



**Before:** Judge Coral Shaw

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

LUVAI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**

Pro-se

**Counsel for the Respondent:**

Miouly Pongnon, Office of the Director-General, UNON

**Notice:** This judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

## **Introduction**

1. The Applicant has applied to the Tribunal for “interpretation and direction to both Parties in regards to Para 19 of judgment UNDT/2010/166” and

[I]n the event that the Respondent is unable to deal with the issues in hand, the Applicant request(s) the Honourable Tribunal to bring the matter to rest by becoming the final arbiter in this case that has gone on for a long time without a credible solution.

## **Facts**

2. The background facts to this case were set out in *Luvai* UNDT/2010/166 and are repeated here.

3. The Applicant is a staff member of the United Nations Office at Nairobi (UNON) employed as a security officer. His initial claim before the Nairobi Joint Appeals Board (JAB) was that: in his absence and without his consent or knowledge, the Respondent opened his locker and, without taking an inventory, placed the contents in an unsecured cardboard box; the Respondent failed to communicate this forceful opening of his locker to him or his representative; and the Respondent failed to take any reasonable precautions to secure his personal effects. The Applicant sought compensation for the loss of his personal possessions.

4. Following the JAB recommendations, the Applicant appealed to the former United Nations Administrative Tribunal. The former UN Administrative Tribunal found, in UN Administrative Tribunal Judgment No. 1421 (2009), that under the Staff Rules, the appeal should have been filed with the Claims Board instead of the JAB. However, it was recognised by the former UN Administrative Tribunal that despite several exchanges of communication between the Applicant and the Administration, the Applicant was never informed by the latter of the proper recourse procedures available to him under the Staff Rules. It had instead misleadingly informed him that any recourse should be addressed to the former UN Administrative

Tribunal. The former UN Administrative Tribunal noted that the Respondent had requested leave “to submit arguments on the merits of the case, should this matter be found to be receivable” but stated that

the Applicant should be given an opportunity to follow that proper recourse procedure, that is, he should be allowed to submit his claim to the Compensation Claim Committee [sic] to determine whether or not he is entitled to compensation.

5. The case was remanded for correction of the procedure. The Respondent was ordered to pay the Applicant compensation of 3 month’s salary, plus interest, for loss resulting from procedural delay.

6. The former UN Administrative Tribunal judgment was delivered on 30 January 2009. In an application dated 26 February 2009 and stamped as received on 17 March 2009, the Applicant applied to the United Nations Dispute Tribunal (UNDT) for judicial review of the former UN Administrative Tribunal judgment.

7. In UNDT/2010/166, this Tribunal found that the UNDT has no jurisdiction to entertain an application for Judicial Review (of a decision by the former UN Administrative Tribunal) and that the Applicant’s application therefore could not be received. This Tribunal went on to state in paragraph 19 of the Judgment:

The Tribunal notes and commends the willingness of the Respondent to cooperate in the process once the claim has been submitted appropriately by the Applicant.

8. The Applicant seeks interpretation of this paragraph.

### **Applicant’s Submissions**

9. The Applicant is moving the Tribunal to “re-open [...] UNDT/NBI/2010/002” to facilitate the compensation process initiated by him in 2004 which has stalled because of a lack of response from the Administration.

10. The Applicant asks the Tribunal to interpret and direct both Parties on the import of paragraph 19 of Judgment UNDT/2010/166, in which the Tribunal said that it

notes and commends the willingness of the Respondent to cooperate in the process once the claim has been submitted appropriately by the Applicant.

### **Respondent's Submissions**

11. The Respondent contends that he is not aware of any claim filed by the Applicant with the Claims Board of the Compensation Claims Committee.

12. The Respondent argues that the present Application “impermissibly seeks a judicial revision of Judgment No 1421” of the former UN Appeals Tribunal, which the Applicant has previously attempted and which was dismissed as non-receivable.

13. The Respondent takes the position that as the former UN Appeals Tribunal Judgment No. 1421 (2009) required the Applicant to file a claim with the Claims Board of the Compensation Claims Committee in accordance with ST/AI/149 Rev. 4, which direction the Applicant has not complied with, the present Application should be dismissed as non-receivable.

### **CONSIDERATIONS**

14. Article 12.3 of the Tribunal's Statute provides that,

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

15. In *Allen* Order No. 42 (GVA/2010), the Tribunal held that,

a request for interpretation of a judgment is receivable only if the operative part of it gives rise to uncertainty or ambiguity about its meaning or import. This has been consistently held by other international administrative tribunals which were vested, before UNDT, with the power to interpret their own judgments (see e.g. ILOAT, Judgment 802, *In re Van Der Peet* (No. 10); Judgment No. 2483; IMFAT, Order No. 2005-2).

16. Further in *Gehr* UNDT/2012/106 the Tribunal confirmed that,

This finding is in line with the very *raison d'être* of article 12, paragraph 3, of the UNDT statute. Indeed, the purpose of an application for

interpretation is not to seek further justification of the grounds for a given decision, but to obtain clarification of the decision itself (see ILOAT, Judgment No. 2483).

17. In UNDT/2010/166, the substantive finding was that the Applicant's application was not receivable. That decision was upheld by the UN Appeals Tribunal in *Luvai* 2011-UNAT-167.

18. Paragraph 19 of UNDT/2010/166 was an obiter observation by the Tribunal. It did not have a bearing on the reasoning or on the outcome of the final judgment. In any event, the Tribunal finds that paragraph 19 was neither uncertain nor ambiguous and is therefore not open to interpretation by the Tribunal.

19. The request for interpretation was expressly made by the Applicant in an attempt to re-open proceedings which have already been held to be not receivable. That is neither an appropriate use of Article 12.3 nor the correct way for him to advance his claim for compensation.

## **DECISION**

20. This Application is DISMISSED.

*(Signed)*

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Judge Shaw

Dated this 17<sup>th</sup> day of September 2012

Entered in the Register on this 17<sup>th</sup> day of September 2012

*(Signed)*

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Legal Officer for  
Jean-Pelé Fomété, Registrar, UNDT, Nairobi