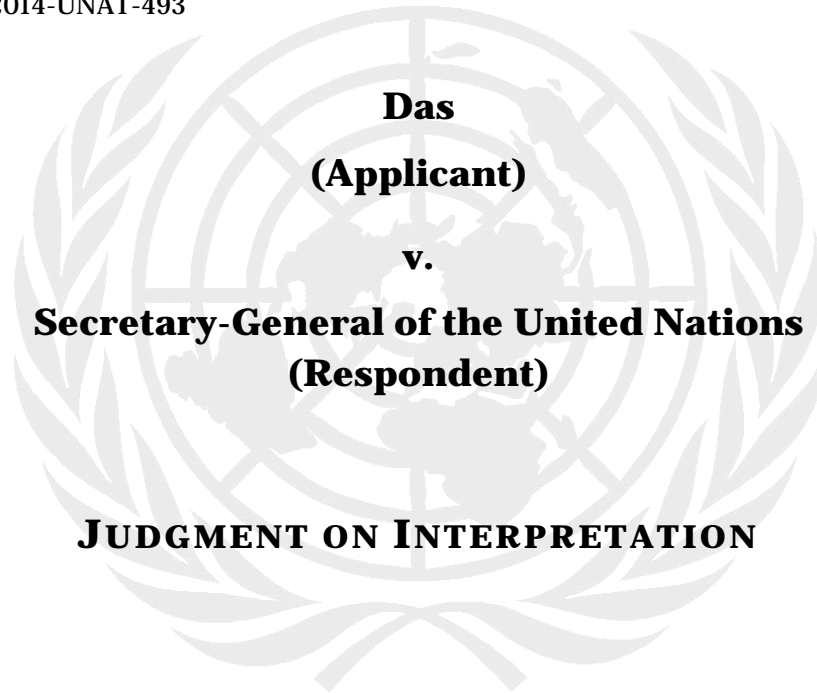




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2014-UNAT-493



**Das  
(Applicant)**

**v.**

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

**JUDGMENT ON INTERPRETATION**

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**Before:** Judge Rosalyn Chapman, Presiding  
Judge Sophia Adinyira  
Judge Mary Faherty

**Case No.:** 2014-650

**Date:** 17 October 2014

**Registrar:** Weicheng Lin

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**Counsel for Applicant:** Self-represented

**Counsel for Respondent:** Phyllis Hwang

*Reissued for technical reasons on 07 January 2015*

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for interpretation of Judgment No. 2014-UNAT-421, rendered by the Appeals Tribunal on 2 April 2014, in the case of *Das v. Secretary-General of the United Nations*. Ms. Malabika Das filed her application for interpretation on 18 May 2014, and the Secretary-General filed his comments on 8 October 2014.

**Facts and Procedure**

2. On 14 March 2013, in Judgment No. UNDT/2013/051, the Dispute Tribunal found, *inter alia*, that Ms. Das' termination on the grounds of unsatisfactory performance was unlawful as the United Nations Children's Fund (UNICEF) did not comply with the requirements set forth in the Agency's applicable administrative instruction. The UNDT ordered, *inter alia*, that Ms. Das be awarded a total of USD 20,000 (USD 10,000 for the unlawful termination of her service and USD 10,000 for the emotional distress caused by her unlawful termination and UNICEF's failure to properly handle her complaint of harassment and abuse of authority), and that she be paid any outstanding termination benefits and entitlements, with retroactive interest.

3. The Secretary-General appealed the UNDT Judgment to the Appeals Tribunal, which issued Judgment No. 2014-UNAT-421 on 2 April 2014. Our Judgment affirmed the UNDT Judgment in all factual and legal regards, other than its award of emotional damages. More specifically, we found that "the circumstances of the present case merited a compensatory award" in the amount of USD 10,000 "for unlawful termination of contract and for the emotional distress [Ms. Das] suffered as a result". However, we found the UNDT erred in awarding USD 10,000 for emotional distress stemming from the Agency's "failure to properly consider and investigate [Ms. Das'] complaint of harassment and abuse of authority", and that award was set aside.

**Submissions**

**Ms. Das' Application**

4. Ms. Das seeks an interpretation of the Appeals Tribunal Judgment with respect to the award of interest on the compensatory damages and any remaining termination benefits and

entitlements. She states that she has “received ‘no Termination Benefits’ from UNICEF during [her] separation from service effective from 31 July 2010” and seeks “a detailed break up [sic] of [her] entitlements”.

### **The Secretary-General’s Comments**

5. The Secretary-General contends that the UNDT’s award of interest was “from the date the Judgment becomes executable”, which was 13 May 2014, the date of the Judgment of the Appeals Tribunal. In other words, “when a judgment has been appealed, it is not executable until it has been affirmed by the UNAT once the UNAT judgment is released”. In the present case, the Appeals Tribunal Judgment modifying the UNDT Judgment was released on 13 May 2014. Accordingly, 13 May 2014 is the appropriate date from which interest at the US Prime Rate began to accrue.

6. The Secretary-General acknowledges that Ms. Das was not paid interest at the time she was paid USD 10,000 on 20 May 2014. However, he claims that, as of 2 October 2014, she was paid interest: at the US Prime Rate from 13 May 2014 to 20 May 2014; at the US Prime Rate from 20 May 2014 to 12 June 2014; and at the US Prime Rate plus five per cent from 13 June 2014 to 2 October 2014.

7. The Secretary-General contends that, for the reasons set forth above, any award of interest on termination benefits and entitlements also runs from 13 May 2014, the date of the Appeals Tribunal Judgment. He states that Ms. Das received her accrued sick leave days upon separation, but acknowledges that termination benefits were not timely paid to Ms. Das. However, he claims that as of 2 October 2014, Ms. Das was paid termination indemnity of three months’ net base salary and the following interest: capitalized interest from 1 August 2010 to 13 May 2014; interest at the US Prime rate from 13 May 2014; and interest at the US Prime Rate plus five per cent from 13 July 2014 to 2 October 2014.

8. The Secretary-General requests that his interpretation of the Appeals Tribunal Judgment be confirmed.

### Considerations

9. Article 11(3) of the Appeals Tribunal Statute provides that “[e]ither party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement”. Similarly, Article 25 of the Rules of Procedure of the Appeals Tribunal provides:

Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of a judgement 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.

10. In Judgment No. 2014-UNAT-421, the Appeals Tribunal upheld the Dispute Tribunal other than varying the amount of damages awarded, reducing that amount from USD 20,000 to USD 10,000. The parties disagree on whether interest should be paid from the date of the Dispute Tribunal Judgment or the date of the Appeals Tribunal Judgment. Thus, the Appeals Tribunal should admit Ms. Das’ application for interpretation of the Judgment.

11. The Appeals Tribunal, relying upon our earlier jurisprudence in *Warren*<sup>1</sup> and *Mmata*,<sup>2</sup> has held 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’”.<sup>3</sup> The Appeals Tribunal Judgment merely affirmed the award of compensatory damages and termination benefits by the Dispute Tribunal. We did not initiate the award of damages and benefits. Thus, as we held in *Shkurtaj*, there is no merit to the Secretary-General’s claim that interest is to be paid from the date of the Appeals Tribunal Judgment.

12. Accordingly, the Secretary-General should pay Ms. Das interest on the award of USD 10,000 compensatory damages and the termination benefits of three months’ net base salary, at the US Prime Rate from the date of the Dispute Tribunal Judgment.

### Judgment

13. IT IS HEREBY ORDERED that the application for interpretation IS ADMITTED. The Secretary-General shall pay Ms. Das, no later than thirty (30) days from the date of publication of this Judgment, interest on the award of USD 10,000 compensatory damages

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<sup>1</sup> *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.

<sup>2</sup> *Mmata v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-092.

<sup>3</sup> *Shkurtaj v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-322, para. 14.

and the termination benefits of three months' net base salary, at the US Prime Rate from the date of the Dispute Tribunal Judgment to the date of payment. Failure to timely pay the interest when due shall result in an additional five percent interest counting from the 31<sup>st</sup> day of the publication of this Judgment to the date of payment.

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2014 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Faherty

Entered in the Register on this 22<sup>nd</sup> day of December 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar