



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye-Berko

NYASULU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RELIEF

Counsel for the Applicant:

Brandon Gardner, OSLA

Counsel for the Respondent:

Nicole Wynn, ALS/OHRM

Nusrat Chagtai, ALS/OHRM

Introduction

1. The Applicant is a former Chief, Judicial Affairs Officer at the United Nations Mission in Liberia (UNMIL) in Monrovia, Liberia who served at the D-1 level.

2. On 7 November 2013, the Applicant filed an application with the United Nations Dispute Tribunal (UNDT) challenging the decision to abolish his post and not to renew his contract. The Applicant further contested the decision to require him to go through a competitive recruitment process for the position of Principal, Rule of Law, UNMIL, at the D-1 level.

3. The Respondent filed a reply to the application on 13 December 2013.

4. The Tribunal heard the matter on 28 October 2014 and the parties filed their closing submissions on 8 December 2014.

5. On 14 March 2016, the Tribunal issued Judgment No. UNDT/2016/020 in which it, inter alia, awarded the Applicant compensation in the following terms:

30. Should the Secretary-General decide, in the interest of the Administration, not to perform the obligation to reinstate the Applicant, as an alternative he must pay compensation to the Applicant. The Respondent shall pay the Applicant four months' net base salary at the level he encumbered prior to his separation and, in addition, USD74,559 which represents the difference in pay for eight months between his last salary (a total of approximately USD139,559) and his salary as a Special Prosecutor in Malawi (total of approx. USD65,000).

6. The Secretary-General appealed the said Judgment and, on 28 October 2016, the United Nations Appeals Tribunal (UNAT) remanded the case to the UNDT in the following terms.

18. Accordingly, the Secretary-General asks the Appeals Tribunal to permit him to recalculate the compensation due to Mr. Nyasulu using the United Nations Operational Rate of Exchange at the applicable time.

19. Mr. Nyasulu does not rebut this appeal, so presumably he has no objection to the compensation being re-calculated in the manner suggested by the Secretary-General. It is therefore surprising that the matter cannot be settled between the parties without having to resort to the appeals process.

20. We make that observation because we have no option but to remand the case. The reason for this is that, in order to rule on the Secretary-General's request, we would first need to be satisfied that the UNDT's calculation of compensation in lieu of rescission was not correct. This cannot be done, because the UNDT gave no reasons whatsoever for applying the impugned exchange rate.

[...]

23. Judgment No. UNDT/2016/020 is remanded to the UNDT to state the reasons, facts and law on which its method of calculating the compensation in lieu of rescission is based.

7. On 28 February 2017, the Tribunal held a case management discussion. The Tribunal considered that since the Applicant did not contest the Appeal, the parties should confer and agree upon the method of calculating the compensation awarded in paragraph 130 of the Judgment.

8. On 8 March 2017, the parties filed a "Joint Submission on the Calculation of Compensation" in which they state that they have agreed on the implementation of paragraph 130 of Judgment No. UNDT/2016/020.

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9. In light of the parties' agreement, the Tribunal accordingly enters judgment as follows:

a. The Applicant shall be paid four months' net base salary at the level he encumbered prior to his separation from service on 9 August 2013.

b. The Applicant shall be paid eight months' net base salary at the level he encumbered prior to his separation from service on 9 August 2013, less the USD equivalent of EUR59,000 calculated as specified below.

c. Pursuant to rule 106.5(a) of the United Nations' Financial Regulations and Rules, the operational rate of exchange, as established by the Under-Secretary-General for Management, shall be used for recording all United Nations transactions.

d. The average United Nations operational rate of exchange applicable during the period from November 2013 to July 2014 should be used to convert the Applicant's occupational earnings of EUR 59,000 into USD.

(Signed)

Judge Nkemdilim Izuako

Dated this 10th day of March 2017

Entered in the Register on this 10th day of March 2017

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi