



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

Judgment No. 2021-UNAT-1104

**George Naoum Azar
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Kanwaldeep Sandhu Judge Dimitrios Raikos
Case No.:	2020-1394
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Francisca Lagos Pola

JUDGE GRAEME COLGAN, PRESIDING.

1. George Naoum Azar (Mr. Azar) appeals against the Judgment of the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) issued on 5 May 2020.¹ Mr. Azar had contested the decision of the Under-Secretary-General for Management (USG/DM) to withhold final remuneration entitlements to settle his indebtedness to the Organisation and to withhold notification to the pension fund of his separation from the United Nations Interim Force in Lebanon (UNIFIL) pending satisfactory settlement of the questions of his indebtedness. The UNDT found the questions moot and dismissed his application. For reasons set out below, we allow the appeal in part.

Facts and Procedure

2. In 2016, Mr. Azar underwent major surgery and in the following two calendar years, he returned frequently to hospital for checks and rehabilitation. On 1 September 2018, Mr. Azar resigned from the United Nations. On 5 October 2018, he was informed that his monetary separation entitlements had been withheld due to an ongoing investigation into his alleged misconduct. The allegations against him included, relevantly, that he had worked without authorisation during periods of sick, paternity and annual leave. The Secretary-General (Respondent) claimed that he was thereby indebted to the Organisation in the sum of LBP 45,186,852.73 (approximately USD 29,758) representing 165.5 days' remuneration and, by letter of 5 December 2018, then required that he pay this sum before his separation paperwork could be completed including payment to him of his pension.

3. On 29 October 2018, Mr. Azar sought management evaluation of the decision not to process his separation, including the decision not to issue relevant documents to the United Nations Joint Staff Pension Fund (UNJSPF) pending completion of ongoing investigation into these disciplinary matters. The Management Evaluation Unit upheld the contested decision on 5 February 2019.

4. In the meantime, however, on 13 December 2018, it appears that the Organisation at least doubted the accuracy of its level of demand because it advised Mr. Azar to disregard its claim for reimbursement as it was still investigating the amount that it was claiming. After his application

¹ *Azar v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/067 dated 5 May 2020 (Impugned Judgment).

was made to the UNDT on 28 January 2019, the Respondent revised downwards and significantly, the amount the Organisation reclaimed from Mr. Azar to LBP 3,925,649.65 (approximately USD 1,195). Mr. Azar settled his debt with the Organisation by payment of this sum on 9 March 2019. Within days his final entitlements were processed and in May 2019, Mr. Azar began to receive his pension benefits.

5. The remedies originally sought by Mr. Azar from the UNDT included to direct the payment to him of his separation entitlements and to direct the Organisation to notify UNJSPF of his resignation so that he could begin to receive his pension. After these remedies had been claimed originally, they became, at least in part, inappropriate to the situation that had altered as just described.

6. In the course of case management (CMD) on 22 April 2020 before the UNDT's hearing, it was revealed that Mr. Azar's original claims had been resolved during the pendency of those proceedings and the appellant therefore sought to change the nature of the relief that he claimed. He then wished to recover compensation for the effects on him of the nine-month delay he claimed had taken place before settlement and to dispute the amount of the pension being paid to him. The UNDT held that these issues had not been referred to management evaluation and so, pursuant to Article 8.1(c) of the Dispute Tribunal Statute (UNDT Statute) and Staff Rule 11.2(a), they were beyond the scope of what it could decide.

7. The UNDT determined in relation to the Organisation's refusal to release documents to the UNJSPF, that this had been done on lawful grounds until settlement of the indebtedness issue whereafter the documents were released promptly. The commencement of receipt of his pension by Mr. Azar also resulted in the UNDT having no live issue before it. The Dispute Tribunal held that the issues were then moot and dismissed his application.

The UNDT Judgment

8. The UNDT recorded that the decisions of the Respondent which Mr. Azar challenged, were to withhold his final entitlements to cover his indebtedness to the Organisation, and to withhold issuing notification to the pension fund of his separation

from service, until such indebtedness had been settled. The UNDT found for the following reasons that “the contested decision has been rendered moot.”²

9. Among its factual findings, the UNDT concluded that the issue or issues referred to management evaluation by Mr. Azar were “the decision not to process his separation, including issuing the relevant documents to the [pension fund] pending the completion of the ongoing investigation and disciplinary process.”³ The UNDT also so described the issue(s) brought to the tribunal by Mr. Azar. It described the relief sought from it by him as a direction to the Administration to release the documents to the pension fund so his pension benefits could be released. The UNDT said that in light of these claims, the issue “the Tribunal had been called to resolve was whether the Respondent was entitled to withhold any outstanding payments to [Mr. Azar] and to delay the release of the separation notification to the [pension fund].”⁴

10. The UNDT recorded that it had been told at the case management conference on 22 April 2020 that “the controversy between the parties was resolved during the pendency of this application (...) [Mr. Azar] now seeks new reliefs, specifically compensation for the long (nine months) it took for him to be paid and in addition he disputes the amount being paid to him as a pension.”⁵ It held that these heads of relief were “beyond the scope of this application since they were not subjected to management evaluation as required by [the UNDT Statute and applicable Staff Rule].”⁶

11. Enigmatically, however, the UNDT then proceeded to decide the claims relating to the failure to release the documents, finding the Administration had “proper legal grounds for refusing to issue the separation notification” and citing the relevant Staff Rules and Administrative Instructions set out in the Respondent’s submissions to us.⁷ It recorded that the Administration promptly released the documents to the pension fund after Mr. Azar “met his obligation to settle his indebtedness to the Organization and [Mr. Azar] was paid his pension which means there is no longer a live issue upon which this Tribunal can competently

² Impugned Judgment, para. 24.

³ *Ibid.*, para. 10.

⁴ *Ibid.*, para. 19.

⁵ *Ibid.*, para. 20.

⁶ *Ibid.*, para. 21.

⁷ *Ibid.*, para. 22.

pass judgment. Any remedy issued would have no concrete effect.”⁸ The proceeding was dismissed for mootness.

Submissions

Mr. Azar’s Appeal

12. Mr. Azar contends that his pension entitlement did not take into consideration either a period of Field Service (FS) contribution with UNMIL from July 2014 to July 2016 or his contributions during the period where he had lost 3 steps in his grade.

13. Mr. Azar submits that he and his family have been harmed by the nine-month delay in receiving his entitlement. He contends that no one from the Organisation told him that there was a case against him or that his entitlement would be put on hold. He further contends that the nine-month delay led to him and his family becoming homeless and that he lost his car and access to schools for his children. He contends that the Organisation “discredited” his health condition.

14. Mr. Azar requests the following relief: “Compensation for the prejudice that the [A]dministration left against me and wasting a great time of my life for the damage it left to my family and my healthy life: Give me my lost rights when I served in Liberia: Recover my lost money when I lost three steps.”

15. In addition, Mr. Azar makes the following request: “I request from your attention to give me my rights back, to compensate fairly what I deserve, and to add my contribution and settle the rest of my pension.”

The Secretary-General’s Answer

16. The Respondent contends that the UNDT was correct to dismiss the appellant’s application on the basis that the appellant’s claims regarding the withholding of his pension benefits were moot. The decision to withhold the release of pension benefits was rendered moot by subsequent actions, specifically that the appellant repaid the overpayments made to him, the Administration had given instructions for his paperwork to be released to the pension fund and the appellant received his pension benefit. The Respondent submits that the

⁸ *Ibid.*, para. 23.

United Nations Appeals Tribunal (Appeals Tribunal or UNAT) jurisprudence has consistently found that the tribunals do not have the jurisdiction to examine the merits of an administrative decision that has been rescinded or superseded by subsequent actions of the Administration, thus rendering the matter moot.⁹

17. The Respondent submits that the UNDT was correct to find that the additional matters raised by the appellant, which were not subject to management evaluation, were not receivable. Specifically, the Respondent contends that the UNDT correctly concluded that the appellant's complaints about the long period it took him to be paid and the amount of the pension, were beyond the scope of the application, since they were not subject to management evaluation, as required by Article 8.1(c) of the UNDT Statute. As such, the UNDT could not review these decisions as they were not receivable *ratione materiae*. The Respondent further provides that challenges against UNJSPF decisions should be directed to UNJSPF in accordance with its legal framework and specifically, Article 48 of the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund. As such, the Respondent contends that these are not decisions of the Secretary-General for which the Respondent can be held to answer.

18. The Respondent says that the UNDT correctly concluded that the Administration was entitled to withhold the release of final documents necessary for the processing of the appellant's pension benefits until the staff member had settled all indebtedness to the United Nations, in accordance with Staff Rule 3.18(c)(ii), Administrative Instruction ST/AI/2009/1 (Recovery of overpayments made to staff members) and Administrative Instruction ST/AI/155/Rev.2 (Personnel Payroll Clearance Action), as amended.

19. The Respondent contends that Mr. Azar has failed to establish any errors of fact or law by the UNDT warranting reversal of the Judgment. Article 2.1 of the Appeals Tribunal Statute (Statute) has not been satisfied, i.e. no grounds for appeal has been identified. Moreover, the Respondent contends that it is the appellant who has the burden of satisfying the UNAT that the judgment rendered by the UNDT is defective, by identifying the alleged defects and stating

⁹ See *Cherneva v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-870, paras. 33-38; *Crotty v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-763, para. 17; *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 44; *Ishak v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-152, para. 29.

upon which grounds. It is insufficient for an appellant to state their disagreement with the outcome of the case or repeat arguments already submitted before the UNDT.¹⁰

20. The Respondent contends that it is insufficient for Mr. Azar to disagree with the findings of fact or conclusions of law made by the trial court; the appellant must persuade UNAT that the contested decision fulfils the objective criteria of its competence.¹¹

21. Further, the Respondent argues that dissatisfaction with a judgment and the desire to pursue another round of litigation are not a proper basis to seek the revision of a judgment.¹²

22. The Respondent contends that Mr. Azar fails to discharge his burden of satisfying the UNAT that the Judgment is defective, or identify any excess or failure of jurisdiction, errors of law, material errors of procedure, nor errors of fact in his appeal. The Respondent submits that the appellant reiterates facts and directs his challenges against different decisions, including the amount of the pension benefit, submitting that certain contributions of service such as his FS service and contribution when he claims he lost 3 steps, were not taken into consideration. The Respondent emphasises that these decisions were neither the subject of a management evaluation process nor the subject of the current proceeding, which only concerns the withholding by the Administration of information required to process the appellant's pension benefits.

23. The Respondent requests UNAT to affirm the Judgment of the UNDT and to dismiss the appeal entirely.

Considerations

24. Standing back from the legal technicalities of the situation, the following situation presents itself. After a sustained period of serious illness, Mr. Azar resigned from his position with the United Nations. Although there were then suggestions that he had improperly obtained remuneration and other benefits, there is no evidence of this, or any conclusions reached about it. That he subsequently agreed to pay the Administration a relatively modest

¹⁰ See *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

¹¹ See *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-707, para. 18.

¹² *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-102, para. 13. We note that whilst this is a correct reference, it should be noted that this case concerns revision of a judgment, not an appeal as this is.

sum, at least compared to what was originally claimed from him, does not necessarily indicate that he obtained money fraudulently or in a way in which he was culpable: there may have been an innocent error or any one of a number of exculpatory circumstances of which we are unaware, as was apparently the UNDT. The situation was described as one of overpayment to him.

25. The Respondent determined to withhold a significant sum (equivalent to USD 29,758) from Mr. Azar and, independently of this, declined to process the paperwork necessary to enable him to receive any of the pension to which he was entitled. It is an open inference that even if the periodic amounts of his pension may have been affected by the Administration's claims, its actions blocked effectively the receipt by him of any pension for a significant period. It seems clear that this blockade against the receipt of his pension was put in place to encourage Mr. Azar to repay the money it said he owed it.

26. After two months, it appears that the Administration had doubts about the accuracy of its claims but apart from advising Mr. Azar of this situation, it did not allow him any financial relief until, a further five months later when it quantified the amount then claimed (USD 1,195) which was just 4 percent of that it had originally asserted he owed and for enforcement of which it had both withheld termination entitlements and delayed the payment of all his pension entitlements.

27. While some of the causes of action originally brought to the UNDT and the amounts in issue had by then fallen away, Mr. Azar was not permitted to amend his claim which was then dismissed as being moot, that is that he no longer claimed what he had originally sought. There remained, however, his claims to the consequences to him of the Administration's conduct, including its refusal to process his pension paperwork and refusal to pay him termination monies. He asserts that he and his family suffered, in his case health-wise and for all, economically, as a consequence of these alleged wrongs. These claims have not been considered or ruled upon.

28. It is correct that some of Mr. Azar's original claims were resolved, albeit after he had issued proceedings, so that these were thereafter moot and properly dismissible for that reason by the UNDT. The real question in these circumstances is, however, whether Mr. Azar was entitled to amend his causes of action and remedies in his proceedings before the UNDT without submitting these new matters for management evaluation and whether, in the absence

of this, the UNDT correctly disallowed Mr. Azar from doing so in the course of his original proceedings.

29. The UNDT misapplied the law of mootness and, thereby, erred in law in reaching the Impugned Judgment. Although citing the Judgment of this Tribunal in *Kallon* in support of its findings on mootness, the UNDT omitted to follow an important passage in the same Judgment relating to the cautious approach that must be taken to such applications to dismiss cases without hearing them on their merits as the Secretary-General had made. At paragraph 45, the UNAT in *Kallon* wrote:¹³

... Since a finding of mootness results in the drastic action of dismissal of the case, the doctrine should be applied with caution. The defendant or respondent may seek to “moot out” a case against him, as in this case, by temporarily or expediently discontinuing or formalistically reversing the practice or conduct alleged to be illegal. And a court should be astute to reject a claim of mootness in order to ensure effective judicial review, where it is warranted, particularly if the challenged conduct has continuing collateral consequences. It is of valid judicial concern in the determination of mootness that injurious consequences may continue to flow from wrongful, unfair or unreasonable conduct. The essence of Mr. Kallon’s rebuttal of the Secretary-General’s claim of mootness in this appeal is his assertion that the unreasonable removal of his procurement designations, as well as his effective and continuing demotion, are ongoing injury of sufficient collateral consequence to preclude mootness despite the cessation or partial (albeit disputed) reversal of the direct effects of procedural irregularity and unfairness ...

30. In *Kallon*, the UNAT continued at paragraph 46 citing with approval the UNDT’s statement in *Gehr* in which the non-absolute nature of mootness was emphasised:¹⁴ “In cases where the Administration rescinds the contested decision during the proceedings, the applicant’s allegations *may* be moot. This is normally the case if the alleged unlawfulness is eliminated and, unless the applicant can prove that he or she still sustains an injury for which the Tribunal can award relief, the case should be considered moot.”

31. That is the position Mr. Azar finds himself in. While he has been paid his termination entitlements and his pension payments have commenced, his complaint (submitted first to management evaluation and then to the UNDT) was that the Respondent wrongfully withheld

¹³ *Kallon*, *supra* note 2, para. 45.

¹⁴ *Gehr v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/211, para. 37 (emphasis added).

these benefits, withheld an excessive amount of them and wrongly continued to withhold them for an improperly long period as a result of which illegalities, he suffered loss and damage. Although he may not have sought these remedies expressly and initially in the UNDT, they were the consequence of the assertions he made and, after his primary claims were resolved, these remained. His proceeding before the UNDT was not moot.

32. Although the UNDT's Judgment was not based expressly on non-receivability, that issue was considered by it and found, impliedly at least, to favour the Respondent. For reasons relating to our finding (and that of the UNDT) about the matters that were advanced by Mr. Azar for management evaluation, we reject the argument for the Respondent that the proceeding was not receivable by the UNDT on this ground. The proceeding was receivable by the UNDT, the remaining claims for relief having been evaluated by the Organisation's management, but was rejected.

33. Although we have described as enigmatic the UNDT's decision to determine the lawfulness of the withholding of these payments to Mr. Azar and to not forward the documentation to the pension fund at the same time as the tribunal has decided that his claims were moot, we will address that former finding also. It, too, was made in error of law. While the Administration had the power to do those things, it was a discretionary power: the word "may" appears in the Staff Rules relating to its exercise and a reading of all the relevant rules clearly shows that they are discretionary and not mandatory. It does not mean that because the Administration possessed this discretionary power, its exercise in Mr. Azar's case was thereby lawful as the UNDT appears to have concluded. Considerations such as proportionality of its exercise, both as to the amounts withheld and the length of their retention are open to judicial review of these administrative decisions and there may well be other grounds of challenge to them. Because of the remedies we grant in this case, we should not express views on what the UNDT may be asked to determine and how it should do so. We simply point out the error of law that was committed in the Impugned Judgment now before us.

34. Finally, we address the ground of appeal that the UNDT wrongly refused to examine and correct the amounts of pension payments that are being made to Mr. Azar. On this issue we agree with the Respondent's case that the UNDT was correct to dismiss his claims. That was not an issue that had been taken to management evaluation or brought to the UNDT before Mr. Azar sought to raise it at the directions conference shortly before the hearing. His claims

to error stem not from the retentions issue relating to his severance from service, but rather to earlier roles held by him elsewhere in the Organisation and the pay grades he had or ought to have held. These are matters that Mr. Azar may wish to take up with the pension board but cannot be hooked into these proceedings by him. In this regard, the Judgment of the UNDT is upheld.

Judgment

35. The appeal against Judgment No. UNDT/2020/067 of the UNDT is allowed in part and the Judgment is set aside. Mr. Azar's claims for compensation for wrongful retention by the Respondent of his entitlements upon his resignation is remitted to the UNDT for decision on their merits. In view of the UNDT Judge at first instance having decided the issue which has now been sent back for re-decision, we direct that another UNDT Judge hear and decide the remitted case.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Colgan, Presiding
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 3rd day of May 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar