



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2013/045

Judgment No.: UNDT/2013/165

Date: 10 December 2013

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Shamila Unnikrishnan, Officer-in-Charge

IGOGO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Steven Dietrich, ALS/OHRM, UN Secretariat

Elizabeth Gall, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant brought this Application on 3 August 2012 challenging the decision of the Management of the International Criminal Tribunal for Rwanda (ICTR) to withhold his final entitlements upon his separation from the Organization on 30 September 2011.

2. Implementation of ICTR's completion strategy meant that the Applicant was one of those whose services could not be retained beyond September 2011. The payment of the Applicant's final entitlements was made to him by ICTR on 21 February 2012.

3. Applicant prayed the Tribunal to order ICTR to pay him "disturbance allowance" for seven months for "holding him hostage and illegitimately stopping his checking out process". He sought also the payment of "subsistence allowance" in the sum of two years net base salary representing "interest" which would have accrued if his entitlements were not delayed. The Applicant also asked for compensation in the amount of two years net base salary for "moral and psychological damage".

Facts

4. The Applicant was recruited by ICTR as a Security Officer on 8 July 1996. He was later moved to the Witness and Victims Support Section (WVSS) of the ICTR until his separation on 30 September 2011. He received and signed his separation notice on 1 September 2011 and was advised to contact the Human Resources and Planning Section (HRPS) to complete the necessary checkout formalities.

5. The ICTR checkout procedures are made to ensure that all outstanding obligations, liabilities and entitlements of a staff member who is leaving the Organization are properly recorded and settled before his separation. All the relevant Section Chiefs would indicate whether the out-going staff member had any outstanding financial obligations or property of the Organization.

6. Where outstanding financial obligations exist or the staff member has not surrendered property in his possession, ICTR would withhold final entitlements until these are settled. The President of the ICTR Staff Association is one of the personnel required to sign the check-out form wherein he would indicate that the out-going staff member has no outstanding debts with the Staff Association.

7. On 15 September 2011, the Applicant's checkout process was initiated online by an HR Assistant. The Applicant had served on the executive committee of the ICTR Staff Association as its Vice President from 2007 until 2010. The incumbent President of the Staff Association informed the Applicant on 8 November 2011, during the checkout process, that he could not sign his checkout form unless he provided the said Staff Association a complete financial report of his tenure since there were on-going investigations by the Office for Internal Oversight Services (OIOS) into the Staff Association's finances¹.

8. On 2 and 4 November 2011, the Applicant wrote to the ICTR Registrar requesting his intervention with regard to the position taken by the incumbent President of the Staff Association. As a result, the Applicant's final salary for the month of September 2011 was released to him and he confirmed receipt on 11 November 2011.

9. On 31 January 2012, the ICTR Finance and Budget Unit received from the Applicant his separation documents without the checkout form because the President of the Staff Union had not signed his part on the form. The Applicant then wrote to the Chief, Human Resources and Policy Services in the Office of Human Resources Management in New York (HRPS/OHRM) asking for assistance in the matter.

10. The Applicant's final entitlements which included his salary revision, compensatory time off and annual leave balance were paid on 21 February 2012.

11. On 8 March 2012, the Applicant requested management evaluation of the ICTR's decision not to complete his checkout process pending his submission of requested financial statements by the Staff Association. The Management

¹ Respondent's Annex R3.

Evaluation Unit (MEU), on 23 April 2012, advised the Applicant that he was not entitled to any compensation based on the claimed delay in making the payments. The decision of MEU was upheld by the Secretary-General and conveyed to the Applicant on 4 June 2012.

12. The Applicant filed the present Application on 3 August 2012. The Application was served on the Respondent on 7 August 2012.

13. On 7 September 2012, the Respondent filed a Reply to the Application.

14. At a case management conference on 23 May 2013, the Tribunal informed the parties that the matter would be decided on the papers.

Applicant's Case

15. The Applicant's case is that there was undue delay in effecting his final entitlements following his separation. In his own chronological summary of the facts of the case, the Applicant did not state the date on which he received the said final entitlements. He claims in some paragraphs of his Application² that the delay in payment lasted over seven months and in others³ that it lasted nine months.

16. He also claims that the ICTR Management had no legitimate reason for the delay and that he suffered emotional distress, harm to his mental faculties, a weakened financial status and career prospects.

Respondent's case

17. The Respondent's case is that even before the Applicant made a request for management evaluation on 8 March 2012, the issue of the final payment of his entitlements was settled in that these had been paid by 21 February 2012. At the time of filing this Application, the payment of the final entitlements of the Applicant and the submission of his documentation to the United Nations Joint Staff Pension Fund (UNJSPF) for purposes of working out his pension benefits had been completed.

² Paragraphs VIII.1., VIII.7 and IX.9

³ Paragraph VIII.6

18. The Organization is authorized to deduct monies from the Applicant's salary and emoluments for any indebtedness to the Staff Association under staff rule 3.17(c). Since the Applicant had a monetary dispute with the Staff Association, the Respondent could withhold the Applicant's entitlements under section 6 of ST/AI/2000/12 (Private legal obligations of staff members) which provides for the withholding of the staff member's pay to offset his private legal obligations.

19. The delay in the payment of the Applicant's final emoluments was fully justified by virtue of the provisions of paragraph 13 of ST/AI/155/Rev.2 (Personnel payroll clearance action) because the Applicant did not settle his financial obligations and final payments are only released following a successful check-out process. The President of the ICTR Staff Association at the times material to this Application, refused to sign the Applicant's check-out forms because as the Vice-President and bank signatory for the previous ICTR executive committee, the Applicant and the defunct executive had not submitted a proper financial account.

20. The delay complained of by the Applicant was not the result of the breach of any regulations; it was the fall-out of the Applicant's inability to complete his check-out. In spite of having been fully paid, the Applicant's executive committee had not provided, even at the time of coming to the Tribunal, the required financial statements and reports.

Considerations

Was the Respondent justified in withholding the Applicant's final payments four months after his separation?

21. The Tribunal has carefully examined the Applicant's claim and the Reply of the Respondent with all the annexes filed in this case.

22. It has noted that the Applicant's last salary was paid after about six weeks following his separation from the service of ICTR. All his other entitlements were paid less than five months after his separation even though the Applicant claims variously that it took all of seven months and nine months to do so.

23. The Applicant did not deny that he was an executive committee member and a bank signatory in the previous Staff Association's executive committee. He did not deny that his committee failed to provide a financial report and to conduct a proper handing-over to the succeeding executive. He did not show in his numerous letters and communications or even in his pleadings before the Tribunal that his committee had rendered proper accounts or that he had done his best to make his committee accountable.

24. Annex R2 shows the election results of the ICTR Staff Association conducted on 25 June 2007. The Applicant beat two other contestants to win the post of Vice-President in the Association. There is no gain-saying the fact that elected officials everywhere are responsible and accountable for the management of the affairs and finances of the bodies or entities which elect them to serve. The same is true of the Staff Association of ICTR. Discharging this responsibility within the Staff Association means that all elected officers who form part of its executive are accountable.

25. An OIOS investigation into the ICTR Staff Association's account which was on-going at the times material to this case may have been unduly delayed. The Applicant's case is not that the OIOS inquiry was slow but rather that it ought not to have been instituted at all. The Tribunal does not agree with this reasoning.

26. It is note-worthy that the Applicant only submitted his uncompleted check-out form to the ICTR Finance office on 31 January 2012 for his final payment. In spite of the form not being signed by the President of the Staff Association who was clearly required to do so, he received his final payments by 21 February, three weeks later.

27. The Tribunal finds that the ICTR Management was right to comply with the checking-out procedures which are well-established within the Organization. The President of the Staff Association did not breach any rules by refusing to sign his portion of the Applicant's check-out forms when the said Applicant was part of an executive committee which had not rendered financial accounts since leaving office more than one year before.

28. The Applicant cannot reap a harvest of compensation from his own lack of accountability.

Judgment

29. The Application has no merit and is dismissed in its entirety.

(Signed)

Judge Nkemdilim Izuako

Dated this 10th day of December 2013

Entered in the Register on this 10th day of December 2013

(Signed)

Shamila Unnikrishnan, Officer-in-Charge, Nairobi Registry