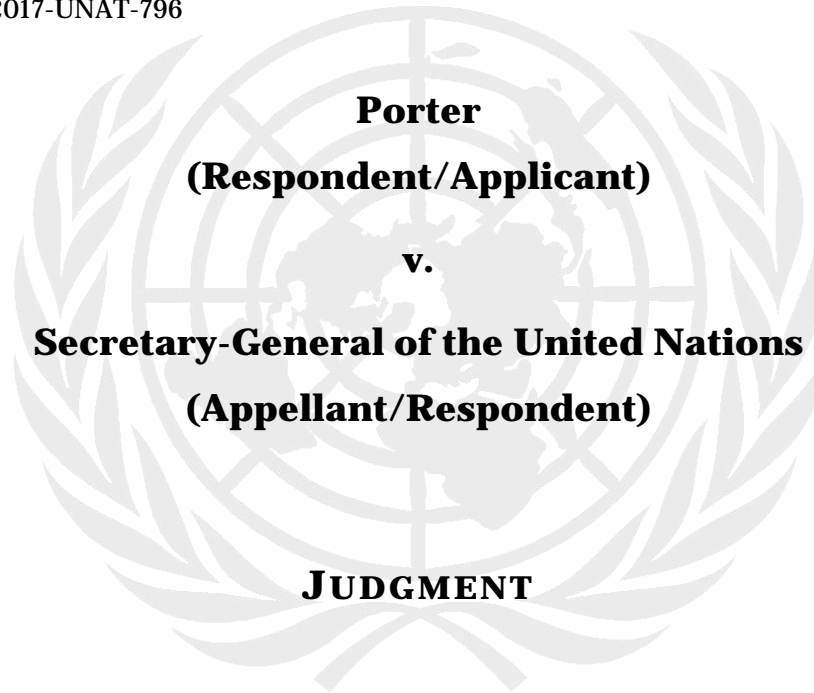




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-796



**Porter
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Deborah Thomas-Felix Judge John Murphy
Case No.:	2017-1081
Date:	27 October 2017
Registrar:	Weicheng Lin

Counsel for Mr. Porter: Monika Ona Bileris
Counsel for Secretary-General: Amy Wood

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/024, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 6 April 2017, in the case of *Porter v. Secretary-General of the United Nations*. The Secretary-General filed the appeal on 5 June 2017, and Mr. Peter W.C. Porter filed his answer on 17 July 2017.

Facts and Procedure

2. The following facts as found by the Dispute Tribunal are:¹

... On 21 February 2012 the Applicant filed an application challenging three issues that arose from the circumstances of a prolonged medical leave that spanned a period of more than two years. These issues were:

- a. A decision taken by [United Nations Mission for Iraq (UNAMI)] administration to keep him on medical leave for more than two years after his doctors had recommended that he was fit to return to work.
- b. During the period of his forced medical leave, the Administration ignored his pleas for information and misled him thereby causing him untold stress and hardship.
- c. Failure by the Administration to reimburse financial claims that accrued to him as a result of the forced medical leave.

... The Respondent filed a reply to the application on 26 March 2012 contending that the Application was not receivable *ratione temporis* as the Applicant had not requested management evaluation of the contested decisions within the requisite time limit.

... After considering the submissions on both sides with regard to receivability, the [Dispute] Tribunal ruled on 4 December 2013 that it was indeed receivable.^[2]

... Thereafter, the Respondent appealed unsuccessfully to the Appeals Tribunal.^[3]

... On 1 July 2016, the [Dispute] Tribunal issued Judgment No. UNDT/2016/096 in favour of the Applicant as follows:

104. The facts of this case show that the Applicant should have returned to work upon receiving medical clearance on 30 November 2009. The [Dispute] Tribunal therefore orders the Respondent to pay the Applicant his full salary from 30 November 2009

¹ Impugned Judgment, paras. 1-7.

^[2] *Porter v. Secretary-General of the United Nations*, Judgment No.] UNDT/2013/156.

^[3] *Porter v. Secretary-General of the United Nations*, Judgment No.] 2015-UNAT-507.

to 1 August 2011 (less any payments that had been made to him such as full salary and half salary during the said period.) In calculating payments due to the Applicant, the hazard pay component of his salary is not to be included since he was in fact outside of the mission area during the period.

105. The [Dispute] Tribunal is also convinced by the submissions made by the Applicant [...] that the prolonged sick leave caused him anxiety and had a devastating effect on his personal and financial affairs including his failure to meet his mortgage obligations. The Applicant is accordingly entitled to moral damages which the [Dispute] Tribunal awards at USD 5,000.

106. The Respondent is ordered to grant the Applicant access to his personnel files in accordance with the relevant administrative practice.

107. All other pleas are refused.

... On 15 February 2017, the Applicant filed an application titled “Application for interpretation of Judgment”.

