



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

ARVIZU TREVINO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALD/OHR, UN Secretariat

Introduction

1. On 15 April 2019, the Applicant filed an application contesting the amount of his termination indemnity entitlement.
2. On 15 May 2019, the Respondent filed his reply submitting that the application has no merit as the Applicant has been paid the correct amount of termination indemnity following his termination for reasons of health on 7 January 2019.

Facts

3. On 1 January 2006, the Applicant commenced his service with the United Nations.
4. On 29 July 2018, the Applicant filed a claim with the Secretariat of Advisory Board on Compensation Claims under Appendix D to the Staff Rules for compensation for a service-incurred illness.
5. On 5 November 2018, the United Nations Joint Staff Pension Fund (“UNJSPF”) notified the Assistant Secretary-General of the Office of Human Resources Management (“ASG/OHRM”) that the Applicant had been awarded a disability benefit under art. 33 of the UNJSPF Regulations.
6. On the same day, the ASG/OHRM notified the Applicant that the Secretary-General had authorized: a) the termination of his fixed-term appointment under staff regulation 9.3(a)(iii) as of 7 January 2019, and b) the payment of a termination indemnity in accordance with Annex III(b) of the Staff Regulations and Rules.
7. On 13 February 2019, the Organization paid the Applicant a termination indemnity of USD45,888.63.

8. On 8 March 2019, the Applicant filed a management evaluation request challenging the amount of the payment of the termination indemnity.

Consideration

9. The legal issue before the Tribunal is whether the Applicant was paid the correct amount of termination indemnity following his termination from service on 7 January 2019.

Legal framework

10. Staff rule 9.3 of the Staff Regulations and Rules provides that:

(a) The Secretary-General may, giving the reasons therefor, terminate the appointment of a staff member who holds a temporary, fixed-term or continuing appointment in accordance with the terms of his or her appointment or for any of the following reasons:

[...]

(iii) If the staff member is, for reasons of health, incapacitated for further service;

11. Annex III of the Staff Regulations and Rules state:

Termination indemnity

... Staff members whose appointments are terminated shall be paid an indemnity in accordance with the following provisions:

... (a) Except as provided in paragraphs (b), (c), (d) and (e) below and in regulation 9.3, the termination indemnity shall be paid in accordance with the following schedule: [...]

... (b) A staff member whose appointment is terminated for reasons of health shall receive an indemnity equal to the indemnity provided under paragraph (a) of the present annex reduced by the amount of any disability benefit that the staff member may receive under the Regulations of the United Nations Joint Staff Pension Fund for the number of months to which the indemnity rate corresponds; [...]

12. The Tribunal notes from the papers before it that it is undisputed between the parties that the Organization paid the Applicant a termination indemnity of USD45,888.63 and that this amount correctly reflects the requirements of Annex III of the Staff Regulations and Rules.

13. In this regard, the Tribunal notes that under Annex III(a), the Applicant's termination indemnity was first calculated as 11 months gross salary(USD164,952.33), minus staff assessment (USD41,875.17) (total of USD123,077.17), which corresponded with the Applicant's 13 years of service. Pursuant to Annex III(b), the termination indemnity calculated under Annex III(a) was then reduced by an amount equal to the disability benefit that the Applicant would receive from the UNJSPF for the 11-month period to which the termination indemnity rate corresponded (USD77,188.54).

14. On 13 February 2019, the Organization paid the Applicant a termination indemnity of USD45,888.63 (USD123,077.17 minus USD77,188.54).

15. The issue to be decided is whether the Applicant should have been paid a greater amount than what is permitted under Annex III of the Staff Regulations and Rules.

16. The Applicant submits that he should have been paid USD123,077.17, rather than USD45,888.63. The Applicant disputes the deduction of USD77,188.54 made by the Respondent pursuant to Annex III(b) of the Staff Regulations and Rules. In support of his contention, the Applicant relies on the 5 November 2018 letter from the ASG/OHRM informing the Applicant of the approval of a termination indemnity. The letter provided as follows:

The Secretary-General has approved the payment of a termination indemnity in accordance with Annex III(b) of the Staff Regulations. You are entitled to an indemnity equal to the amount of the disability benefit you will receive under the Regulations of the United Nations

Joint Staff Pension Fund for the number of months to which the indemnity rate corresponds.

17. The Applicant submits that the termination indemnity amount was not calculated as instructed in the ASG/OHRM's letter as the letter made no mention of any deductions of disability benefit. The Applicant therefore argues that it was unlawful for the Respondent to make the deductions required under Annex III(b).

18. The Respondent disputes that the Applicant is entitled to any additional termination indemnity, or that he can rely on the ASG/OHRM's letter to argue that the provisions of Annex III(b) should not apply in his case. The Respondent accepts that the ASG/OHRM's 5 November 2018 letter did indeed incorrectly paraphrase Annex III(b). In this regard, on 27 February 2019, the Chief of Human Resources Operations, Headquarter Client Support Service, Division of Administration, Department of Operational Support apologized to the Applicant for the error. The Respondent, however, maintains that the Applicant cannot rely on the error to claim a higher termination indemnity.

19. Having reviewed the papers before it, the Tribunal is satisfied that the Applicant's benefit was properly calculated and that there are no grounds for him to claim additional benefits. Annex III of the Staff Regulations and Rules clearly stipulates the method for calculating the termination indemnity benefits. The Applicant was informed in the ASG/OHRM's 5 November 2018 letter that the Secretary-General has approved the payment of a termination indemnity in accordance with Annex III(b) of the Staff Regulations and Rules. As noted in para. 16 above, it is undisputed between the parties that the Organization paid the Applicant a termination indemnity in accordance with Annex III of the Staff Regulations and Rules.

20. The Tribunal finds no merit in the Applicant's argument that because the ASG/OHRM's 5 November 2018 letter failed to cite the full provisions of Annex III(b), including the requirement to make a deduction equal to the disability benefit, that he then "had a reasonable expectation that the regular benefit would not apply to him and

that he would not be subject to the deductions in the Annex III". The Tribunal notes that the purpose of Annex III(b) is to ensure that a staff member does not receive a double payment for their accelerated separation from service due to disability.

21. Furthermore, in the event the Administration did make an error in the ASG/OHRM's 5 November 2018 letter by not citing the complete provisions of Annex III(b), the Administration has a duty to correct its errors (see for instance, *Kellie* 2018-UNAT-875 and *Husseini* 2016-UNAT-701).

22. The Applicant is, therefore, not entitled to any additional termination indemnity.

Conclusion

23. In light of the above, the application is rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 8^h day of December 2020

Entered in the Register on this 8^h day of December 2020

(Signed)

Nerea Suero Fontecha, Registrar, New York