UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/117
Judgment No.: UNDT/2021/053
Date: 17 May 2021
Original: English

Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

BRANGLIDOR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Miryoung An, AAS/ALD/OHR, UN Secretariat
Romy Batrouni, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former staff member of the United Nations Multidimensional Integrated Stabilization Mission in Mali ("MINUSMA"). He filed an application on 8 August 2019 challenging a decision he characterizes as the "failure in entitlements' disbursements after separation from service".

2. The Respondent filed a reply on 13 September 2019. The case was initially joined with a disciplinary matter, Case No. UNDT/NBI/2019/057, for hearing. Given material gaps in the evidence that had to be addressed by the Respondent, however, it was considered that efficiency would be served by separating the cases for adjudication. The record of Case No. UNDT/NBI/2019/057 has been retained as part of the present one, where relevant (Order No. 027 (NBI/2021)).

Factual background

3. On 25 March 2019, the Applicant received a sanctioning decision imposing on him the disciplinary measure of separation from service. The same latter conveyed a decision on recovery of an overpayment of EUR13,079.95 for an education grant claim in relation to his child DB.[1] Subsequently, the Applicant was instructed about the checkout procedure and actions required of him in this regard.[2] The Applicant received his March payslip and confirmed that BNP Paribas in France was his account as recorded in Umoja.[3] Given, however, that no payment followed, the Applicant expressed his discontent and was informed by the Chief Human Resources of MINUSMA that his final payment was to be expected within weeks after the completion of the checkout formalities and that the wait time is normal when recoveries are involved.[4]

4. For reasons on the part of the Applicant, including his illness[5], failure to submit

[1] Reply, annex R12.
[2] Reply, annex R/2.
[3] Reply, annex R/5, p. 4.
[4] Reply, annex R/5 (exchange of emails).
[5] Reply, annex R/3 and application, annex 11.

relevant forms[6], failure to return the official laptop[7] and accounting for unauthorized absences continued from the previous year[8], the check out on the Mission level was not completed until August 2019.[9]

5. Meanwhile, on 31 May 2019, the Applicant submitted a new payment instruction form to MINUSCA indicating that his final separation payment should be deposited into his account with BNP Paribas in Martinique.[10] MINUSCA did not act on the new payment instruction form; as such, no changes were made to the Applicant's bank account on record, which remained BNP Paribas in France.[11] The Applicant's designated bank for off-cycle payments on record was United Nations Federal Credit Union ("UNFCU").[12] On 5 September 2019, the Organization paid a relocation grant of USD13,000 into the Applicant's UNFCU account[13] and, shortly thereafter, it paid the settling-in grant.[14]

6. On 4 December 2019, the Applicant complained to the Secretary-General, copying the Under-Secretary-General for Management Strategy, Policy and Compliance; the Assistant Secretary-General for Field Support; the Spokesperson for the Secretary-General; and his diplomatic mission, among others.[15] On 9 December 2019, he received a response from the Chief Human Resources Officer ("CHRO") of MINUSMA that the separation payments had been finalized and were to be released "any time now".[16]Eventually, a final payment of USD57,217.53 was disbursed on 19

[6] Reply, annex R/10.
[7] Reply, annex R/2, p. 2 and annex R/6 (exchange of emails between the Applicant and MINUSCA HR). It needs to be noted that after an SIU investigation, the laptop was declared lost (reply, annex R/12); the cost of the laptop was to be withheld from the final salary (reply, annex R/13), this apparently did not happen, and the Applicant was cleared by IT and Property Survey in July 2019 (reply, annex R/14).
[8] Respondent's submission pursuant to Order Nos. 69 and 75 (NBI/2021) and annexes R/44-R/47.
[9] Reply, annex R/14.
[10] Respondent's submission pursuant to Order No. 237 (NBI/2020), annex R/19.
[11] Respondent's submission pursuant to Order No. 237 (NBI/2020), para. 5 and footnote 5.
[12] Respondent's submission pursuant to Order No. 237 (NBI/2020), annex R/17
[13] Respondent's submission pursuant to Order No. 237 (NBI/2020), annex R/18. See also Applicant's submission pursuant to Order No. 242 (NBI/2020).
[14] Respondent's submission pursuant to Order No. 27 (NBI/2021), annex R/30.
[15] Applicant's submission of 4 December 2019.
[16] Applicant's submission pursuant to Order No. 242 (NBI/2020), unnumbered annex, email from Ancilla Kazirukanyo dated 9 December 2019.

February 2020 into the Applicant's BNP Paribas account in France, rather than in Martnique[17], and USD3,566 was paid into his UNFCU account.[18] The Applicant's education grant claim equivalent to USD2,990.52 resulting from an adjustment of previous calculations, was processed on 24 February 2020, but was not paid to him.

7. On 25 February 2020, a request was made to the Treasury at the Office of Programme Planning, Finance and Budget in the Department of Management Strategy, Policy and Compliance ("OPPFB/DMSPC") to recall the Applicant's February 2020 final payment made to the BNP Paribas account because when disbursing the final payment the Organization had not deducted the Applicant's outstanding UNFCU loan of USD34,612.[19] The Applicant admits to his debt to UNFCU.[20]

8. On 28 February 2020, Citibank, an intermediary bank, sent a Swift message to the United Nations stating that for the payment to be returned, the Applicant would have to provide debit authorization. On 6 and 20 March 2020, the Applicant was advised to provide BNP Paribas, France, with his debit authorization.[21] On 24 June 2020, BNP Paribas informed the United Nations in a swift message that they were still waiting for the Applicant's debit authorization.[22] The Respondent advised the Applicant again to authorize BNP Paribas to debit his account to have the funds returned to the United Nations.[23] The ensuing correspondence between the parties over the period of June 2020 demonstrate that the Applicant's account had been with a collection agency, due to credit card delinquency.[24]

9. On 5 August 2020, the Payroll and Payments Section realized that an education

[17] Respondent's submission pursuant to Order No. 237 (NBI/2020), para. 6 and annex R/20. See also Respondent's submission pursuant to Order No. 27 (NBI/2021), annexes R/24 and R/25.
[18] Respondent's submission pursuant to Order No. 237 (NBI/2020), para. 6 and annexes R/20 and R/21.
[19] Respondent's submission pursuant to Order No. 237 (NBI/2020), para. 7(c).
[20] Applicant's submission pursuant to Order No. 242 (NBI/2020).
[21] Respondent's submission pursuant to Order No. 237 (NBI/2020), paras. 7 & 8. See also Respondent's submission pursuant to Order No. 27 (NBI/2021), annexes R/26 and R/27.
[22] Respondent's submission pursuant to Order No. 237 (NBI/2020), para. 7(g). See also Respondent's submission pursuant to Order No. 027 (NBI/2021), annex R/28.
[23] Respondent's submission pursuant to Order No. 27 (NBI/2021), annex R/29.
[24] Applicant's submission pursuant to Order No. 242 (NBI/2020), five unnumbered annexes entitled "BNP 2020".

grant overpayment of EUR13,079.95 (USD14,746.28) with respect to the Applicant's son DB for the 2013-2014 school year had also not been deducted from the Applicant's final pay.[25] On 11 August 2020, the Payroll and Payments Section offset the pending payment of USD2,990.52 due to the Applicant as per a final calculation (para. 6 *supra*) against the pending overpayment of USD14,746.28.[26] Thus, currently, USD11,755.76 owed to the United Nations is pending recovery from the Applicant, in addition to the loan due to UNFCU.

10. On 14 September 2020, BNP Paribas advised the Organization that the Applicant's account was with a collection agent and thus, BNP Paribas did not have control of the account. A judgment of 4 December 2020, issued by the Tribunal Judiciaire d'Aix-en-Provence, ordered the Applicant to pay the BNP Paribas, France, the amount of EUR41,067.99 with interest and legal costs. This judgment has been submitted for execution by a bailiff.[27] The attempt to have the February 2020 payment returned to the United Nations has been unsuccessful to date.[28]

11. On the balance, the Respondent calculated that, in the event the USD57,217.53 disbursed into the Applicant's BNP Paribas account were returned to the United Nations, the amount owed to the Applicant after deductions of what is due to the Organization, would leave approximately USD10,849.77 (USD57,217.53 paid to BNP Paribas, minus the USD34,612.00 due to UNFCU and minus the USD11,755.76 recovery of education grant).[29]

Parties' submissions

12. The Respondent's position is that the Applicant's claims other than his salary of March 2019 and outstanding boarding claims, are not receivable, as this is how his claim was presented for management evaluation. With respect to the receivable claims,

[25] Respondent's submission pursuant to Order No. 237 (NBI/2020), para. 7(i).
[26] Respondent's submission pursuant to Order No. 237 (NBI/2020), annex 23.
[27] Applicant's submission pursuant to Order No. 242 (NBI/2020), five unnumbered annexes entitled "BNP 2020".
[28] Respondent's submission pursuant to Order No. 237 (NBI/2020), paras. 7 & 8.
[29] Respondent's submission pursuant to Order No. 237 (NBI/2020), para. 8.

following the completion of the Applicant's check-out procedure at the Mission-level, the final pay was processed and released to the Applicant in February 2020. The payment includes the Applicant's final salary of March 2019 and then outstanding education grant claims; therefore, the application in this case is now moot.[30]

13. The Applicant's position had originally been that the Respondent has unlawfully withheld "retroactive boarding claims", his March 2019 earnings and "relocation, repatriation and 2018-2019 education grants". In response to developments described by the Respondent, he admits having received the relocation grant into his UNFCU account.[31] In relation to the other separation payments, however, he submits that his entitlements were erroneously deposited in the wrong bank account in February 2020 and this error has yet to be corrected. As such, the Applicant questions that any payment has been made at all and, thus, requests immediate release of the withheld earnings and grants, among other, "wrapping up" educational grants. This notwithstanding, he specifically questions whether the payment included the boarding cost of his three children in the school year 2017-2018, in the amount of USD15,000 were made. He, moreover, questions deductions made on account of his unaccounted absences, which were recorded as special leave without pay ("SLWOP"). Finally, the Applicant requests compensation for damages resulting from diminished and late separation payments, which had caused emotional, reputational and financial distresses for him and his six dependents.[32]

Considerations

Receivability

14. On the question on of receivability, the Tribunal recalls that in the management evaluation stage, the Applicant undertook to file his claim twice. First, in his March 2019 request for management evaluation, which was mainly directed against the disciplinary measure of separation from service, he requested release of "salaries and

[30] Respondent's closing submission of 12 October 2020, para. 20 and the annex to the closing submission.
[31] Applicant's submission pursuant to Order No. 242 (NBI/2020).
[32] Applicant's submission in response to Order No. 39 (NBI/2021).

allowances" and "compensation for financial and psychological losses.[33] His request was found not receivable. Upon the Applicant's insistence that the request went beyond the disciplinary measure, he was invited to make a more specific submission on a proper form, which he did on 18 June 2019, asking for release of his March 2019 earnings, including March 2019 salary and retroactive boarding claims. As a result, management evaluation advised the Applicant to contact MINUSMA HR to determine if a decision had in fact been taken not to pay his earnings and boarding claims.[34] No formal management evaluation has ever been issued, which, unfortunately, is not an isolated instance of the Management Evaluation Unit ("MEU") foregoing their review in cases involving complex fact-finding and calculations.[35]

15. The Tribunal informed the parties during the 5 November 2019 CMD that its review of this application would be limited to the decision to withhold the Applicant's "salary and allowances since March 2019". The Tribunal deemed the other claims listed in the Applicant's original request for management evaluation to be subsumed by his challenge against the separation decision or unrelated to an administrative decision in the sense of art. 2 of the UNDT Statute.[36] This said, the Tribunal does not accept the Respondent's interpretation of the request for management evaluation reducing the present application to the question of March 2019 "salary" and retroactive boarding claims. It recalls that the Applicant never limited his demand only to 'salary"; rather, in his numerous writings he persisted in referring to "salaries and allowances", "entitlements" or "earnings", that were due to him as of his separation, i.e., at the end of March 2019. [37] As demonstrated moreover by the payslips submitted by the Respondent, for March 2019[38] and the final pay of February 2020[39], *earnings* are meant to encompass all payments made to staff members. The Tribunal therefore finds that the application ought to be considered in relation to elements routinely encompassed

[33] Reply, annex R/7 (original management evaluation request).
[34] Reply, annex R/9.
[35] *Mutiso* UNDT/2015/059; *Clarke* UNDT/2019/112; *Kuate* UNDT/2021/018.
[36] Order No. 178 (NBI/2019).
[37] Reply, annex R/11 (June 2019 management evaluation request) and annex R/9 (email exchanges).
[38] Reply, annex R/4.
[39] Respondent's submission pursuant to Order No. 237 (NBI/2020), annex R/20.

by "earnings", and it will do so below.

16. As concerns recovery of the overpaid education grant of EUR13,079.95, this decision had already been expressly conveyed in the sanction letter.[40] The deadline for appealing it was thus activated at the same moment as the decision on the disciplinary measure and, similarly, did not require management evaluation. At the date of the present application, the deadline to challenge that recovery had already elapsed. In this connection, however, it must be noted that the investigation demonstrated that the child DB had not attended the school for which the education grant of EUR13,079.95 had been paid and the Applicant does not contest it.[41] Given that, as ascertained by the Respondent[42], the recovery was not processed with the final pay of February 2020, the Tribunal is satisfied that the August 2020 off-setting of this outstanding education grant claim, mentioned in para. 6 *supra*, was lawful.

17. The Applicant admits receipt of his relocation grant as stated by the Respondent.[43] The Tribunal is also satisfied that the Respondent accounted for the processing of the settling-in grant.[44] It follows that the application in this respect has become moot and not receivable.

18. Receivability as to other claims depends on the question whether the final separation payment was validly done. The Tribunal discusses this matter below.

Whether the Respondent has effected separation payments

19. As concerns the Respondent's claim that the final pay was disbursed in February 2020 and the Applicant's counterclaim that the final pay was sent to a wrong bank account necessitating that it be done afresh, the Tribunal agrees that ignoring the Applicant's payment instructions was a serious irregularity. This said, the payment has not been made into to someone else's account, but to the Applicant's proper account at

[40] Reply, annex R/1.
[41] Reply in Case No. UNDT/NBI/2019/057, annex R/2, p. 16 (OIOS investigation report, para. 56).
[42] Respondent's submission in response to Order No. 27 (NBI/2021).
[43] Applicant's submission pursuant to Order No. 242 (NBI/2020).
[44] Respondent's submission pursuant to Order No. 27 (NBI/2021), annex R/30.

BNP Paribas in France. It is apparent from the documents submitted by the Applicant that the onerousness caused by the transfer to BNP Paribas in France consisted in exposing him to execution by another debtor, that is, the Bank itself. On the facts presented to the Tribunal, however, this mistake did not cause financial damage to the Applicant: it resulted in a reduction of his personal liabilities while the Applicant does not show that the funds would have been used in any profitable way. Finally, the Applicant had had opportunity (at least from February till June 2020) to authorize the return of the funds to the Organization, and thus undo the consequences of the irregularity, which he ignored. In these circumstances, the Tribunal concludes that the irregularity concerning the identity of the designated account does not obliterate the fact that the Organization discharged its final payment obligation toward the Applicant.

Calculation of payments

20. The Applicant submits, and not without a reason, that the final pay slip is incomprehensible to a lay person. The Tribunal recalls that the Applicant had indeed requested explanation of the figures, which he, nevertheless, never obtained, as the payroll officer made it dependent on the Applicant's issuance of a debit authorization for BNP Paribas in France to return the funds to the Organization.[45] Before the Tribunal, the Applicant specifically questioned having ever received the payment of USD15,000 on account of boarding expenses of three of his children for the school year 2017-2018 which had been included in his March pay slip but then withheld, and the position titled "Miscellaneous Deductions". [46]

21. After a round of clarifications requested by the Tribunal, the Respondent submitted that, following the Applicant's separation, his leaves and absences had been reviewed, revealing days of absences for which he had not provided acceptable justification. Unaccounted absences exceeded the Applicant's leave balance, which resulted in the Applicant having a negative leave balance at the time of his separation. Negative leave balances are normally accounted for by placing the staff member on

[45] Respondent's submission pursuant to Order No. 27 (NBI/2021), annex R/27 (email from Payroll Section/UNHQ to the Applicant seeking debit authorization for return of funds).
[46] Applicant's submission in response to Order No. 39 (NBI/2021).

SLWOP retroactively. Accordingly, in May and July 2019, the administration recorded in Umoja the Applicant's absences as SLWOP totaling 60 days of absence over the period from July 2017 to January 2019.[47]

22. The Respondent explains that the Applicant's April 2019 pay was prorated on the basis of the days that he was in service in April 2019. The newly recorded SLWOP was reflected as the negative earnings in the final pay slip. Thus, the final pay slip, under positions of: Gross Salary, Post Adjustment, Hardship Allowance, Danger Pay, Mobility Incentive, Non-Family Service Allowance, and Dependency Allowance (For Spouse and Child) include: (a) the April 2019 earnings; and (b) deductions of the amounts corresponding to the period of SLWOP for the months of January 2019, October 2018, June 2018, May 2018, September 2017, and July 2017. With respect to the Danger Pay, in addition to the deductions resulting from the SLWOP, the amount of USD1,021.37 was deducted because the Applicant was not at the mission for 14 days in March 2019.[48]

23. Similarly, the retroactive SLWOP affected the figures in the deductions of the final pay slip. Specifically, Staff Assessment and Staff Member's Pension Contribution include: (a) the April 2019 deduction; and (b) return of the previously deducted amount corresponding to the period of SLWOP for the months of January 2019, October 2018, June 2018, May 2018, September 2017, and July 2017.[49]

24. As concerns Education Grant Claim, the figure of USD56,779.26 in the earnings of the February 2020 final pay slip consists of: (a) the Applicant's education grant claim for the school year of 2018-2019 i.e,. USD65,901.42; and (b) a deduction made, as a result of the retroactive SLWOP, to his previous education grant claim for the school year of 2017-2018 i.e., USD9,122.16.[50]

25. As regards the school year of 2017-2018, on 4 August 2017, the Applicant

[47] Respondent's submission in response to Order Nos. 39 and 57 (NBI/2021), annexes 36 and 37. See also Respondent's submission in response to Order Nos. 69 and 75 (NBI/2021), annexes 44-47.
[48] Respondent's submission in response to Order Nos. 39 and 57 (NBI/2021).
[49] Respondent's submission in response to Order Nos. 39 and 57 (NBI/2021).
[50] Ibid.

received advance education grant of USD42,530.67 in relation to four of his children. A year after, in August 2018, following the closure of the school year, the Applicant's education grant claim for the 2017-2018 school year was settled. As a result of the settlement, in August 2018, the Applicant was paid USD63,643,39 and the advance of USD42,530.67 was recovered from him.[51] As a result of the retroactive SLWOP that fell within the school year - in September 2017, May 2018 and June 2018, the education grant payment for each child was prorated on the basis of the period of eligible service compared to the full academic year, in accordance with section 6.1 (d) of ST/AI/2018/1/Rev.1 (Education grant). The retroactive SLWOP reduced the total education grant payment to the Applicant for the school year of 2017-2018 by USD9,122.15. The USD9,122.15, therefore, was deducted from the February 2020 final pay.[52]

26. As regards the school year of 2018-2019, on 2 November 2018, the Applicant received advance education grant of USD63,295.32 with respect to four of his children.[53] Just as for the previous school year, the education grant claims were settled in February 2020, following the Applicant's separation. As a result, the Applicant was determined to be eligible to receive USD68,891.94 with respect to four of his children for the school year 2018-2019. Since the retroactive SLWOP for the months of October 2018 and January 2019 fell within the school year, the education grant payment for each child was prorated on the basis of the period of eligible service compared to the full academic year, just as it had been done for the previous school year. This reduced the education grant by USD2,990.52. Consequently, in February 2020, with respect to the 2018-2019 school year, the Applicant was paid the education grant of USD65,901.42 (USD68,891.94-USD2,990.52). At the same time, in the February 2020 final payment, the advance of USD63,295.32 was recovered. The recovery of the advance of USD63,295.32 corresponds to the figure of "EG ADV Recovery"

[51] Respondent's submission in response to Order Nos. 39 and 57 (NBI/2021), annex R/39 (August 2018 ay slip).
[52] Respondent's submission in response to Order Nos. 39 and 57 (NBI/2021), para 7. In footnote 16, the Respondent signals that the adjustment of education grant on account of SLWOP for the school year 2017-2018 is under review and may increase, leading to further recovery from the Applicant.
[53] Respondent's submission in response to Order Nos. 39 and 57 (NBI/2021), annex R/41 (November 2018 pay slip).

(education grant advance recovery) in the deductions of the February 2020 pay slip.[54]

27. In summing up, the position "EG Claim" in the February 2020 final pay slip – USD56,779.26 is equivalent to the 2018-2019 school year's education grant payment of USD65,901.42 minus the recovery of USD9,122.16 resulting from the retroactive SLWOP with respect to the 2017-2018 school year.[55]

28. In regard to the position described as "salary adjustment" in the final pay slip, the Respondent explains that deductions including "Salary Adjustment" of (minus) USD30,848.96 refers to the Applicant's March 2019 pay. The reason why this amount shows up in the February 2020 final pay slip is connected to the withholding of the Applicant's March 2019 salary at the time of his separation, in view of the potential overpayments that needed to be recovered. By adding the (minus) USD30,848.96 in the February 2020 final pay slip, the withheld March 2019 pay was released to the Applicant. This amount includes the USD15,000 claimed by him on account of boarding expenses. [56]

29. Regarding the position titled "Umoja Fnd Miscellaneous Deduction" of USD4,349.79, which was questioned by the Applicant, the Respondent explained that they related to the advances paid to the Applicant in 2014 totaling USD4,349.79 (USD2,384.94 + USD1,964.85) with respect to two mission projects for which the Applicant did not submit any accountability reports. The advances were not resolved by the time of the Applicant's separation. Hence in February 2020, the advances were deducted from the final pay.

30. The Respondent, moreover, presented a detailed calculation of the remaining separation-related payments.[57] As these were not disputed as to the principle, the Tribunal shall not recite these calculations and accepts them as correct.

31. The Tribunal finds that recording unjustified absences exceeding annual leave

[54] Respondent's submission in response to Order Nos. 39 and 57 (NBI/2021).
[55] Ibid.
[56] Ibid.
[57] Ibid.

entitlement as SLWOP and prorating payments accordingly is a correct practice and is undisputed. However, the calculation of amounts by which specific earnings are decreased is conditioned upon a proper record of absences. The issue is contentious and will be discussed below.

Calculation of absences

32. Pursuant to Orders Nos. 069 and 075 (NBI/2021), on 14 April 2021, the Respondent filed submissions and documentation in relation to the Applicant's absences. The Applicant filed a response on the same day. The facts below are based on the Respondent's submission of 14 April 2021.

33. After a review of the Applicant's absences recorded in Umoja, MINUSMA HR wrote to the Applicant on 24 October 2018 requesting that he provide justification for his absences for the following days, which were not accounted for in Umoja: 1 to 16 July 2017; 26 to 28 September 2017; 11 to 17 January 2018; 27 April 2018; 7 to 31 May 2018; 1 to 13 June 2018; 13 to 19 July 2018; 30 July 2018; and 2 to 18 October 2018. The Applicant was informed that if he failed to provide justification, his absences would be recorded as annual leave or SLWOP should he not have enough annual leave days.[58]

34. The Applicant provided the following justification, which did not address all the dates raised in the 24 October 2018 communication: 1 to 16 July 2017 - he was on certified sick leave ("CSL"); 29 April to 6 May 2018 – he was on Rest & Recuperation ("R&R") break; 5 to 13 June 2018 – he was on CSL; 13 to 19 July 2018 – he was on CSL; 30 July 2018 – he returned to his duty station in Mali; 4 to 18 October 2018 – he was on annual leave.[59] He did not provide justification for the other days when again asked to do so on 19 November 2018.[60]

35. On 3 May 2019, the Regional Service Centre Entebbe ("RSCE") informed the Applicant that unless he provided an explanation for a rejected sick leave request for 7

[58] Respondent's submission of pursuant to Order Nos. 69 and 75, annex R/44.
[59] Respondent's submission of pursuant to Order Nos. 69 and 75, annex R/45.
[60] Ibid.

May to 12 June 2018, those 27 days of absence would be converted to SLWOP. The Applicant explained that his request for CSL was rejected by the Medical Unit because he had submitted his medical documents late. The RSCE subsequently converted the 27 days to SLWOP.[61]

36. On 11 May 2019, MINUSMA HR requested that the following 33 days of absence be recorded in Umoja as SLWOP: 1 to 16 July 2017 (3 to 14 July 2017 without weekends); 26 to 28 September 2017; 11 to 17 January 2018; 27 April 2018; 30 July 2018; and 2 to 18 October 2018.[62] The Tribunal notes that while these dates include weekends, the weekends were not included in the 33 days of absences.

37. The Respondent explained in his submission that the newly recorded days of SLWOP (i.e. 27 days of rejected sick leave and 33 days of other absences) retroactively reduced the Applicant's annual leave balance in Umoja and this resulted in the Applicant having an insufficient leave balance to cover two instances of annual leave. Specifically, the Applicant did not have enough days to cover his annual leave from 4 to 21 September 2017 because of the retroactive SLWOP for the period of 3 to 14 July 2017 thus this leave was converted into SLWOP. Similarly, the period of 11-14 January 2019 (2 days) was originally recorded as annual leave but changed to SLWOP because the Applicant lacked sufficient leave balance after the retroactive SLWOP as recorded. This resulted in the Applicant having a negative leave balance at the time of his separation from service.

38. In support of his 14 April 2021 submission, the Applicant submitted medical certificates for April and June 2017, 4 July 2017, 29 May 2018 and an undated certificate he claims was given to him in July 2018. He submitted that these certificates had been approved by the MINUSMA Medical and HR Units. He did not provide any explanations for the other absences alleged by the Respondent.

39. The Tribunal recalls that ST/AI/2005/3 (Sick leave) governs staff members' entitlement to sick leave. Section 1.2 of this administrative instruction stipulates that

[61] Respondent's submission of pursuant to Order Nos. 69 and 75, annex R/47.
[62] Respondent's submission of pursuant to Order Nos. 69 and 75, annex R/46.

unless uncertified sick leave ("USL") is permitted, sick leave must be supported by a medical certificate or report from a licensed medical practitioner. Section 2.2 of ST/AI/2005/3/Amend. 1 allows the local personnel office to approve up to 20 days of CSL after the staff member has submitted "a certificate from a licensed medical practitioner indicating the date or dates of absence from duty by reason of illness, injury or incapacitation, without identification of diagnosis, or upon submission by the staff member of form MS.40, duly completed and signed by the attending physician". Under section 2.4(b) of ST/AI/2005/3, a medical report is not required if a staff member claims sick leave for half a day owing to a visit to a licensed medical practitioner and submits a medical certificate indicating that the staff member consulted the doctor or dentist. Under section 2.5 of ST/AI/2005/3, if a staff member fails to submit a medical certificate or the sick leave is not certified by a designated medical officer, the absence may be treated as either an unauthorized absence or SLWOP.[63] Section 2.5(a) goes on to say that "if the staff member belatedly submits the required medical certificate or report and establishes to the Secretary-General's satisfaction that the late submission was attributable to circumstances beyond his or her control, the absence may be charged to sick leave upon certification by the Medical Director or designated medical officer."

40. For the reasons expanded on in the ensuing paragraphs, the Tribunal finds that the Respondent properly placed the Applicant on SLWOP for his unauthorized absences on: 1 to 16 July 2017 (3 to 14 July 2017 without weekends); 26 to 28 September 2017; 11 to 17 January 2018; 27 April 2018; 30 July 2018; and 2 to 18 October 2018 in accordance with section 2.5 of ST/AI/2005/3.

41. The Tribunal finds that the Applicant failed to provide justification for his absence from 26 to 28 September 2017, 11 to 17 January 2018, and 27 April 2018. Regarding 30 July 2018, since he told MINUSMA HR that he had returned to his duty station on 30 July 2018, the Tribunal concludes that the Applicant was absent from

[63] The AI is outdated with respect to the types of appointment to which it refers. The Tribunal considers, nevertheless, that it retains validity as *lex anterior specialis* in relation to the amended staff rules 4.11 and 6.2.

work on this day.

42. The Tribunal examined the adequacy of the Applicant's medical certificates against the requirements of sections 1.2 and 2.4(b) of ST/AI/2005/3. It notes that while they attest to ailments, none of them indicates the date or dates of absence from duty by reason of illness, injury or incapacitation. Moreover, the Tribunal finds that the April and June 2017 medical certificates submitted by the Applicant are irrelevant to the proceedings since his attendance during those months are not at issue. The Tribunal also finds that the medical certificates of 29 May 2018 are valueless because they fall within the 7 May to 12 June 2018 period of absence that the Medical Director refused to certify as sick leave due to the Applicant's tardy compliance with section 2.1 of ST/AI/2005/3.

43. The Tribunal further finds that the Applicant erroneously relied on the 4 July 2017 medical certificate, which was a digital X-ray report. That medical certificate did not meet the requirements of section 2.2 of ST/AI/2005/3/Amend. 1, in that it did not indicate the dates of the Applicant's absence from duty as 3 to 14 July 2017 or his inability to perform his duties due to illness. The Tribunal finds that this medical certificate, at best, might have been satisfactory under section 2.4(b) of ST/AI/2005/3 to excuse the Applicant from work on half day on 4 July 2017, had it been timely requested as such. This the Applicant did not do. Consequently, the Applicant failed to provide satisfactory evidence of certified sick leave for the period 3 to 14 July 2017.

44. Lastly, the Tribunal finds that the Applicant's absences between 2 and 18 October 2018 were unauthorized because, while the Applicant claimed to have been on annual leave during this period, he does not rebut the failure to record this leave in Umoja. The Tribunal notes, moreover, that given the Applicant's insufficient balance of annual leave, the mere fact of non-recording in Umoja was not decisive for the issue of qualifying this absence as SLWOP.

Lateness of payment

45. Part of the Applicant's complaint concerns the lateness of the separation

payments. In this regard, the Applicant relies on the information provided in the Separation Memorandum dated 27 March 2019, that a separation process involving recoveries may take from 8 to 12 weeks[64]. This, in his case has been greatly exceeded. It is admitted that the Applicant's check-out on the Mission level was not completed until 23 August 2019 and that on 5 September 2019 the relocation grant was processed. The Respondent demonstrates that also a settling-in grant was processed on 11 September 2019[65], and the Applicant does not dispute it. The Tribunal understands the Applicant's grievance to relate to the period thereafter, until the final payment in February 2020.

46. The Respondent submits that in the course of the check-out process, on 31 May 2019, the Applicant claimed payments of education grant with respect to four of his children for the school year 2018-2019.[66] The Applicant, however, failed to submit all the necessary forms for the claim until 8 January 2020 when he submitted the P.45 form regarding one of the children.[67] It is the Respondent case that outstanding education grant claims should be settled prior to the final payment and the settled amount, if any, should be processed as part of the final pay. Following the Applicant's submission of the P.45 form on 8 January 2020, the Applicant's education grant claims were reviewed and settled as part of the final payment. On 27 February 2020, in approximately seven weeks from 8 January 2020, the final pay was remitted to the Applicant's bank account. The seven-week period is within the normal time frame, as foreshadowed in the Separation Memorandum. The Applicant's late submission of documents required for his education grant claim caused delay in processing the final pay.

47. The Tribunal recalls that it is generally accepted that the employer can expect reasonable cooperation from the affected staff member.[68] Cooperation which can be reasonably expected of a staff member is to trigger the process, where such impulse is

[64] Respondent's reply, annex R/2.
[65] Respondent's submission pursuant to Order No. 27 (NBI/2021), annex R/30.
[66] Respondent's submission pursuant to Order No. 27 (NBI/2021), annex R/32.
[67] Respondent's submission pursuant to Order No. 27 (NBI/2021), annex R/33.
[68] E.g., *Shashaa* UNDT/2009/034.

required, and to supply the necessary information and proof. Once the process is triggered, however, as many times stressed by the Tribunal, the primary responsibility for effecting timely and accurate payment of entitlements due to staff members rests with the United Nations Administration. For this purpose, the United Nations maintains a dedicated bureaucratic apparatus which is supposed to handle those payments professionally in both substantive and formal sense. A staff member, in this particular relation, is in a position of a consumer vis-à-vis a professional agent: the consumer chooses the moment to request action; the agent has to act promptly from the moment the agency has been seised of the case. It is not to be required of a staff member to be constantly monitoring, following-up, reminding, verifying and nagging. As noted by UNAT in *Ahmed*, "the Appeals Tribunal is mindful of the fact that staff members are unlikely to be conversant with separation formalities".[69] This implies the administration's duty to inform a staff member of information or proof that is missing.

48. In the context of separation payments, the Tribunal agrees that the processing of separation payments can reasonably be expected to start once the check-out is completed. This was, the Tribunal takes it, the understanding of the Separation Memorandum by both parties. In the Applicant's case, which was marred by unauthorized absences and multiple reasons for deductions, clearance may have required more time, and, indeed, took four months. This said, the Tribunal has doubts as to the normative validity of the statement about 8-12 weeks processing time after the clearance. The Respondent does not demonstrate that such period would have been a standard approved above the Mission level, expressed in guidelines, and/or resulting from any analysis of a median time needed for processing such payments, in consideration of relevant parameters of written rules and good practice. Rather, it appears chosen by the author of the Separation Memorandum, i.e., Chief Human Resources of MINUSMA, at the administration's convenience. For comparison, at UNICEF, which also operates in the field, the targeted processing time in 2017 was 40 workdays (20 Human Resources, 20 payroll) for 90% of cases.[70]

[69] 2013-UNAT-386.
[70] *Langue* UNDT/2017/092.

49. The Tribunal considers, in any event, that reasonableness of processing time is to be adjudged by objective factors. These factors comprise factual complexity and particulars of financial and administrative processing, including all necessary levels of approval; generally, off-cycle payments may require more time than the regular ones. Accepting that the calculations in the Applicant's case were complicated, on the record before the Tribunal, however, there is a conspicuous gap in administrative activity between September and December 2019, which resumed only after the Applicant wrote to the Secretary-General. While Chief Human Resources of MINUSMA assured that the payments were on their way, this was inaccurate – possibly it was only then that the administration started looking into the case again and found a missing P.45 form, this raising a question why the form had not been requested of the Applicant earlier, during the check-out process. Be it as it may, the Tribunal considers that the missing form regarding education grant of one child did not objectively prevent timely calculations and disbursement of the remaining entitlements. Especially when a staff member is separated abruptly, as the Applicant was, he or she should be able to expect payment within a given timeframe. In the Applicant's case, an additional onus was posed by the fact that his March 2019 salary had been withheld, which mandated acting promptly. Altogether, six months to effect separation payments is *prima facie* unreasonable, whereas the Respondent failed to persuade the Tribunal why the operation could not have been concluded within the announced 8-12 weeks. The Tribunal accordingly considers that the payments were in arrears since mid-November 2019 until the date of payment in February 2020.

Damages

50. As concerns the claimed financial damage, the Tribunal finds that no miscalculation in the separation payments was proven to the Applicant's detriment. To the contrary – several went to his undue advantage: failure to recover the education grant overpayment of EUR13,079.95 (USD14,746.28)[71]; failure to recover the cost of the lost laptop estimated at USD500.00[72]; and possible miscalculation of adjustment of

[71] Para. 9 above.
[72] Fn 7 above.

education grant on account of SLWOP.[73] Accordingly, no underpayment was proven, which renders the application moot.

51. To the extent the Applicant seeks to derive compensation for lateness of payments, the Tribunal recalls the seminal holding of the Appeals Tribunal in *Warren*:

> Notwithstanding the absence of express power of the UNDT and the Appeals Tribunal in their respective statutes to award interest, the very purpose of compensation is to place the staff member in the same position he or she would have been in had the Organization complied with its contractual obligations. In many cases, interest will be by definition part of compensation. To say that the tribunals have no jurisdiction to order the payment of interest would in many cases mean that the staff member could not be placed in the same position, and that therefore proper "compensation" could not be awarded.[74]

52. As shown by the above, in the absence of a material rule providing for an automatic interest accrual on a late payment arising from a statutory or contractual obligation – thus combining compensatory, punitive and preventive function - the Appeals Tribunal interpreted the Tribunals' authority to grant interest from a right to compensation. In the first scenario, for the award of interest it would suffice to show the delay. In the construct adopted by the Appeals Tribunal, it is moreover necessary to show that a financial loss persists.

53. In the Applicant's case there is no financial loss resulting from the late processing of separation payments because the delay in disbursing the earnings was accompanied by a delay in effecting deductions. The deductions equal nearly 45% of the earnings. Among them, those for unaccounted absences were due as early as at the end of 2017 and 2018, the resulting decrease in education grant – by the end of 2018, and those for two mission projects for which no accountability reports were submitted – since the end of 2014. Throughout these periods the corresponding funds were in the Applicant's disposal and, hypothetically, capable of bringing interest. As such, the Tribunal concludes that no compensation is due. This finding follows independently

[73] Fn 52 above.
[74] *Warren* 2010-UNAT-059 at para 10; *Iannelli* 2010-UNAT-093.

from the matter of recoveries that have not been implemented and remain outstanding.

54. The Applicant advances a claim for non-financial damages. While he alleges moral and physical suffering, no connection has been demonstrated with the question of payments, temporal or otherwise.

Conclusion

55. The Applicant failed to demonstrate any outstanding financial claim regarding separation payments; neither a damage.

JUDGMENT

56. The application is dismissed.

(*Signed*)

Judge Agnieszka Klonowiecka-Milart

Dated this 17th day of May 2021

Entered in the Register on this 17th day of May 2021

(Signed)
Abena Kwakye-Berko, Registrar, Nairobi