3. On 6 April 2017, the UNDT issued the impugned Judgment on Interpretation. It concluded that the application was receivable and that the Secretary-General had “correctly calculated the compensation from the time of separation but failed to add the accrued interest to which [Mr. Porter was] entitled”.⁴ The UNDT ordered that the Secretary-General add pre-judgment interest on the compensation already paid from the date of separation to the date of payment.⁵

Submissions

The Secretary-General’s Appeal

4. The Secretary-General submits that the UNDT erred by finding that the application for interpretation was receivable. The underlying Judgment on the merits did not require interpretation because it was not ambiguous, unclear or misleading. The UNDT did not order payment of pre-judgment interest; it was silent on this point and silence cannot be equated with a lack of clarity or ambiguity. As such, the application for interpretation did not fall within the scope of Article 12(3) of the Dispute Tribunal Statute (UNDT Statute).

⁴ Impugned Judgment, para. 20.

⁵ *Ibid.*, para. 21.

5. The UNDT also erred in law and exceeded its competence by ordering payment of an additional component of compensation in the impugned Judgment. Article 12(3) of the UNDT Statute provides for a statutory exception to the legal principle of finality – which must be interpreted narrowly and in strict accordance with its stated objective, i.e., to allow a party to a case to petition the UNDT to clarify a provision of a judgment that is ambiguous on its face. A judgment on interpretation cannot be used to add relief never in contention in the original litigation on the merits as this would go beyond the scope of Article 12(3) of the UNDT Statute and contravene the principle of finality.

6. The Secretary-General submits further that an applicant is not automatically entitled to interest absent a specific order by the UNDT to this effect. Interest may be awarded when it is necessary to adequately compensate an applicant. Where the UNDT decides to order pre-judgment interest, it must expressly include it in the compensation ordered. Its inclusion cannot be automatically implied as this would put the Administration in an impossible position of having to guess whether or not it was required to pay interest.

7. The Secretary-General requests that the Appeals Tribunal vacate the impugned Judgment, except for its finding that the Secretary-General properly calculated the in-lieu compensation at the salary scale at the date of separation.

Mr. Porter's Answer

8. Mr. Porter submits that the UNDT did not err in finding Mr. Porter's application receivable. It correctly determined that the impugned Judgment's operative part gave rise to uncertainty and required clarification.

9. At the time of the impugned Judgment, neither Mr. Porter nor the UNDT knew that the Administration would use the pay scale at the time of his separation without adding any interest. Mr. Porter did not know this fact at the time, nor was this due to negligence on his part.

10. The UNDT did not err in law or exceed its competency by ordering pre-judgment interest. Mr. Porter requested interest in his original application, and the UNDT simply clarified the content of its award. The principle of finality was not contravened. The UNDT's award of compensation was intended to put Mr. Porter in the position he would have been had he not been unlawfully separated. This was not achieved by the Secretary-General's calculation.

11. Mr. Porter submits that the UNDT's approach follows that taken by the Appeals Tribunal in *Azzouni*.⁶ In that case, the Appeals Tribunal similarly treated an application of revision of its judgment as one of interpretation of the calculation of compensation and awarded interest. Thus, Mr. Porter contends, the UNDT did not err and the Secretary-General effectively requests the Appeals Tribunal to depart from its own jurisprudence.

12. There is no policy or legal basis for the Secretary-General's submission that an award of pre-judgment interest must expressly accompany the initial compensation ordered. It is "preposterous" for the Administration to claim that without such an express mention it would be put in an "impossible" position of having to "guess" if interest were required.

13. Mr. Porter requests that the Appeals Tribunal dismiss the appeal and uphold the UNDT's order of pre-judgment interest. He also seeks USD 25,000 in moral damages and USD 10,000 in punitive damages for the Administration's "bad faith in pursuing this lawsuit".

Considerations

14. The UNDT held that Mr. Porter's application for interpretation of judgment was properly before it "in accordance with the requirements set out at [Article] 12(3) of the UNDT Statute and [Article] 30 of the [UNDT] Rules of Procedure".⁷ It consequently allowed his application on the basis that "there is a need to clarify the meaning of paragraphs 104 and 105 of Judgment No. UNDT/2016/096".⁸

15. Having decided that the application was receivable, the UNDT found that the Secretary-General had failed to add the accrued interest to the compensation to which Mr. Porter was entitled. The UNDT consequently amended its Judgment by ordering the Secretary-General to "add a pre-judgment interest on the compensation already paid; calculated at the [U.S.] Prime Rate applicable on 30 November 2009 (date of separation) to 9 December 2016 (date of payment)".⁹

16. The Secretary-General in his appeal submits that the UNDT erred in finding Mr. Porter's application for interpretation receivable as it fell outside the scope of Article 12(3) of the UNDT Statute; and further erred by ordering in its

⁶ *Azzouni v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-162.

⁷ Impugned Judgment, para. 17.

⁸ *Ibid.*, para. 18.

⁹ *Ibid.*, para. 21.

Judgment on Interpretation “payment of an additional component of compensation to the award set in its original Judgment on the Merits”. We agree with this submission.

17. The UNDT is given competence to issue an interpretation of its judgment by virtue of Article 12(3) of its Statute, as implemented by Article 30 of its Rules of Procedure (Rules), pursuant to which a party may apply for interpretation, as distinct from review.

18. Article 12(3) of the UNDT Statute provides:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.

19. Article 30 of the UNDT Rules provides:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or scope of a judgement, provided that it is not under consideration by the Appeals Tribunal. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application. The Dispute Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

20. It is trite law that interpretation is only needed to clarify the meaning of a judgment when it leaves reasonable doubt about the will of the Tribunal or the arguments leading to a decision. But if the judgment is comprehensible, whatever opinion the parties may have about it or its reasoning, an application for interpretation is not admissible.¹⁰

21. The subject parts of Judgment No. UNDT/2016/096 which the UNDT decided needed clarification, are in the following terms:

104. The facts of this case show that the Applicant should have returned to work upon receiving medical clearance on 30 November 2009. The Tribunal therefore orders the Respondent to pay the Applicant his full salary from 30 November 2009 to 1 August 2011 (less any payments that had been made to him such as full salary and half salary during the said period.) In calculating payments due to the Applicant, the hazard pay component of his salary is not to be included since he was in fact outside of the mission area during the period.

¹⁰ *Karseboom v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-681, para. 13, quoting *Abassi v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-315, para. 18.

105. The Tribunal is also convinced by the submissions made by the Applicant that the prolonged sick leave caused him anxiety and had a devastating effect on his personal and financial affairs including his failure to meet his mortgage obligations. The Applicant is accordingly entitled to moral damages which the Tribunal awards at USD 5,000.

In the Judgment under appeal, the UNDT did not identify any words or sentences in those paragraphs that are unclear or ambiguous. In fact, the paragraphs are not in any way obscure, uncertain or misleading. They are in plain, unambiguous language which leaves no reasonable doubt as to their meaning. They require no interpretation.

22. The UNDT therefore clearly erred in law in holding that Mr. Porter's application for interpretation was receivable.

23. We reject Mr. Porter's submissions regarding *Azzouni*.¹¹ That case is not pertinent to the present case. Ms. Azzouni's case involved the interpretation by the Appeals Tribunal of its own judgment. It set aside the UNDT judgment and ordered Ms. Azzouni's reinstatement or, in lieu, two years' net base salary. The question of an award of interest arose on appeal, when Ms. Azzouni requested interest in her application for revision. The Appeals Tribunal treated Ms. Azzouni's application as an application for interpretation of its award of compensation in lieu and awarded interest accordingly. In the present case, Mr. Porter's claim for interest was part of his case before the UNDT. He had applied for interest in his application to the UNDT filed on 21 February 2012.¹² The UNDT should have dealt with his claim for interest in its Judgment No. UNDT/2016/096, but it omitted to do so.

24. Article 12(3) does not give the UNDT the power to change a final judgment under the cover of interpretation. The UNDT therefore exceeded its competence by wrongly applying Article 12(3) to alter the substance of its final ruling by adding additional relief in the form of an award of interest.

25. Mr. Porter had no grounds for filing an application for interpretation in the UNDT. The proper procedure to challenge the UNDT's Judgment, which clearly failed to adjudicate his claim for interest, was to bring an appeal before the Appeals Tribunal.

¹¹ *Azzouni v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-162.

¹² His application was for "payment of all back pay, benefits, [Monthly Subsistence Allowance], hazard pay, danger pay, pension, and any other emoluments Applicant has been denied since being involuntarily forced into taking sick leave/released from work/SLWOP beginning May 2009, as well as 11 [per cent] interest thereon dating back to the time the Organization failed to pay him".

26. Mr. Porter claims in his answer moral damages of USD 25,000 for “the psychological and emotional suffering he continues to endure over this near decade long appeal”. He has not filed a cross-appeal against the UNDT’s award of USD 5,000 for moral damages. His claim is therefore dismissed.

27. Mr. Porter also claims USD 10,000 for punitive damages. This claim is without any legal foundation as the Appeals Tribunal is not competent to award punitive damages.¹³ This claim is also dismissed.

28. It follows from the foregoing reasons that the appeal succeeds.

¹³ Article 9(3) of the Statute provides: “The Appeals Tribunal shall not award exemplary or punitive damages.”

Judgment

29. The appeal is allowed and Judgment No. UNDT/2017/024 is vacated.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Murphy

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar