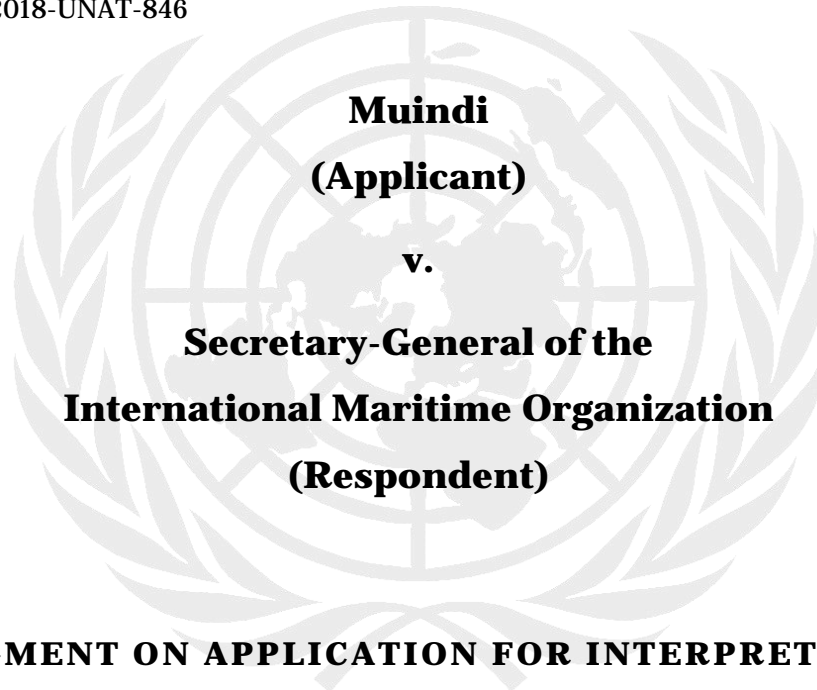




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2018-UNAT-846



Before: Judge Sabine Knierim, Presiding
Judge John Murphy
Judge Dimitrios Raikos

Case No.: 2017-1133

Date: 29 June 2018

Registrar: Weicheng Lin

Counsel for Applicant: Antje Kunst

Counsel for Respondent: Dorota Lost-Sieminska

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for interpretation of Judgment No. 2017-UNAT-782 rendered by the Appeals Tribunal on 14 July 2017. Mr. John Paul Muindi filed his application on 27 November 2017 and the Secretary-General of the International Maritime Organization (IMO) submitted his comments on 20 December 2017.

Facts and Procedure

2. Mr. Muindi was appointed to the post of Regional Coordinator in IMO's Regional Presence Office for Technical Co-operation in the Eastern and Southern Sub-region of Africa in Nairobi, Kenya, on 1 March 1999, as a locally recruited National Officer. He worked in this position until his summary dismissal on 4 April 2016, following a fact-finding investigation into fraudulent activities allegedly committed by him, conducted by the Internal Oversight Services (IOS) from 1 to 5 February 2016.

3. By letter dated 5 January 2017, the IMO Secretary-General informed Mr. Muindi that after consideration of both the report of the Joint Disciplinary Committee and the report of the Staff Appeals Board (SAB), and in line with the SAB's recommendation not to reinstate Mr. Muindi, he confirmed the decision of summary dismissal of Mr. Muindi as described in his letter of 4 April 2016.

4. On 8 February 2017, Mr. Muindi filed an appeal before the Appeals Tribunal against the decision of the IMO Secretary-General to confirm the decision of summary dismissal of Mr. Muindi for serious misconduct. The IMO Secretary-General filed his answer on 12 April 2017.

5. On 14 July 2017, the Appeals Tribunal issued Judgment No. 2017-UNAT-782, granting Mr. Muindi's appeal in part. The Appeals Tribunal ordered the rescission of the 5 January 2017 decision of summary dismissal and in the alternative, payment of one year's net base salary at the rate in effect in March 2016.

6. By letter to the Acting Director, Administrative Division of the IMO dated 13 September 2017, Mr. Muindi requested that in the event the IMO Secretary-General elects payment of in-lieu compensation, Mr. Muindi should be paid his salaries, emoluments and

entitlements from the date of his unlawful separation until the date of the Judgment and the one year's net base salary ordered by the Appeals Tribunal; as well as interest on the compensation awarded at the applicable US Prime Rate calculated from 5 April 2016, the date of separation, to the date of satisfaction of judgment.

7. By letter dated 6 October 2017, the Director, Legal Affairs and External Relations Division, IMO, advised that the IMO had elected payment of compensation in lieu of rescission of summary dismissal and Mr. Muindi would be paid one year's net base salary. In addition, he would be compensated for his annual leave balance of 60 days minus outstanding telephone charges.

8. By e-mail dated 24 October 2017, Mr. Muindi responded that he would like the Judgment to be "properly implemented", that discussions between the IMO Administration and the Staff Association were underway and that the IMO had ignored his request for payment of interest.

9. On 27 October 2017, the IMO paid Mr. Muindi a total amount of 13,921,535.21 Kenyan Shillings consisting of one year's net base salary, Mr. Muindi's accrued annual leave minus the outstanding telephone charges.

10. By e-mail dated 3 November 2017, the Head, Legal Affairs Office, Legal and External Relations Division, IMO advised Mr. Muindi that the IMO would be willing to pay interest on the in-lieu compensation from the date that compensation became due, i.e. from the date the Judgment was issued (14 July 2017).

11. On 27 November 2017, Mr. Muindi filed his application for interpretation and the IMO Secretary-General filed his comments on 20 December 2017.

Submissions

Mr. Muindi's Application

12. Mr. Muindi requests clarification as to which date should be considered his separation date from the IMO for purposes of determining his separation entitlements, in particular pension benefits, when the IMO Secretary-General has opted for in-lieu compensation of 12 months' net base salary at the rate in effect in March 2016.

13. Mr. Mundi contends that the satisfaction of judgment should be his separation date for the purposes of calculating his entitlements including making contributions to the United Nations Joint Staff Pension Fund (Pension Fund). Alternatively, the separation date should be one year after the summary dismissal of 5 April 2016, i.e. 5 April 2017, to take into account the in-lieu compensation of one year's net base salary for the purposes of determining his entitlements including making contributions to the Pension Fund. In the further alternative, his separation date should be the date of the unlawful decision of 5 January 2017.

14. Mr. Muindi requests that in accordance with the Appeals Tribunal's consistent case law, the IMO pay interest on the compensation awarded at the applicable US Prime Rate calculated from 5 April 2016 to the date of satisfaction of judgment.

The IMO Secretary-General's Comments

15. The IMO Secretary-General contends that the Judgment is clear in that it only ordered the rescission of the decision of summary dismissal and in the alternative, payment of one year's net base salary at the rate in effect in March 2016. The compensation was granted in lieu of rescission and not in lieu of reinstatement which is in accordance with Article 9(1)(a) of the Appeals Tribunal's Statute (Statute). Therefore, as it was decided to pay compensation in lieu of rescission of the decision of summary dismissal, the summary dismissal was never rescinded and the separation date remains the date of the summary dismissal on 5 April 2016. Moreover, whether or not further compensation is payable to Mr. Muindi, in addition to the in-lieu compensation, is unrelated to the separation date.

16. The Appeals Tribunal did not order the payment of loss of earnings or interest payments in addition to the in-lieu compensation. If the Appeals Tribunal now ordered these additional components of compensation, this would be a violation of Article 10(6) of the Statute, which stipulates that Appeals Tribunal judgments are final.

17. An interpretation to the contrary would also go against Article 9(1)(b) of the Appeals Tribunal Statute which stipulates that compensation shall normally not exceed two years' net base salary. If Mr. Muindi was paid salaries, emoluments and entitlements from the date of his separation until the Judgment and the additional one year's net base salary, this compensation would exceed the limit of Article 9(1)(b) of the Statute. The Appeals Tribunal did not find that there were exceptional circumstances allowing a higher compensation.

18. Mr. Muindi's contention that consistent case law requires payment of interest on any compensation awarded is not correct. The Appeals Tribunal did not rule that interest should always be paid on compensation awarded, but instead that the UNDT has the power to award pre- and post-judgment interest. In the present case, the Appeals Tribunal decided not to award interest on the compensation.

19. In an effort to reach an amicable solution, the IMO had offered to pay interest on the in-lieu compensation from the date that the compensation became due, i.e. from the date the Judgment was issued (14 July 2017). This is in line with the consistent jurisprudence that, if interest is actually awarded, such interest is to be paid from the date on which the entitlement became due. Since Mr. Muindi made an application for interpretation before the interest payment was made and since the IMO's interpretation of the Judgment does not entail payment of interest, the IMO has withdrawn its amicable offer for interest payment.

20. The IMO Secretary-General requests that his interpretation of the Judgment be confirmed.

Considerations

21. Under its statutory framework, the Appeals Tribunal has authority to decide on applications for interpretation of a judgment issued by the Appeals Tribunal. Article 11(3) of the Statute reads: "Either party may apply to the Appeals Tribunal for an interpretation of the meaning or scope of the judgement."

22. Whether or not such an application for interpretation is admitted lies within the discretion of the Appeals Tribunal. Article 25 of the Appeals Tribunal Rules of Procedure (Interpretation of judgements) 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 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.

23. Following our jurisprudence, an application for interpretation will be admitted, if the parties disagree on the meaning or scope of a judgment because it is unclear or ambiguous.¹

Which date should be considered Mr. Muindi's separation date from the IMO for purposes of determining his entitlements, in particular pension benefits?

24. We do not admit Mr. Muindi's application on this issue. His request for interpretation refers to the legal consequences of Judgment No. 2017-UNAT-782 with regard to his separation date which goes beyond an application for interpretation of the meaning and scope of a judgment provided under Article 11(3) of the Statute and Article 25 of the Rules of Procedure. In Judgment No. 2017-UNAT-782, we examined the lawfulness of the 5 January 2017 decision by which the IMO Secretary-General confirmed the 4 April 2016 decision of summary dismissal. Rejecting all other requests, we ordered rescission of the 5 January 2017 decision and in-lieu compensation in the amount of one year's net base salary. The issue of Mr. Muindi's separation date was not part of the Judgment. Hence, there can be no interpretation by the Appeals Tribunal in this regard.

Whether the IMO is obliged to pay interest on the compensation awarded

25. As we did not order the IMO Secretary-General to pay interest on the in-lieu compensation, there is no unclarity or ambiguity in our Judgment. Thus, the application on this point is equally not admissible.

¹ *Awe v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-827, para. 27.

Judgment

26. Mr. Muindi's application for interpretation of judgment is rejected.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar