



Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Wanda L. Carter

AHOUISSOU

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Martine E. Lamothe, OSLA

Counsel for Respondent:

Frederica Midiri, UNDP

Introduction

1. The Applicant challenges the Administration's decision to delay the issuance of his personnel payroll clearance action form to the United Nations Joint Staff Pension Fund ("UNJSPF"), which resulted in holding his entitlements after separation from the Organization on the basis that he is under investigation.

Historical and procedural facts

2. The Applicant joined the United Nations Development Program ("UNDP") in Chad in February 2016, as a Technical Specialist at the P-4 level. In January 2018, he received a fixed-term appointment in the same office as a Chief Technical Specialist and, in October 2019, he was promoted to the P-5 level in the same post.

3. In June 2020, the UNDP Office of Audit and Investigations ("OAI") received allegations that the Applicant had engaged in procurement fraud, abuse of authority, and improper recruitment. After a preliminary assessment, OAI initiated an investigation into the allegations of misconduct.

4. In June 2022, the Applicant was appointed as a Chief Technical Specialist at the P-4 level in UNDP, Central African Republic ("UNDP/CAR").

5. By letter dated 27 January 2023, OAI notified the Applicant that he was the subject of an investigation into allegations, which included: abusing his authority and engaging in conflict of interest by providing contracts to acquaintances and colleagues; committing procurement fraud while managing two projects; and falsely certifying documents when he had served as the Chief Technical Specialist in UNDP Chad.

6. On 17 February 2023, the Applicant was placed on administrative leave with pay ("ALWP") pending the investigation for an initial period of three months from 17 February to 17 May 2023.

7. On 24 March 2023, the Resident Representative, UNDP/CAR, notified the Applicant that his fixed-term appointment would not be renewed upon its expiration on 31 May 2023, due to financial constraints.

8. The Applicant separated from the Organization on 31 May 2023.
9. The Resident Representative, UNDP/CAR decided to withhold payment of the Applicant's final separation entitlements and to defer the issuance of the PF4 form to UNJSPF due to the ongoing OAI investigation and the Applicant's potential indebtedness to the Organization resulting from the allegations of fraud.
10. On 25 September 2023, the Applicant corresponded with the Administration via the Human Resources Office, detailing his dire circumstances and inability to sustain himself financially. He received a response on the same day in which he was notified that his separation had not yet been finalized because of reasons known to him. The response implied that the Applicant's final entitlements would not be paid and that the issuance of his personnel payroll clearance action form would be postponed until the investigation was concluded, and any outstanding debts owed to the United Nations had been resolved.
11. On 15 November 2023, the Applicant submitted a management evaluation request ("MER") contesting the decision deferring the issuance of his final entitlement and personnel payroll clearance action form to UNJSPF resulting in an undue delay in the payment of his pension benefits.
12. On 21 December 2023, the UNDP Assistant Administrator and Director of the Bureau for Management Services replied to the MER, upholding the contested decision.
13. On 12 March 2024, the Applicant filed the application mentioned in para. 1, challenging the decision to delay the issuance of his personnel payroll clearance action form to the UNJSPF, and submitting that he is not indebted to the Organization and, therefore, the withholding of the issuance of the form is unlawful.
14. On 10 April 2024, the Respondent filed his reply.
15. On 18 April 2024, the Applicant filed a rejoinder to the reply.
16. On 18 April 2024, the Applicant filed a motion for a rejoinder to the Respondent's reply.

17. On 4 June 2024, an Order was issued by a Duty Judge, Order No. 62 (NBI/2024). By this Order, the Duty Judge granted the Applicant's motion for the rejoinder, and admitted the rejoinder into the case record; asked the parties to explore resolving the dispute amicably; advised the parties to file English translations of the documents filed in French, if already in existence, and if not in existence, to advise the Tribunal whether they believe that these documents needed to be translated into English in order dispose of this case.

18. On 18 June 2024, the parties informed the Dispute Tribunal that, after conferring, the parties had failed to achieve a resolution, and no settlement had been reached.

19. On 25 June 2024, the parties informed the Dispute Tribunal that there was no existing translation of the French-filed documents and asserted that these documents were essential for understanding and adjudicating the case. The Applicant presented for the Tribunal's consideration, the English translation of some of the annexes that were previously included with the parties' submissions.

20. On 5 August 2024, the case was assigned to the undersigned Judge.

21. By Order No. 109 (NBI/2024) dated 20 August 2024, the parties were informed that this matter would be decided based on the documents filed by the parties and were directed to file closing submissions.

22. On 12 September 2024, the Respondent file a motion to introduce new evidence.

23. On 13 September 2024, the parties filed their closing submissions.

24. On 16 September 2024, the Applicant filed a response to Respondent's motion to introduce new evidence.

Parties' submissions

25. The Applicant's principal contentions are:

a. The Administration relied on staff rule 3.16(d)(ii) to justify the withholding of his pension and final entitlements. The rule states that deductions from salaries and other emoluments may be made, *inter alia*, for indebtedness to the United Nations.

b. The Administration's suspension of his final entitlement and clearance is being erroneously justified by evoking the nature and scope of the allegations, while omitting the fact that there is no indebtedness to the United Nations in the present case. The Applicant was never notified of any outstanding debt owed to the United Nations and was not apprised of the amount supposedly owed.

c. His right to a presumption of innocence was violated by the Administration when it decided that he was in debt to the Organization, when no such conclusion had been reached by an impartial investigation. The Administration erred in treating his case as an anticipated indebtedness when there is no such law or legal provision for such.

d. The investigation conducted by OAI was still in progress at the time of the Applicant's separation from the Organization and it remains ongoing. As a result, no factual determination has been rendered to establish the Applicant's indebtedness to the Organization, either presently or previously.

e. The denial of his pension benefits based on unfounded assumptions of indebtedness is a violation of staff rule 3.4. This action contravenes the established policies, which guarantee pension benefits to eligible employees and retirees. It is imperative that the provisions outlined in staff rule 3.4 be upheld to ensure that all eligible staff receive their entitled pension benefits without undue delay or unreasonable grounds for withholding.

f. He has not been informed of the anticipated timeline for the completion of the OAI investigation in his case. As a result, his final entitlements and

pension benefits are being withheld indefinitely. The investigation was only set in motion around April 2022, as is evident from the search conducted at his office. This indicates that the ongoing investigation is not in compliance with art. 1.4, paragraph 85 of the UNDP Legal Framework for Addressing Non-Compliance with United Nations Standards of Conduct, as well as the corresponding jurisprudence.

g. He cannot be held accountable for the intricacies of the investigation, or the challenges faced in mobilizing resources. Under the applicable rules, the investigation should have been concluded within one year, equivalent to 270 working days. However, it has been over three and a half years since the complaint was made to OAI on 20 June 2020. As such, the delay in the investigation cannot be attributed to him and does not justify the suspension of his final payment and pension.

h. The failure to conclude the investigation in a timely manner has had adverse effects on his career prospects. The delayed investigation has prevented him from seeking employment opportunities following the non-renewal of his appointment. This setback has had a significant impact on his professional growth and has caused undue hardship.

i. His separation letter does not make any mention of this suspension. Instead, it states that the final payment must be made within a period of two to four months, despite the knowledge that he was under investigation.

j. The Respondent's claim that there was confusion from Human Resources which was not made aware of the Resident Representative's decision, should not affect his right to be validly informed. There was no formal notification either from the Resident Representative or the Human Resources Section. The apparent confusion of the Administration should not be detrimental to him, and the claim of confusion should not be an excuse for the administration not to follow proper procedure.

k. The Respondent's argument that there is no mandatory deadline to complete an investigation is not acceptable. Allowing such liberty to

investigators would create an open path for the violation of due process and staff members' rights. The discretionary power to conduct an indefinite investigation can only lead to abuse and violation of rights, which would be detrimental to staff members like him.

26. The Applicant requests the Tribunal to order rescission of the decision to delay the issuance of his separation form and to direct the Administration to send the separation form to UNJSPF with immediate effect. Additionally, the Applicant seeks interest at the US Prime Rate for the delayed payment of his pension benefits, calculated from the date of separation to the payment date.

27. The Respondent's principal contentions are:

a. The contested decision is legal, reasonable and procedurally fair. The Respondent requests the Tribunal to dismiss the application for the reasons set out below.

b. It was not possible to assess the level of probability of the indebtedness at the time of the Applicant's separation as the OAI investigation had not been completed. Any such assessment would have been premature.

c. UNDP could not accept any offer of a kind of surety or guarantee from the Applicant because it is highly unlikely that such a financial instrument is commercially available to a former staff member under investigation for misconduct. Any such instrument negotiated with a willing third party would present numerous obstacles in terms of enforcement and, as such, be largely illusory taking into consideration art. V, section 2 of the Convention on the Privileges and Immunities of the United Nations.

d. Accordingly, the Resident Representative's decision to withhold payment of the final entitlements to the Applicant and to defer the issuance of the PF4 form to UNJSPF should be reviewed according to the principles of reasonableness and procedural fairness.

e. At the time of his separation from service on 31 May 2023, the Applicant was aware of the serious allegations of misconduct against him, and on notice that he may be found to be responsible for financial loss to UNDP. OAI notified the Applicant in writing on 27 January 2023, of the allegations against him, which included procurement fraud. OAI investigators interviewed the Applicant on three days, prior to and including the date of his separation from service. OAI investigators also interviewed him twice in the week after his separation.

f. The Resident Representative properly relied upon OAI's assessment that there was a potential financial loss to UNDP if the allegations against the Applicant were substantiated. OAI is an independent investigating entity, and initiates investigations following a preliminary assessment indicating that an investigation is warranted. The scope of the OAI investigation included procurement fraud involving multiple projects in Chad for a total amount of over hundreds of thousands of USD.

g. Based on the information available to the Resident Representative, it was reasonable to conclude that the Applicant's final separation entitlements (approximately USD57,000) and his pension contributions (estimated to be USD106,243.48) would be insufficient to cover all of the potential financial loss to UNDP. While UNDP erroneously paid the Applicant some of his final separation entitlements after the Resident Representative's decision, the total amount paid (USD15,187) does not represent a significant portion of the potential financial loss.

h. UNDP is a voluntarily funded Organization and is accountable to Member States and donors for the public funds and other categories of funds contributed to the Organization. Had UNDP paid the entire amount of the Applicant's final separation entitlements and issued the PF4 form to UNJSPF, the Organization risked losing any surety it had to ensure full recovery of the potential financial loss. In view of UNDP's accountability, and the challenges in recovering monies from former staff members, the Resident Representative's decision to withhold payment of the final separation

entitlements to the Applicant and to defer issuance of the PF4 form are reasonable methods of ensuring that recovery of financial loss may be effected.

i. Once OAI has transmitted the Investigation Report to the Bureau of Management Services' Office of Legal Services ("BMS/OLS"), the Report will be reviewed and, if appropriate, procedures under the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct will be initiated. If the Applicant is exonerated, there is no finding of financial loss, or a financial recovery is not effected, UNDP will promptly pay the final separation entitlements to the Applicant, transmit the PF4 form to the UNJSPF, and notify the Applicant accordingly.

j. The Applicant's claim that he was not aware of any potential indebtedness to the Organization has no merit. The Applicant was on notice of the potential indebtedness deriving from the allegations of procurement fraud before his separation.

k. The separation letter did not supersede or vary the Resident Representative's decision to withhold payment of final separation entitlements and to defer the issuance of the PF4 form to the UNJSPF. The apparent confusion generated by the email received by the Applicant on 25 September 2023, was due to fact that the Human Resources Officers in UNDP/CAR who were responsible for part of the separation procedures at the local level were not made aware of the Resident Representative's decision to withhold payment of the final entitlements and defer issuance of the PF4 form, due to the confidentiality of the ongoing OAI investigation. For this same reason, the Applicant received part of his final entitlements in error, notwithstanding the Resident Representative's decision.

l. The Applicant's claims that the timelines for the completion of the OAI investigation have not been met do not support his views. While paragraph 85 of the UNDP Legal Framework for Addressing Non-Compliance with United Nations Standards of Conduct does provide that the completion of the

investigation should not normally exceed 270 working days, this is a benchmark, not a mandatory deadline. The time taken to complete an investigation depends on the complexity of a case and operational factors.

m. The OAI investigation into allegations against the Applicant is particularly complex as it involves: a) alleged conduct that is criminal in nature and requiring careful consideration; b) multiple allegations involving several separate procurement processes which required the expansion of the investigation; c) the review of extensive documentation, and interviews of over 59 witnesses. The Applicant alone was interviewed over five separate days. While the OAI investigation is in its final stages, OAI has already issued investigation reports substantiating allegations against four individuals who were working with the Applicant, and three vendors as they were all involved in the same fraudulent scheme. Two of these vendors have been already sanctioned by UNDP. Additional investigation reports substantiating allegations against individuals and vendors involved in the same fraudulent scheme are being finalized at the time the Respondent filed the reply. As a result, the length of the OAI investigation is justified by its complexity and by the need to conduct it in a prudent and diligent manner.

Consideration

28. Preliminarily, the Tribunal notes that the Respondent file a motion to introduce new evidence, represented by an email, dated 11 September 2024, with the following content:

From: Alain Danloy <alain.danloy@undp.org>

Sent: Wednesday, September 11, 2024 8:46 AM

To: Federica Midiri <federica.midiri@undp.org>

Cc: Ophelie Kerckhove <ophelie.kerckhove@undp.org>

Subject: RE: Brice Ahouissou case

Dear Federica, Regarding the case against Mr. Brice Ahouissou, the allegations: Misrepresentation, Forgery, False Certification, Theft and Embezzlement, Fraud, Procurement Fraud, Abuse of Authority,

Entitlements Fraud, Failure to Comply with Financial Disclosure Obligations and improper Recruitment were all established by the investigation, which further assessed the total financial loss suffered by UNDP as a result of Mr. Ahouissou's actions, at \$1,240,984.06 and that the draft IR will shortly be shared with the subject in accordance with the Investigation guidelines (I need our Director's signature but for her to read 170 pages long IR might take few days).

Thank you Federica, Regarding the case against Mr. Brice Ahouissou, the allegations: Misrepresentation, Forgery, False Certification, Theft and Embezzlement, Fraud, Procurement Fraud, Abuse of Authority, Entitlements Fraud, Failure to Comply with Financial Disclosure Obligations and improper Recruitment were all established by the investigation, which further assessed the total financial loss suffered by UNDP as a result of Mr. Ahouissou's actions, at \$1,240,984.06 and that the draft IR will shortly be shared with the subject in accordance with the Investigation guidelines (I need our Director's signature but for her to read 170 pages long IR might take few days).

29. The Respondent stresses that OAI's correspondence dated 11 September 2024, is relevant to legal issues to be determined by the Tribunal in these proceedings, that is, whether the contested decision is legal, reasonable and fair. The additional evidence is relevant to the assessment of the following factors: a) the seriousness of the allegations against the Applicant; b) the complexity of the investigation and resulting impact on the length of the investigation; c) the Organization's progress in quantifying of the Applicant's possible indebtedness due to misconduct; d) the uncertainty faced by the Organization regarding the prospect of any recovery from the Applicant for the possible indebtedness; and e) the proportionality of the contested decision in view of a possible indebtedness in excess of one million United States Dollars as a result of fraud and other related misconduct.

30. The Tribunal is aware that the Applicant contests the motion, recalling the Tribunal's Order No. 109 of 20 August 2024, stating the case would be adjudicated on the evidence already in records only, but it considers that the document had been created after the Order, and as supervening evidence, can be accepted.

31. The document, however, as it will be stressed, although generically relevant for the reasons mentioned by the Respondent, is not decisive to adjudicate the case.

Scope of the review

32. When judging the validity of the exercise of discretion in administrative matters, the UNDT determines if the decision is legal, reasonable, and procedurally fair.

33. , it is not the UNDT's role to consider the correctness of the choice made by the Administrator amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Administrator.

The law

34. Staff rule 3.16(d)(ii) provides that:

(d) Deductions from salaries and other emoluments may also be made for: [...]

(ii) indebtedness to the United Nations[.]

35. Under staff rule 10.1(b), a staff member may be required to reimburse the United Nations for financial loss suffered by the United Nations as a result of his misconduct:

(b) Where the Secretary-General determines that a staff member's conduct constituted misconduct, and that the staff member's conduct was willful, reckless or grossly negligent, the staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's conduct.

36. Under staff rule 10.2(b)(ii), the administrative measures that may be taken against a staff member include recovery of monies owed to the Organization:

(b) Measures other than those listed under paragraph (a) above shall not be considered disciplinary measures. Such measures are administrative measures that include, but are not limited to, the following: [...]

(ii) Recovery of monies owed to the Organization[.]

37. The above-mentioned rules allow the Administration to recover money owed to the Organization and obtain a refund for a loss caused by a staff member's misconduct.

38. The cited Staff Rules do not state that where a staff member is under investigation, the Administration may defer the issuance of the PF4 form to the UNJSPF, only providing for case of quantified and confirmed indebtedness.

39. The Respondent opines that the said Rules implicitly allow the Organization to postpone the issuance of the pension form, in order to avoid payments by the Organization that could be difficult to recover once the loss caused by the staff member will result.

40. The Tribunal notes that the aforementioned regulations unequivocally stipulate the necessity of a verified indebtedness and that a hypothetical or contingent debt, pending the outcome of an investigation, does not meet the criteria to be considered as indebtedness.

41. Also, in the case at hand, it is worth recalling that the Applicant was never notified of any outstanding debt owed to the United Nations and was not apprised of the amount supposedly owed. Indeed, neither at the time of separation, nor in his reply, did the Respondent make any reference to the specific amount the Applicant is allegedly responsible to reimburse to the Organization, only recalling a "potential financial loss" arising from conduct not even detailed in its specific nature and consequences.

42. At this stage, the Applicant has not even been charged with allegations of misconduct, therefore- also considering the general principle of presumption of innocence- it is really premature to assume that he will be indebted to the Organization.

43. Only by email dated 11 September 2024, did the Administration seem to quantify the debt owed by the Applicant.

44. The said email, however, as noted by the Applicant, is not decisive, owing to its content. Indeed, the role and capacity of the sender of the email remain undisclosed, creating uncertainty regarding his authority to possess and provide such information.

45. Furthermore, the email states the necessity for the Director to review the report and sign it, which would then be shared with the subject of the investigation for their comments. Subsequently, the report is to be returned to the Administration for final evaluation and determination. With the draft report not yet approved by the Director, it can be inferred that no recommendations have been put forth, resulting in the absence of a final determination. In other words, until the draft report is approved by the Director, it does not have any decisive value.

46. Therefore, the evidence that the Respondent attempts to adduce at this late stage of the proceedings, has no evidentiary value as it is merely an email saying that the draft report will be finalized once the Director reviews and approves it, occurrences for which there is no timeline. Further, the Director may decide to request the gathering of further evidence or even reject the findings of the draft report.

47. Also, in accordance with Article 59 of the UNDP Investigation Guidelines as of January 2022, OAI is limited to providing recommendations; consequently, it remains the Administration's discretionary power to draw from the investigation report consequences impacting the staff member's (or former staff member's) position.

48. Not only at the time of the Applicant's separation, but also at this moment, no proven misconduct or indebtedness exists. The withholding of the pension release form and final entitlements was unlawful at that time and remains as such.

49. The Tribunal is aware that the Respondent stresses the precautionary intent of the Administration to avoid payments which will be difficult to recover from a former employee once dismissed. It says that OAI already issued investigation reports against staff members who worked with the Applicant and even disciplined two of them.

50. Nevertheless, the Tribunal notes that those reports and disciplinary decisions are not in the case records and that the recalled facts do not show any specific connection with the Applicant's activity, and that at this stage no charges have been levelled towards the Applicant.

51. In many cases, this Tribunal has recalled the importance of the presentation to the Tribunal of relevant evidentiary material to assess concretely the possible staff member's misconduct.

52. In *Kalambi*, UNDT/2023/097-105, paras. 71 and 76, the Tribunal wrote as follows:

71. Indeed, the record in this case is devoid of details about the investigation at all. Even today, we do not know what was investigated, whether the investigation was ever completed, and if so, what it found about the "possible fraud". This absence of evidence is astounding given over four years of systematic monitoring, the passage of two and a half years since OIOS was first notified of the allegations of possible fraud and began to investigate, and more than a year after the disputed decision to withhold the Applicant's separation entitlements and pension paperwork "until the investigation has been concluded and the findings support the imposition of financial recovery ..." Despite the OIOS promise giving rise to the decision that "[a]s per normal practice, OIOS will issue reports for each staff member at the completion of its investigations, with an indication of the quantified MIP fraud should this be established," No report has been presented to the Tribunal.

76. ... The record in this case lacks any evidence whatsoever of the nature of the alleged fraud, how the Organization suffered any financial loss, and how any alleged financial loss was calculated.

53. In *Bisimwa*, UNDT/2023/096, paras. 64 to 67, the Tribunal observed that

64. ... the Tribunal was not told what evidence OIOS uncovered over the course of its year and a half investigation. Indeed, the few crumbs of "evidence" that were produced in this case were contradictory and unreliable.

65. The Respondent argues that the Organization is entitled to rely on the OIOS Memorandum and assessment of the financial loss (referencing Loto 2022-UNAT-1292, para 80). However, the memorandum in this case consists of a single conclusory statement "(OIOS) received allegations of possible medical insurance

provider (MIP) fraud ...” and the assessment of financial loss is merely another conclusory statement that “[p]ossible maximum USD liability for the Applicant was USD10,232.20.”

66. *In essence, the USG/DMSPC was presented with the same paucity of evidence that was given to this Tribunal. was presented with the same paucity of evidence that was given to this Tribunal.*

67. *This is in marked contrast to the evidence provided to the Organization in Loto. There, UNAT observed that the OIOS Memorandum and the Code Cable “provided a detailed description of the unsatisfactory conduct, the names of the implicated staff member(s), and specifics as to where and when the unsatisfactory conduct occurred ... These documents, supported by the information obtained by OIOS during the investigation, including Mr. Lotto’s interview with OIOS, led the Administration to conclude that it was more likely than not (preponderance of evidence) that Mr. Lotto had engaged in the above-described misconduct.” Of course, here the Administration was given no evidence whatsoever, and certainly not the detailed description in Loto.*

54. Also, the alleged damage caused by the Applicant has been quantified in the recalled email, but no criterion was recalled by the Administration to specifically understand (and verify) the amount allegedly due from the Applicant or to substantiate the suspicion of a damage caused by the latter.

55. With respect to the discretion to withhold the issuance of the PF4 form to the UNJSPF, the Tribunal further observes that an ongoing investigation cannot justify the withholding of the staff member’s final entitlements indefinitely.

56. If in its case law, indeed, the UNDT recognized that such a measure may be taken, this was allowed only in extraordinary cases, where recovery against the final salary and entitlements due to the staff member upon separation is impossible or insufficient.

57. In *Azar* UNDT/2021/125, paras. 21-22, the Tribunal stated that

21. *... the present case concerns a withholding of notification to UNJSPF imposed in a state of only a hypothetical indebtedness to the Organization, which was not determined and quantified at the time of separation, and, as later demonstrated, remained undetermined until March 2019. The legality question arising is whether the practice under ST/AI/155/Rev.2 may legitimately serve*

not to enforce a concrete obligation, but to secure a merely possible one, akin to a bail. This purpose does not transpire from ST/AI/155/Rev.2. If the question, however, were to be answered in the positive, there must a sufficient level of probability of the indebtedness, the value of it estimated and the notice given to the separating staff member, in order to enable him/her to take an informed decision whether to offer a kind of surety in exchange of the release of the documents while the determination is being made. Obviously, moreover, the Administration must act swiftly.

22. It further results from staff rule 3.18(c)(ii) and ST/AI/2009/1 that the main tool for recovery of money owed to the Organization is offsetting against a staff member's salary and entitlements. It is more effective and quantifiable and does not undermine the provisional function of the entitlement as does withholding of the notification to UNJSPF. The latter, therefore, is rather an extraordinary measure, the resort to which should be reserved to situations where execution against the salary and entitlements is impossible or insufficient. For this reason, in accordance with section 12, it must be decided on at an appropriately high level, that is the USG/Management.

58. In the case at hand, as to the legality of withholding pension payments of an employee and the Administration's decision to not transmit the personnel payroll clearance action form to the pension fund, this Tribunal finds that any postponement in issuing the Applicant's separation information to the Pension Fund could be justified only to a reasonable timeframe; indeed, the indefinite protraction of an investigation would violate the staff member's contractual rights to have his final entitlement paid (and also the right to a timely definition of any eventual disciplinary process against him/her).

59. Outside of this reasonable timeframe, any delay of the Administration is inconsistent with its duty to act fairly, justly, and transparently in its dealings with staff.

60. Article 1.4, paragraph 85 of the UNDP Legal Framework for Addressing Non-Compliance with UN Standards of Conduct states: "To the extent possible, depending on the complexity of a case and the availability of investigative resources, the period between the date the allegations of wrongdoing are reported to OAI and the completion of the investigation should not normally exceed 270 working days. The timeframe from receipt of the final investigation report by

BMS/OLS to the finalization of the case should not normally exceed 180 working days.”

61. In the case of *Mutiso* UNDT/2015/059, para. 77, where there was a delay of three years to complete the disciplinary proceedings, the Tribunal stated that

delay is also a component to be considered in the determination of disciplinary proceedings and that includes the timely completion of an investigation.

62. In the matter of *CH v. International Bank for Reconstruction and Development* (Decision No. 489/2014 and Decision No. 487/2014), the World Bank Administrative Tribunal held that the Bank unreasonably delayed giving the Applicant notice of the allegations of misconduct and secondly the Vice President, Human Resources, without explanation took nine months to make his disciplinary decision. This delay, in the view of the World Bank Administrative Tribunal, was a violation of the due process rights of the Applicant.

63. The discretionary power to conduct an investigation can lead to abuse and violation of rights if indefinite, in detriment to staff members’ rights.

64. In the case at hand, the investigation, which was supposed to be concluded within a year, equivalent to 270 working days, has surpassed four years since the OAI received a complaint on 20 June 2020, and more than fifteen months from the Applicant’s separation from the Organization.

65. The prolonged duration of the investigation does not warrant the withholding of his final payment and pension for such a long time, considering the ordinary function for the said entitlements in providing a living.

66. In *Kabila* UNDT/2023/103, the Tribunal stated at paras. 88 and 89:

88. Accordingly, it is reasonable to conclude that the pension paperwork should be sent to UNJSPF around the date of the staff member’s separation. Indeed, it would be unfair for the Organization to benefit (at the expense of the staff member) for any institutional inefficiencies, whether for this particular duty station or in general.

89. *The four-month delay in submitting the pension paperwork to UNJSPF necessarily resulted in a four-month delay in the Applicant's receipt of her pension entitlements, during which she lost the use of that money. As a result, she is awarded four months of interest on that money at the US prime rate.*

67. In the present case, the Applicant's entitlements are still withheld by the Administration, after more than one year from the Applicant's separation.

68. The withholding of the pension release form and final entitlements was unlawful at the time of separation of the Applicant (because this is not supported by a staff member's debt already assessed) and remains still unlawful now (where the Applicant has not even been charged of any specific accusation).

69. In conclusion, the Administration failed to submit the pension documents of the Applicant to the UNJSPF in a timely manner, which resulted in a delay in the disbursement of his pension benefits., the Tribunal finds that UNDP's decision to defer the issuance of the Applicant's final entitlements and personnel payroll clearance action form (in UNDP referred to as the Separation Notification Form PF4 (PF4 Form) to the UNJSPF is unlawful.

70. The Applicant recalls that the balance of final entitlements on hold amounts to approximately USD57,000 while the Applicant's contributions made to UNJSPF (from February 2016 to May 2023) are estimated to amount to USD106,243.48. The Respondent did not oppose any different calculation.

71. The challenged administrative decision must consequently be rescinded for the reasons stated above.

72. The Tribunal therefore requests the Administration to release the Applicant's final entitlements in the amount under para. 70 and to send the prescribed form to UNJSPF with immediate effect to ensure the Applicant can receive his pension benefits alongside his final entitlements.

73. Additionally, the Applicant seeks interests at the US Prime Rate for the delayed payment of his pension benefits, calculated from the date of separation to the payment date. Also, this request must be granted, being the damage of the delay

within the exclusive responsibility of the Administration, and not of the pension fund.

Conclusion

74. In view of the foregoing, the Tribunal DECIDES:

- a. the Administration's decision to delay the issuance of the Applicant's personnel payroll clearance action form to UNJSPF is rescinded; and
- b. the Respondent is to pay to the Applicant a compensation calculated as the interests at the US Prime Rate for the delayed payment of his pension benefits and final entitlements, calculated on these sums from 31 May 2023 to the payment date.

(Signed)

Judge Francesco Buffa

Dated this 8th day of October 2024

Entered in the Register on this 8th day of October 2024

(Signed)

Wanda L. Carter, Registrar, Nairobi