



Before: Joelle Adda

Registry: New York

Registrar: Isaac Endeley

DRUCKER

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Martine Lamothe, OSLA

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR/UN Secretariat

Introduction

1. By Order No. 005 (NY/2024) dated 18 January 2024, the Duty Judge issued the following instructions to the parties of relevance to the present Order:
 - a. The Applicant and Counsel for the Respondent were “to confer with a view to resolving the matters in this case informally” and, by 18 March 2024, to file a jointly signed statement informing the Tribunal whether they agree to attempt informal resolution”.
 - b. If the parties did “not agree to attempt informal resolution, by 8 April 2024, the Applicant [should] file a rejoinder to the Respondent’s reply”.
 - c. “Unless otherwise ordered, the Tribunal would thereafter adjudicate the case based on the papers on record”.
2. On 18 March 2024, the parties filed a joint submission in which they informed the Tribunal that “[a]t this time, there is no agreement to attempt informal resolution”.
3. On the same date (18 March 2024), the Applicant filed his rejoinder.
4. On 20 September 2024, the Applicant filed a request to include, as an additional claim to the application, “the accrued interest to the reimbursable amount in accordance with the precedent” set by the Appeals Tribunal in *Jackson 2024-UNAT-1475*.
5. On 25 September 2024, the Respondent filed an objection to the Applicant’s 20 September 2024 request.
6. On 30 September 2024, the Respondent filed an “addendum” to his 25 September 2024 objection.

Consideration

The parties' submissions

7. The Applicant submits in his 20 September 2024 request that:
 - a. In *Jackson*, the Appeals Tribunal stated that (see paras. 52 – 53):

... Our determination above thus requires consideration of whether the remedy ordered by [the Dispute Tribunal] was appropriate. [The Dispute Tribunal] required the United Nations to reimburse Mr. Jackson the full amount of state taxes owed for 2015-2018, as well as any penalty or interest accrued on those taxes which accrued from 27 January 2022 (the day after [the Assistant Secretary-General for Human Resources] denied the request for an exception) to the date of payment ...

... That resolution is appropriate ...
 - b. As an “additional claim”, he “seeks the accrual of interest on unpaid 2020 taxes from June 15, 2023, the day following the communication of the decision to deny reimbursement, to date of payment”;
 - c. It is “crucial for a fair resolution that this request be included in the case submission, reflecting the principles established in [*Jackson*]”, and the Tribunal’s “understanding and acknowledgment of this request would greatly contribute to an equitable outcome”.
8. In the Respondent’s 25 September 2024 objection, he submits that the Applicant’s proposed additional claim is not receivable, arguing that (references to footnotes omitted):
 - a. In *Majook* 2024-UNAT-1408, the Appeals Tribunal set out “how the United Nations Dispute Tribunal is to examine the receivability of applications”. The Dispute Tribunal is “to determine, in the following order: i) whether an applicant has standing; ii) whether the requirements for the Dispute Tribunal’s substantive jurisdiction are met; and iii) whether temporal requirements are met”.

b. Regarding “the second prong of the Appeals Tribunal’s gateway test for receivability, the Appeals Tribunal stated:

(ii) If the applicant has standing, the Tribunal examines whether the necessary requirements for its substantive jurisdiction are met. This means the existence of an appealable individual administrative decision, positive or implied, that was previously submitted to the Administration for management evaluation, or any other equivalent administrative remedy, where required.

c. The Appeals Tribunal stated that “[o]nce these three elements are met, the gateway test of receivability is satisfied, and the Tribunal can turn to the merits of the application”.

d. The Applicant “has standing”, but under *Majook* and the Appeals Tribunal’s established jurisprudence on receivability, the Dispute Tribunal “does not have substantive jurisdiction to adjudicate the Applicant’s proposed additional claim”. There is “no appealable individual administrative decision about ‘the accrual of interest on unpaid 2020 taxes’, positive or implied, that was submitted to the Administration for management evaluation, or any other equivalent administrative remedy”.

e. A “review of the records of the Applicant’s requests for reimbursement of his 2020 taxes reveals that he has never requested payment of interest from the Organization”. On 5 January 2023, “when the Applicant requested reimbursement for his 2020 taxes from the Organization’s Income Tax Unit, he did not make a request for interest”, and “[a]bsent any request, it cannot be said that a positive or implied administrative decision existed”, referring to *Majook*, para. 33.

f. On 13 July 2023, “when the Applicant requested management evaluation of the decision to not reimburse his 2020 taxes, he did not make a request for interest”. On 26 October 2023, “when the Applicant filed the Application, he did not make a request for interest”. In “Section V, paragraph 1 of the Application, where the Applicant described the details of the contested decision, the Applicant stated: ‘The Applicant seeks to

challenge the administration’s decision dated 14 June 2023 not to reimburse his U.S. Income Tax for the year 2020”. In “Section IX, paragraph 17, where the Applicant specified the remedies he sought, he stated:

[The Applicant] respectfully requests the rescission of the decision made on June 14, 2023, pertaining to the non-reimbursement of taxes for the years of 2020 and that payment be made to him in relation thereto. The aforementioned request is grounded on the reasons mentioned above.

g. As “recently as 12 September 2024, the Applicant corresponded with the Organization’s Income Tax Unit regarding reimbursement of his 2020 taxes, and the Applicant did not make a request for interest”.

h. The Applicant “may not ask for payment of interest on his 2020 taxes for the first time at the Dispute Tribunal”. The Organization’s tribunals “should be a last resort for staff to obtain relief—not a first resort”. The Applicant’s “proposed additional claim is separate and apart from that articulated in the Application and cannot simply be ‘append[ed]’ to the Application without there having previously been a request to the Organization”.

i. The basis “for the Applicant’s proposed additional claim of interest is inexplicably vague”. On the one hand, “there is interest that the Internal Revenue Service (IRS) charges for a variety of reasons”. On the other hand, “there is interest that the Dispute Tribunal may award at the U.S. Prime Rate as a form of compensation within the meaning of Article 10.5(b) of the Dispute Tribunal Statute”. It is “unclear which type of interest the Applicant wishes to add as an additional claim”. It is “not the role of the Respondent nor the Dispute Tribunal to speculate as to the specific type of interest the Applicant wishes to add as an additional claim”. The Applicant’s “failure to clarify the type of interest he seeks deprives the Respondent of proper notice and prejudices his ability to mount a defense”.

j. To “the extent the Applicant requests to append as an additional claim interest that the IRS charged him on his 2020 taxes, his request should

be denied”. The Applicant “does not attach to his 20 September 2024 submission evidence that the IRS charged him interest on his 2020 taxes”.

k. When “the Applicant submitted supporting documents to his request to the Organization’s Income Tax Unit, he included no documents, such as an IRS Account Transcript, that would let the Organization determine whether the IRS charged him interest. Even assuming, *arguendo*, that the IRS charged the Applicant interest and the Applicant attached evidence thereof, whether the Organization has an obligation to reimburse the Applicant interest on his 2020 taxes would require an examination of the reason(s) that the IRS charged the Applicant interest”.

l. The Appeals Tribunal “specified that the Organization does not have an obligation to pay interest and penalties which arise because of a staff member’s ‘delay in filing and claiming tax reimbursement’”. The “record shows that though (upon information and belief) the Applicant apparently timely filed his tax returns with the IRS by the extended deadline of 2021, he delayed in seeking reimbursement from the Organization until 2023”. These “are matters that the Applicant must first raise with the Organization’s Income Tax Unit, and, if he is dissatisfied with their response, with the Management Advice and Evaluation [Section], prior to raising it at the Dispute Tribunal”.

m. To “the extent the Applicant requests to append as an additional claim interest as a form of compensation within the meaning of Article 10.5(b) of the Dispute Tribunal Statute, his request should be denied”. Per the Appeals Tribunal in *Banaj* 2023-UNAT-1357, para. 116:

It is not enough to demonstrate an illegality to obtain compensation: the claimant bears the burden of proof to establish the existence of negative consequences, able to be considered damages, resulting from the illegality on a cause-effect lien. If these other two elements of the notion of responsibility are not justified, only the illegality can be declared but compensation cannot be awarded.

n. The Organization’s “reimbursement in relation to taxes is not intended to be compensation”. It is “simply intended to be a ‘mechanism for staff to receive a refund for taxes paid and payable on their United Nations salary’”, referring to *Jackson*, para. 42.

9. In the Respondent’s 30 September 2024 addendum, he submits that:

a. After *Jackson*, the Organization “began implementation by informing the Applicant that ‘[United Nations] Income Tax Unit is in the process of reviewing your 2020 Income Tax claim for approval,’ and requested that he provide additional documentation”.

b. Under *Ozturk* 2022-UNAT-1274, para. 33, “recourse for the Applicant’s complaints about ‘the accrual of the interest on unpaid 2020 taxes from June 15, 2023, the day following the communication of the decision to deny reimbursement, to the date of payment,’ is not to be found in a motion to append an additional claim”. The Applicant “must first make a request of the Organization’s Income Tax Unit, and, if he is dissatisfied with their response, with the Management Advice and Evaluation [Section], prior to raising it at the Dispute Tribunal”.

The Appeals Tribunal’s judgment in Jackson as relevant to the Applicant’s 20 September 2024 request

10. In *Jackson*, the Appeals Tribunal reviewed and adjudicated the reimbursement of taxes and the payment of accrued interest thereon as two distinct matters (see, paras, 41 – 51 and 52 – 54, respectively). The same occurred in the Dispute Tribunal’s previous judgment in the case, namely *Jackson* UNDT/2023/021, paras. 50 – 51. By requesting the Tribunal to consider the issue of accrued interests as an additional claim the Applicant also appears to concede to this reading of *Jackson*.

Is the new issue of accrued interest receivable?

11. A basic tenet of receivability of an appeal against an administrative decision is that a staff member has sought management evaluation of the relevant decision.

This follows from staff rule 11.2(a). The only exceptions, as per staff rule 11.2(b) are: (a) an administrative decision taken pursuant to advice obtained from a duly designated technical body, as determined by the Secretary-General, or (b) a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure. Neither of these exceptions are relevant here.

12. In the present case, it follows from the Applicant's undated request for management evaluation, as appended to the application, that the Applicant only requested "to be reimbursed in full for all US Federal, State, and local income taxes for 2020 in accordance with the Tribunal's jurisprudence". No mention was made of the issue of accrued interests anywhere in the request.

13. Accordingly, the additional claim on accrued interests must be rejected on receivability (*ratione materiae*), as submitted by the Respondent.

Informal settlement

14. By Order No. 005 (NY/2024) dated 18 January 2024, the Duty Judge instructed the parties to file a jointly signed statement informing the Tribunal whether they agreed to attempt informal resolution by 18 March 2024. The parties did so and responded that "[at] this time, there is no agreement to attempt informal resolution".

15. On 16 August 2024, the Appeals Tribunal issued its judgment in *Jackson* in a case similar to the present one. In light of thereof, the Tribunal will instruct the parties to reconsider the option of informal resolution. If the parties do not wish to do so, unless otherwise ordered, the Tribunal will proceed to adjudication of the case on the paper of the case record.

16. In light of the above,

IT IS ORDERED THAT:

17. The Applicant and Counsel for the Respondent are to confer with a view to resolving the matters in this case informally.

18. By **4:00 p.m. on Monday, 14 October 2024**, the parties are to file a jointly signed statement informing the Tribunal whether they agree to attempt informal resolution. If so, they may request a suspension of the proceedings.

19. If the parties do not agree to attempt informal resolution, unless otherwise ordered, the Tribunal will thereafter adjudicate the case based on the papers of record.

(Signed)

Judge Joelle Adda

Dated this 3rd day of October 2024

Entered in the Register on this 3rd day of October 2024

(Signed)

Isaac Endeley, Registrar, New York