of the contested judgment.

10. Furthermore, the Secretary-General submits that Mr. Shkurtaĵ's assertion that interest should have been paid from "the date when an entitlement was payable" is without merit. The Appeals Tribunal did not find that Mr. Shkurtaĵ suffered any actual financial loss, but rather established a sum to compensate him for the violation of his due process rights. Therefore, there is no date at which his entitlement was due from which an award of interest can be calculated.

Considerations

11. Article 25 of the Rules of Procedure of this Tribunal provides:

Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgment on a prescribed form. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application on a prescribed form. The Appeals Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

12. In Judgment No. 2011-UNAT-148, the Appeals Tribunal upheld Judgment No. UNDT/2010/156, and awarded Mr. Shkurta six months' net base salary with an additional USD 5,000 compensation for delay. The Secretary-General was required to pay the above amount within 60 days from the date of the Judgment of this Tribunal.

13. The contention between the parties is whether interest should be calculated from the date of the UNDT judgment or the Appeals Tribunal Judgment. Bearing in mind the opposing contentions of the parties on whether interest on the compensation is calculated 60 days from the date of the Dispute Tribunal Judgment or as of the date of the UNAT judgment, this Tribunal will grant the application for interpretation.

14. The Appeals Tribunal has previously held in *Warren* and *Mmata* that interest is to be paid at the US Prime rate "from the date on which the entitlement becomes due, which in this case is the date of the UNDT Judgment".¹

15. The interest payable is at the US Prime Rate and an extra five percent shall be added to the US Prime Rate if the Judgment is not executed within 60 days of its issuance to the parties.

16. In the present case the interest on the compensation is to be calculated from the date on which the UNDT issued its judgment.

¹ *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059; *Mmata v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-092.

Judgment

17. The date from which interest is to be paid at the US Prime Rate is calculated from the date of the UNDT judgment. It is hereby ordered.

Original and Authoritative Version: English

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

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

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

(Signed)

Weicheng Lin, Registrar