



UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/NBI/2024/047
Judgment No.:	UNDT/2025/082
Date:	6 November 2025
Original:	English

Before: Judge Sean Wallace

Registry: Nairobi

Registrar: Wanda L. Carter

BUBEGA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Ana Giulia Stella, OSLA

Counsel for Respondent:

Wei Zhuang, DAS/ALD/OHR, UN Secretariat

Talha Konukpay, DAS/ALD/OHR, UN Secretariat

Introduction and procedural history

1. The Applicant is a former Disarmament, Demobilization and Reintegration Assistant working with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”).

2. He filed an application contesting the decision delaying the issuance of his pension forms (“P.35 and PF.4 forms”) until the conclusion of an Office of Internal Oversight Services (“OIOS”) investigation against him for possible fraud (“the contested decision”).

3. At a case management discussion, the parties agreed that this case could be determined based on the written record as it existed.

4. Pursuant to para. 13(a) of Order No. 4 (NBI/2025), the Tribunal directed the Respondent to submit evidence of legitimate investigative activity that was taken in connection with this case from the date on which the Administration received the report of possible misconduct (on 30 December 2020) until the date of the decision to withhold the Applicant’s final entitlements and pension paperwork. This included, but was not limited to, what action was taken between the interview of the Applicant on 13 August 2021 and the contested decision. The Respondent filed the required submissions on 3 February 2025.

5. Also, pursuant to para. 13(d) of Order No. 4 (NBI/2025), the parties filed closing submissions regarding the specific claims in this case. Thus, this case is ready for judgment.

Facts

6. On 30 December 2020, the Finance Division, Department of Management Strategy, Policy and Compliance (“DMSPC”) referred to the Investigations Division of OIOS a report of possible misconduct relating to medical insurance claims for the Applicant in the amount of USD23,677.19.

7. On 28 July 2021, OIOS visited CSL, a Medical Service Provider (“MSP”) in Bukavu, and met with CSL’s Medical Director. The Medical Director was unable to find the Applicant’s medical documents during the OIOS visit.

8. On 31 July 2021, the CSL Medical Director sent OIOS several emails providing various documentation regarding the Applicant’s medical treatment.

9. On 13 August 2021, the Applicant was interviewed by OIOS as a subject.

10. On 31 December 2023, the Applicant separated from the Organization after 17 years of service having reached the mandatory retirement age. The Applicant’s pension benefits were withheld because the Administration did not release his pension forms to the United Nations Joint Staff Pension Fund (“UNJSPF”).

11. By email dated 24 January 2024, MONUSCO Human Resources (“HR”) conveyed to the Applicant the contested decision. The pertinent parts of the email are reproduced below:

This is to inform that your final payment processing will be put on hold until further notice. This is because there is a medical insurance fraud by you pending investigation which involves a hypothetical indebtedness amount of US \$ 23,677.19. HRMS is following up with the concerned entity. HRMS will keep you posted as soon as there will be an update on your case.

12. On 29 February 2024, the Applicant requested management evaluation of the decision to withhold his pensions paperwork and sought relief in the form of economic and financial loss that he suffered as a result.

13. By email dated 1 March 2024, the Director of the Administrative Law Division (“ALD”) informed the Applicant that the Organization was considering withholding the amount of USD23,677.19 from his final separation entitlements pending the conclusion of the OIOS investigation and possible financial recovery. He also said that the Organization considered delaying the issuance of his P.35 form until his indebtedness to the Organization had been settled or a form of surety had been provided.

14. The email requested the Applicant to provide comments on the matter within two weeks. He did not do so.

15. OIOS reinterviewed the Applicant on 8 March 2024.

16. By letter dated 5 April 2024, the Assistant Secretary-General for Human Resources (“ASG/OHR”) informed the Applicant that the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”) had decided to:

a. Withhold his final separation entitlements in their entirety, in accordance with section 9.6 of ST/AI/2017/1 (Unsatisfactory conduct, investigations, and the disciplinary process); and

b. Delay the issuance of his P.35 form until the investigation has been concluded and all indebtedness to the United Nations, including the possible financial loss of the Organization resulting from the alleged unsatisfactory conduct had been satisfactorily settled, pursuant to paragraphs 11 and 12 of ST/AI/155/Rev.2 (Personnel Payroll Clearance Action), or he had provided a form of surety in the amount of his indebtedness exceeding his final separation entitlements.

17. Upon receiving the 5 April 2024 letter, the Applicant supplemented his management evaluation request.

18. On 11 April 2024, the Applicant filed an application for suspension of action pending management evaluation (“SOA”) with the Tribunal seeking to suspend the decisions dated 24 January 2024 and 5 April 2024 which delayed the issuance of his P.35 and PF.4 forms to UNJSPF. The Tribunal issued Order No. 46 (NBI/2024) finding the 24 January 2024 decision unlawful but rejected the SOA application for failing to meet the irreparable harm requirement of the tri-partite test.

19. On 9 May 2024, OIOS concluded its investigation into the Applicant’s alleged misconduct. OIOS found that:

between 3 June 2015 and 31 March 2019, 15 Medical Service Provider claims totalling US\$30,035.23, related to the medical treatment of [the Applicant] had been submitted to Cigna, the administrator of the United Nations' Medical Insurance Plan (MIP). A total amount of US\$ 23,677.19 was reimbursed by Cigna directly to the providers.

20. OIOS recommended that the Office of Human Resources and the Office of Legal Affairs take appropriate action and that the Organization seek to recover its financial loss.

21. At the Organization's request, in late May 2024 the Applicant agreed to a split-payment arrangement whereby the UNJSPF would pay to the Organization the amount of the estimated financial loss that exceeds his final entitlements. The agreement was put in place at the end of July 2024.

22. The Applicant filed this instant application with the Tribunal on 12 July 2024. The Applicant had not received the management evaluation outcomes at the time of filing this application, although the prescribed time for management evaluation had expired.

Parties' submissions

23. The Applicant's principal contentions are:

a. The Respondent's submission dated 3 February 2025 primarily focuses on explaining how the lack of resources within OIOS and challenges and complexities faced by the investigators has contributed to immense delays in investigations related to MIP fraud, rather than providing the evidence of legitimate and serious investigative activity from 2020 to 2024 in the Applicant's case, as specifically requested by the Tribunal.

b. The Respondent makes reference to Annex R/1 as evidence of the investigative activities undertaken by OIOS in connection with the present case but Annex R/1 is a submission filed *ex parte* that the Applicant has no access to for comments and should not have any bearing in the adjudication of this case.

c. The Respondent states in the 3 February 2025 submission that the Tribunal's task is to pass judgment on the application and conduct a judicial review of the contested decision rather than analyse systemic problems faced by OIOS, yet it focuses on issues and challenges faced by OIOS in its submission.

d. The Organization has systematically delayed pension documents for many former staff members – delays for which, in some cases, no investigation was initiated or were supposed to be initiated. These delays generally occurred without the necessary approvals and mistakes were made by the Administration. This widespread issue caused significant financial hardship for staff members.

e. According to the investigation report of the Applicant's case, the investigators mostly relied on evidence dated no later than 2021. The investigation should have been carried out promptly rather than two or three years later had OIOS acted diligently.

f. The interview with the Applicant in March 2024 was used merely as a pretext to create the appearance of ongoing investigative activity. The evidence shows that there was a significant lack of investigative activity for an extended period, with the investigation only resuming long after. The Respondent's justification of security risks and practical challenges at the duty station does not adequately explain the delay in the investigation.

g. Had the Administration acted diligently, it would have been able to complete the investigation before the Applicant's separation. The delay is particularly incomprehensible, as, unlike other staff members, the Administration was fully aware of the Applicant's retirement and had ample time - from August 2021 to December 2023 - to finalize the disciplinary process. Instead, the investigation stagnated for almost three years without any clear justification, causing significant harm to the Applicant. Moreover, the split payment option was only made available to the Applicant in April

2024, which he accepted reluctantly, and the disciplinary process against the Applicant had not concluded.

h. There is no clear or convincing evidence to suggest that the Applicant, an honest individual, committed fraud. The Applicant placed trust in a facility that exploited him to perpetrate fraud.

i. The Tribunal's case law on the lawfulness of withholding payments underscores that the Administration must adhere to strict standards of procedural fairness, including the provision of a clear notice of estimated debt and swift action. In this case, the Administration withheld the pension documents without providing sufficient evidence of unsatisfactory conduct, without giving appropriate notice and without acting swiftly. The USG/DMSPC letter was only sent on 5 April 2024 and the investigation report was only finalized in May 2024. The Applicant should not bear the consequences of the Administration's delays.

j. The Respondent's contention that the Applicant's claim for moral damages lacks justification due to the seriousness of the misconduct and the complexity of the investigation overlooks that the disciplinary process against the Applicant had not concluded.

24. The Respondent's principal contentions are:

a. This case does not exist in a vacuum. It is part of a massive, concerted fraud involving potentially hundreds of MONUSCO staff members, who filed tens of thousands of medical insurance claims for tens of millions of dollars, causing a significant financial loss to the Organization's self-funded MIP. The scale of the fraud is unprecedented in 80 years of the United Nations, and this case should be assessed against this background.

b. Considering the challenges faced by OIOS, the investigations have proceeded timely. The time taken to investigate and process this intricate and unprecedented MIP fraud matter cannot reasonably be regarded as an undue delay.

c. All evidence of the investigative activities undertaken by OIOS in connection with the present case has already been submitted in the OIOS investigation report and its supporting documentation, at Annexes R/3 and R/4 to the reply and Annex R/1 to the Respondent's submission in compliance with Order No. 4 (NBI/2025).

d. Evidence of legitimate investigative activity in other MIP fraud cases is not part of the present matter before the Tribunal. As in this case, the relevant investigative activity is set out in the pertinent investigation reports.

e. The contested decision – which is aimed at securing the recovery of the financial loss – is lawful and entirely reasonable. The Organization owes a fiduciary duty to its Member States, which fund it and to its staff members who contribute to the MIP. The General Assembly has repeatedly emphasized that the full recovery of the financial loss amount should be pursued, and has encouraged the Secretary-General to strengthen his efforts to improve the quantification and the rate of recovery of losses.

f. At the same time, the Organization has limited means to pursue financial recovery against former staff members like the Applicant. The Organization cannot file a fraud claim in a local court. Where a staff member is separating, and pending the conclusion of an investigation, the only way the Organization can execute its fiduciary duty is to withhold final entitlements and delay the Applicant's access to pension benefits while giving him the opportunity to provide a surety. These withholdings are interim measures until the matter is resolved.

g. The fact that the MIP fraud was massive, concealed and concerted, and occurred in the Democratic Republic of Congo ("DRC") under challenging circumstances, should not be held against the Organization; this is squarely a risk to be assigned to those who perpetrated this fraud in the first place. By extension, it would be perverse for the Applicant, who is implicated in this fraud, to seek to benefit financially by claiming compensation for alleged delays.

h. In view of the background of this case, it would be entirely appropriate to rule that whether the withholding was valid and lawful will ultimately depend on whether the serious misconduct and the financial loss caused in relation to which the interim measure of withholding took place, is factually established.

i. In this case, both the outcome of the investigation as contained in the Investigation Report and the Allegations Memorandum, indicate that the serious misconduct and the financial loss took place, and will be factually established at the conclusion of the post-separation disciplinary process. Accordingly, the withholding decision is valid and lawful, even if the investigation was delayed unduly. As such, there is no basis for granting the Applicant the financial benefit he seeks. To rule otherwise would be to reward fraud, and good (public and staff member) money will be thrown after bad.

j. The claim of moral damages also lacks justification. The Applicant's misconduct is decidedly serious (justifying a dismissal or separation from service) and the investigation was complex and occurred under the most challenging of circumstances.

k. The Applicant was informed that he could provide an alternative surety to the Organization or request a split-payment agreement with UNJSPF. Such amounts are repaid if the misconduct or financial loss is not established. In those circumstances, the Applicant's damage is neither great nor irreparable; the Applicant requested the Administration to facilitate a split-payment agreement to provide surety, which was duly executed. Accordingly, the Applicant has unencumbered access to the lion's share of his pension benefits. The Applicant's attempt to financially benefit in this matter should fail.

Considerations

25. The issues in this case are: whether the contested decision was lawful; if so, whether the Organization should be ordered to release the Applicant's pension forms; and whether financial compensation and moral damages should be awarded to the Applicant.

Issue I: Is the contested decision lawful?

26. The contested decision cites paragraphs 11 and 12 of ST/AI/155/Rev.2 as the basis for withholding the Applicant's pensions forms.¹

27. ST/AI/155/Rev.2 sets out the guidelines and procedures that must be followed when a staff member separates from the Organization. Paragraph 11 states that "Staff members separating from service, in accordance with their contractual obligations to the United Nations are responsible for: (a) Settling all indebtedness to the United Nations ..."

28. Paragraph 12 then says that "The Under-Secretary-General for Administration and Management may refuse to issue the P.35 form or may delay its issuance until a staff member has satisfactorily fulfilled the requirements set out in paragraph 11 above."

29. The Dispute Tribunal has held that this power relates to "a stated indebtedness ... a financial obligation, the extent of which is defined, albeit may be disputed." *Azar* UNDT/2021/125, para. 20 (not appealed). Furthermore ST/AI/15/Rev.2 may not be used "to secure a merely possible [obligation], akin to a bail." *Id.*, para. 21. At the very least,

there must be 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

¹ The contested decision also decides to withhold the Applicant's final separation entitlements in accordance with section 9.6 of ST/AI/2017/1. This application does not contest that portion of the decision.

documents while the determination is being made. Obviously, moreover, the Administration must act swiftly. *Ibid.*

Furthermore, since this “is rather an extraordinary measure ... it must be decided on at an appropriately high level, that is the USG/Management”. *Id.* para. 22.

30. Thus, to be lawful the decision must meet certain criteria:

- a. the decision must be made by the USG/Management;
- b. a sufficient level of probability of the indebtedness;
- c. the value of the indebtedness is estimated;
- d. advance notice must be given to the separating staff member; and
- e. the Administration must act swiftly.

31. Applying this test in the present case, it is clear that the initial decision to withhold the Applicant’s pension paperwork was not made by the authorized official. The 24 January 2024 notice to the Applicant of that decision came from MONUSCO, not the USG/Management, and there is no indication that the USG/Management made the decision. Thus, the initial withholding decision was unlawful.

32. Regarding the decision made by the USG/Management on or about 5 April, two of the criteria are met. The OIOS investigation (as of the date of the decision) gave rise to a sufficient level of probability that the Applicant was indebted to the Organization and the value of that indebtedness was estimated at USD23,677.19.

33. However, it is clear that the Applicant was not given advance notice of the withholding “in order to enable him 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.”

34. The Organization knew the Applicant’s birthday and thus when he would reach mandatory retirement/separation age. It also knew of the investigation

pending for several years and the possibility that the Applicant might be indebted to the Organization. Yet the Organization gave the Applicant no notice until after his pension paperwork had been withheld.

35. Moreover, none of the notices given to the Applicant mention the possibility of the Applicant posting a surety to have his pension paperwork released, although the record indicates that the Organization has forms to effectuate a surety.

36. Finally, the record shows that the Administration failed to act swiftly in resolving the possibility of the Applicant's indebtedness. The contested decisions were made more than three years after the Finance Division of the Department of Management referred the matter to OIOS.

37. During that time, OIOS initially waited over six months before visiting the medical clinic which purportedly provided the services shown on the claim. There was some additional activity on the case, culminating in the interview of the Applicant on 13 August 2021.

38. Thereafter, the case sat with little to no investigative activity for years. In November 2023, OIOS got Fleet Logger data from MONUSCO. Then nothing else was done until OIOS reinterviewed the Applicant on 8 March 2024, which was after his pension paperwork had been withheld.

39. This evidences sluggish, leisurely, and laggardly action, not the swift action which is required.

40. Accordingly, the Tribunal finds that the withholding of Applicant's pensions paperwork was unlawful and should be rescinded.

Issue II: Damages

41. Articles 10.5(a) and (b) of the UNDT Statute provide that the Dispute Tribunal may only order: rescission of the contested administrative decision or specific performance, and compensation for harm, supported by evidence.

42. The Applicant seeks the following relief:

- a. Interest on the one-time pension withdrawal settlement at the US Prime Rate from the date of his separation until the date UNJSPF received the Applicant's finalized forms;
- b. USD5,000 in compensation for moral damages for the pain and suffering caused by the contested decision; and
- c. Reimbursement in the amount of USD18,022.45 (i.e. the difference between the estimated financial loss of USD23,677.19 and the Applicant's final entitlements of USD5,654.74) that UNJSPF paid to the Administration in the frame of the split-payment agreement.

43. The Applicant asserts that he should be compensated for the delayed payment of his pension benefits and that his claim for moral damages is appropriate in this case even in the absence of additional medical documentation. He relies on jurisprudence of this Tribunal and of UNAT, specifically *Azar* UNDT/2021/125; *Kings* UNDT/2017/043; *Chacon Gomez* UNDT/2017/09; *Hallaj* 2018-UNAT-810; *Civic* 2020-UNAT-1069.

44. Both this Tribunal and UNAT have consistently determined that appropriate remedy for delays in paying monetary entitlements is the award of damages. That interest has been calculated at the US prime rate from the date on which the entitlement was due until the date of payment. *See, e.g., Muselemu* UNDT/2023/105, para. 82, citing *Azar, op. cit.*, para. 31; *Kings* UNDT/2017/043, para.49; *Johnson* UNDT/2011/144, para. 40(b); *Massi* UNDT/2016/100, para. 79; *Warren* 2010-UNAT-059; *Ianelli* 2010-UNAT-093.

45. The Tribunal held in *Muselemu* UNDT/2023/105, para. 88, that,

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.

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

46. In this case, the Tribunal awards the Applicant damages for the unlawful decision to withhold his entitlements in the amount of lost interest on the one-time pension withdrawal settlement he would have been entitled to (minus the sums already released to him pursuant to the split-payment agreement) at the US Prime Rate from 31 December 2023 until the present.

47. The Applicant also claims moral damages for "financial distress" and "severe stress, embarrassment and loss of self-esteem" as a result. He also claims that the lack of medical insurance and money to pay for treatment, caused him and his family to be deprived of proper medical care.

48. The Tribunal has previously held that even if it were accepted (without evidence) that an Applicant had no means to pay for medical care, awarding moral damages on that basis,

would require evidence about what the physical and psychological problems were, how they were related to the delayed processing of his pension, what treatments were needed, and how the lack of treatment caused harm to the Applicant.

Muselemu, Id., para. 94

49. Similarly, to justify an award of moral damages, the Applicant was required to adduce evidence of any physical or psychological harm he and his family suffered and the causal link to the delayed processing of his pension. He has failed to do so, and as a result, his request for moral damages is denied.

Accountability

50. In denying the Applicant's previous suspension of action, the Tribunal opined in Order No. 046 (NBI/2024), that

29. The facts of this case, and the plethora of similar cases in this Tribunal arising from alleged medical insurance fraud in

MONUSCO, raise troubling concerns about how these allegations are being handled by the Organization ...

31. It appears that OIOS/MONUSCO frequently do not bring these MIP fraud investigations to conclusion, neither clearing the innocent nor charging the guilty. Instead, the investigations languish inactive for years. Then when the involved staff member separates from service, the Administration grabs the departing staff member's final entitlements under the guise of a pending investigation. At that point the staff members are left without access to their earned entitlements and with no other choice than to file with the Tribunal.

32. If this appearance is true, it is an unfair state of affairs to both the Organization and the staff members. If the investigations were concluded and allegations disproven, the staff member could have the cloud of suspicion lifted and would receive their entitlements and pension without delay upon separation. If the investigations were concluded and the allegations proven, the Organization could bring disciplinary actions against the staff members and/or arrange repayment at a time when the staff members are employed and thus with income to make such repayments. In either case, failing to conclude the investigations harms both the Organization and its staff members.

33. In the limited context of an SOA there is insufficient evidence to refer the matter to the Secretary-General for enforcement of accountability. However, should such a case come before the Tribunal on the merits, the undersigned judge would expect the Respondent to produce evidence of legitimate investigative activity over the years in question, along with details about all the MIP fraud cases handled by OIOS/MONUSCO in this manner including the ultimate resolution of those allegations. If that evidence confirms the suspicions that have arisen in this case (and prior cases), a referral for accountability might be issued.

51. In this case, the Tribunal followed through on its expectations and required the Respondent to produce evidence of legitimate investigative activity over the years in question, as well as that in other similar cases.

52. In his response to the Tribunal's Order No. 4 (NBI/2025), the Respondent referred to the OIOS Report of Investigation regarding the investigative activity in this case. The chronology set forth in the summary of facts above is taken from the Report of Investigation. As found by the Tribunal, that chronology leads to the inescapable conclusion that the Respondent did not act with diligence or dispatch in handling the investigation in this case.

53. With regard to other similar cases, the Respondent states that

since the reporting of red flags four years ago, initially implicating 188 staff members serving in MONUSCO at different duty stations throughout the DRC, OIOS commenced 130 separate MIP fraud investigations, involving hundreds of interviews and site-visits to Medical Service Providers (MSPs). OIOS has to-date concluded 97 individual investigations, including the investigation into the Applicant's conduct.

He says that the scale of the alleged fraud was unprecedented and that the investigative activity "should be assessed against this background".

54. The Respondent further asserts that "[s]ince 2017, there has been a 182% increase in intake and 278% increase in OIOS investigations" world-wide, but the "surge in demand has not been matched by a commensurate increase in OIOS resources, putting a strain on the overall investigation resources. The capacity gap is being addressed through appropriate mechanisms, and additional resources have recently been approved by Member States in relation to budget submissions.

55. The Tribunal accepts this information as true in stating the challenges faced by OIOS in handling these cases without adequate resources. Accordingly, the Tribunal will not make a referral for accountability by OIOS. However, it is worth reiterating that this situation "is an unfair state of affairs to both the Organization and the staff members."

Conclusion

56. In light of the Tribunal's findings:

- a. The contested decision is found to be unlawful.
- b. The Respondent shall pay to the Applicant all the money that was unlawfully withheld from him, minus the sums already released to him

pursuant to the split-payment agreement, plus interest for the period between 31 December 2023 and the present calculated at the US prime rate.²

- c. The Applicant's claim for compensation for moral damages is denied.
- d. All other claims are denied.

(Signed)

Judge Sean Wallace

Dated this 6th day of November 2025

Entered in the Register on this 6th day of November 2025

(Signed)

Wanda L. Carter, Registrar, Nairobi

² Concurrently with this Judgment, the Tribunal is issuing a companion judgment in Case No. UNDT/NBI/2025/071 (Judgment No. UNDT/2025/083). For the reasons set forth in that judgment, the Tribunal determined that the Applicant was indebted to the Organization in the amount of USD23,380.87. That amount should be offset from the amount ordered to be paid in this case.