Before: Judge Goolam Meeran

Registry: Amman

Registrar: Laurie McNabb

RIANO

v.

COMMISSIONER GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES

JUDGMENT

ON REMEDIES

Counsel for Applicant: Self-represented

Counsel for Respondent: Anna Segall (DLA)
**Introduction**

1. This is a judgment on the remedy to which the Applicant is entitled following Judgment No. UNRWA/DT/2013/035 dated 1 October 2013 (“Judgment No. 035 (2013)”). In its judgment the Tribunal found that the decision to terminate the Applicant’s appointment was procedurally flawed. The Tribunal rescinded the decision to terminate the Applicant’s fixed-term appointment prior to its date of expiration and ordered the Respondent to pay to the Applicant the salary and other emoluments and benefits to which he would have been entitled had his contract continued until its expiration date.

2. On 10 February 2014, a hearing was convened in accordance with paragraphs 134 and 135 of Judgment No. 035 (2013) to determine whether there is sufficient evidence to support an award of moral damages, and if so, to determine the appropriate quantum. The parties were also invited to address the Applicant’s claim for travel expenses following the termination of his contract. The Applicant represented himself at the hearing and appeared via telephone link from New York. The Respondent was represented by Mr. Moses Ojakol, who appeared in person. The Respondent called Ms. Christine Kisenga, Human Resources Officer, to give evidence regarding the Applicant’s travel and associated entitlements following his termination.

3. At the beginning of the hearing the Tribunal enquired whether any sums had been paid to the Applicant by the Respondent following Judgment No. 035 (2013). Counsel for the Respondent stated that the Respondent was awaiting the final judgment on remedies. In his closing submissions, Counsel for the Respondent asked that the termination indemnity which the Applicant was paid upon termination be used to offset any salary and entitlements which he is owed. The four issues for determination in this judgment are therefore as follows:

   (a) What salary and other emoluments and benefits is the Applicant entitled to receive from the Respondent under paragraph 132 of Judgment No. 035 (2013)?
(b) Is the Applicant entitled to receive compensation for any travel expenses that he incurred following his termination from the Agency?

(c) Is there sufficient evidence to support an award of moral damages and, if so, what is the appropriate sum, having regard to the evidence, and principles set down in previous judgments of the Dispute Tribunals and the United Nations Appeals Tribunal.

(d) Should the termination indemnity which the Applicant was paid be used to offset the final sum which he is owed?

The Law

Remedies

4. Paragraph 5 of Article 10 of the Statute of the Tribunal provides:

As part of its judgment, the Dispute Tribunal may order one or both of the following:

(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered, subject to subparagraph (b) of the present paragraph;

(b) Compensation, which shall normally not exceed the equivalent of two years’ net base salary of the applicant. The Dispute Tribunal may, however, in exceptional cases, order the payment of a higher compensation and shall provide the reasons for that decision.

5. The Statute of the Tribunal specifically excludes the award of exemplary or punitive damages and limits compensation, both pecuniary and non-pecuniary, to a maximum of two years’ salary unless the case is exceptional.

6. It is well-established jurisprudence, both of the Dispute and Appeals Tribunals, that once the Tribunal has made a determination of liability against the
Respondent, the applicable principle in determining entitlement to compensation is that the applicant be placed, as far as money can do so, in the same position she or he would have been had the contractual obligation been complied with (Warren 2010-UNAT-059). Compensation cannot be awarded where no harm has been suffered. Accordingly, it is for the applicant to prove that the breaches of contract caused loss or injury (Sina 2010-UNAT-094; Antaki 2010-UNAT-095).

**International travel claims**

7. International Staff Regulation 7.1 provides:

   Subject to conditions and definitions prescribed by the Commissioner-General, the Agency shall in appropriate cases pay the travel expenses of staff members and their dependents.

8. International Staff Rule 107.1 on the Official Travel of Staff Members provides:

   (a) Subject to the conditions laid down in these Rules, the Agency shall pay the travel expenses of a staff member under the following circumstances:

   [...]  

   (vi) On separation from service, in accordance with the provisions of Chapter IX of the staff Regulations and Rules.

9. At the hearing the Applicant accepted that the Agency paid his travel costs from Amman to Columbia upon his separation from service. The Applicant was transported by the Agency from Amman to New York on 8 May 2012 and from New York to Bogota, Columbia on 9 May 2012. This is documented in the annexes to the Respondent’s Response to Order No. 003 (2014) and is in accordance with the interoffice memorandum from Mr. Patrick Cronin, former Chief, Personnel Services Division, dated 26 March 2012, which stated:

   **Repatriation Travel**

   The Agency will meet the cost of repatriation travel for yourself in accordance with Staff Rule 107.1 from your duty station, Amman, to your recognized place of home leave in Bogota, Columbia, or to an alternative destination of your choosing.
10. At the hearing on remedies the Applicant noted that when he was repatriated to Bogota, he was separated from his wife, who remained working in Amman for UNRWA. The Applicant stated in his application and at the hearing on the merits that he was married on 21 April 2012, a point that was not in dispute and was known to certain staff members at the Agency. His appointment was terminated with effect from 22 April 2012, the day after his wedding. The Applicant submits that, following his marriage on 21 April 2012 and his separation from the Agency, he became a dependant of his wife. Therefore, after his repatriation to Columbia, he was entitled to be installed in Amman as a dependent of his wife at the expense of UNRWA. He claims the cost of flights booked at his own expense from Bogota to Amman, leaving 13 May 2012 and arriving 14 May 2012, the return leg from Amman to Bogota leaving and arriving 13 June 2012, and reimbursement to UNICEF, who payed for the Applicant to be installed in New York as a dependant of his wife.¹

11. The entitlements of the Applicant and his wife under her contract of employment are not the subject of the case that was decided by the Tribunal in Judgment No. 035 (2013). At the hearing on the merits of this case the Tribunal cautioned the Applicant about attempting to expand the scope of his case to include grievances held by his wife. If the Applicant was entitled to be installed in Amman as a dependant of his wife, this was a matter for his wife to raise with the Agency and, if not satisfied with the outcome, to file an application with the Tribunal. The Applicant has not satisfied the Tribunal that the issue is in anyway causally connected to the subject matter of his claim before the Tribunal. The Agency having discharged its obligation in accordance with International Staff Rule 107.1 the Tribunal finds no merit in the Applicant’s claim for reimbursement of travel costs for his trip from Columbia to Amman and back in May and June 2012. This part of his claim is dismissed.

12. At the hearing on remedies the Judge enquired whether the Applicant was seeking reimbursement for the costs associated with traveling from New York to Amman to attend the hearing on the merits of this case in person. The Applicant

¹ The Applicant’s wife returned to a post at UNICEF in New York.
stated that he was not claiming reimbursement for these costs, which he accepted as an “extra loss”.

**Pecuniary or material damage**

13. At the hearing on remedies and in documents filed prior to the hearing the Applicant sought to make out a claim for an award of damages in the amount of USD 500,758.84 in recognition of an assumed loss of income as a result of early termination of his contract and the resulting impact on his ability to find comparable employment in the following months and years.

14. Paragraph 132 of Judgment No. 035 (2013) ordered the Respondent to pay to the Applicant the salary and other emoluments and benefits to which he would have been entitled had his contract continued until its expiration date. The Tribunal reiterates paragraph 130 of the judgment: the Applicant was employed on a fixed-term contract with no right or expectation of renewal. As stated above, the Applicant is entitled to be placed, as far as money can do so, in the same position he would have been in had the contractual obligation been complied with. Had the Applicant’s contract not been terminated, there would have been no obligation on the Agency to renew the Applicant’s contract. The Tribunal also heard evidence at the hearing on the merits that there was no intention of renewing his contract following its expiration on 9 July 2012.

15. The Tribunal’s order, in Judgment No. 035 (2013), in relation to lost income is clear and was not a matter to be re-examined at the hearing on remedies. In any event, the Applicant did not adduce sufficient evidence to show that the decision to terminate his contract prior to its expiration date had a detrimental effect on his future earning capacity. The calculations that he presented were purely speculative in nature and unsupported by any evidence of substance showing a causal connection with his termination. The claim in respect of loss of income is dismissed.

16. By e-mail to the Registrar dated 24 February 2014, the Respondent submitted, as requested by the Tribunal, a schedule showing the remuneration,
separation entitlements and deductions that would have applied had the 
Applicant’s contract continued until the date of expiration.

17. By Order No. 026 (2014) dated 24 February 2014 the Tribunal ordered the 
Applicant to submit comments on the Respondent’s schedule stating where he 
disagrees with the calculations provided by the Respondent and the reasons for the 
disagreement, submitting, if appropriate, his calculation identifying the basis upon 
which he contends that the Tribunal should accept them as being correct.

18. In the absence of agreement the Respondent was granted leave to file any 
final comments on or before Sunday 2 March 2014. By Order No. 030 (2014) 
dated 3 March 2014 the Respondent was granted an extension of one day to file 
final comments in consideration of the fact that Sunday is not a working day for 
Counsel for the Respondent.

19. By e-mail dated 27 February 2014, the Applicant filed a schedule with 
revised figures for some items and comments explaining his reasons for 
disagreement with the Respondent’s calculations.

20. On 3 March 2014, the Respondent submitted a Response to Order No. 026 
and Order No. 030 providing final comments on the compensation to which the 
Applicant is entitled.

Remuneration

21. This includes three items: salary, post adjustment, and non-removal 
allowance. The only issue in dispute between the parties on these items was the 
end date of the contract. The Tribunal accepts the Respondent’s submission that 
the end date of the Applicant’s contract was 9 July 2012, rather than 10 July 2012 
as claimed by the Applicant. This is clear from the documentary evidence, in 
particular the Letter of Appointment dated 18 July 2011, signed by the Applicant, 
which states that the effective date of appointment was 10 July 2011 and the date 
of expiration was 9 July 2012.

22. There was a minor discrepancy, amounting to a few cents, in the 
calculations of the Applicant and the Respondent in regard to the salary and post
adjustment to which the Applicant was entitled, with the Applicant correcting the Respondent’s calculation to his own detriment. The Respondent maintained his figures in his final submission. The discrepancy will be applied in favour of the Applicant.

23. The Applicant was entitled to be paid USD 18,506.95 in salary, USD 7,957.99 in post adjustment, and USD 432.06 in non-removal allowance, amounting to a total of USD 26,897.

24. In order that the Applicant be placed in the same position that he would have been in had the contractual obligation been complied with (Warren 2010-UNAT-059) he is entitled to be paid interest, at the US Prime Rate applicable at the time, on the salary and post adjustment from the date that they would have been paid to the Applicant had his contract not been terminated until the date of this judgment. The Applicant having commenced employment on 10 July 2012, he was entitled to be paid, at the earliest, on the 10th day of each month. Therefore the Applicant is awarded interest on the salary and post adjustment due to him for the periods he would have worked in April, May, June and July, from the 10th day of the following month until the date of this judgment.

25. The Applicant is entitled to be paid interest, at the US Prime Rate applicable at the time, on the non-removal allowance from 10 July 2012 to the date of this judgment.

Repatatriation grant

26. There was a discrepancy between the amount claimed by the Applicant and the amount calculated by the Respondent. The parties agree that an amount of USD 4,991.77 had already been paid to the Applicant. The Applicant claims that he is entitled to an amount of USD 7,210.33. The Applicant has not provided sufficient information to support his claim. Accordingly, this claim is dismissed and the Applicant is entitled to no further payment under this item.
Annual leave

27. It is common ground that the Applicant was entitled to 2.5 days annual leave per month. The Applicant claims compensation for 7.5 days annual leave representing the annual leave to which he would have been entitled had he worked in May, June and July.

28. The Respondent submits that the Applicant is entitled to be reimbursed for 6.5 days annual leave because he would not have worked a full month in July as his contract expired on 9 July 2012. The Respondent refers to Administrative Instruction ST/AI/1999/13 of the United Nations Secretariat on Recording of attendance and leave. Paragraph 3.2 of ST/AI/1999/13 states: “When a staff member separates before the last working day of a month, one day shall be credited for service ending up to and including the fifteenth day of the month and two days thereafter.”

29. According to the calculations of the Tribunal it would appear that the Applicant may be entitled to be compensated for 6 days of annual leave: 2.5 days for May and June and one day for July, in accordance with paragraph 3.2, because he separated from the Agency before the fifteenth day of the month. However, because the Respondent would be in a better position to calculate the amount of annual leave, the Tribunal will interpret the apparent discrepancy in favour of the Applicant and accept the Respondent’s calculation.

30. The Applicant is entitled to be compensated for 6.5 annual leave days in the sum of USD 3127.60, which was due to be paid to him on the expiry of his contract.

31. The Applicant is entitled to be paid interest, at the US Prime Rate applicable at the time, on this amount from 10 July 2012 to the date of this judgment.

Termination indemnity

32. The Applicant claims that the indemnity should not be returned to the Agency or used to offset the other amounts owed to him, submitting that
“[e]liminating the Termination Indemnity would be equivalent to the Tribunal stating that the early termination did not happen, which is contrary to fact.”

33. The Respondent submits that “the essence of rescission is to annul the impugned decision…In effect, the mode of separation is no longer termination of the fixed-term contract but the expiry of the contract, given that the decision to terminate was rescinded by the Tribunal in its judgment.”

34. The Respondent’s submission is accepted. The relevant principle is identified at paragraph 6 above. The Applicant is entitled to be placed, as far as possible, in the same position he would have been had the contractual obligation been complied with. He is not entitled to the “double benefit” of a termination indemnity and payment of his entitlements as if his contract had continued to the date of expiration.

35. The Respondent is entitled to subtract the termination indemnity amount of USD 9,983.54 from the final amount owed to the Applicant.

Finding and order on pecuniary loss

36. The total amount due to the Applicant before consideration of the offset provided by the termination indemnity is USD 30,024.60. The Respondent is entitled to subtract the amount of USD 9,983.54 paid to the Applicant as termination indemnity from this amount.

37. **It is ordered that the Respondent is to pay to the Applicant the amount of USD 20,041.06 as compensation for pecuniary or material damage caused by the early termination of his contract.**

Non-pecuniary (moral) damages

38. The Applicant seeks moral damages in the amount of USD 50,000.

39. As a matter of principle, it is the Tribunal’s view that an award for non-pecuniary damages should be expressed as a lump-sum rather than in terms of net base salary. After all, the Tribunal is assessing the degree of injury suffered by the individual and quantifying the award accordingly. This exercise is not related to
the status or seniority of the individual and an award should therefore not be related to the individual’s earning or status, but to the actual distress and moral damage suffered by the individual. Each case is to be assessed on its own facts and the unique characteristics of the individual, the manner in which s/he has been treated and the impact of the treatment on the individual concerned (see, for instance, the Appeals Tribunal in Solanki 2010-UNAT-044, Warren 2010-UNAT-059, Ianelli 2010-UNAT-093, Zhouk 2012-UNAT-224). A principled approach minimises the risk of awards being disproportionate.

40. The Tribunal endorses the finding in its Judgment No. UNRWA/DT/2013/022, at para. 84, that the assessment of whether moral damage should be awarded should be arrived at after considering the following steps:

a. There should be a finding as to whether or not the Applicant did in fact suffer such damage.

b. If he did not there would be no basis for such an award.

c. If he did, it will be important for the Tribunal to make a factual determination of the level of damage, bearing in mind that feelings of upset, stress, anxiety, psychological damage and all such components that either singly or cumulatively make up what has been referred to as “moral damages” are at varying levels of severity. At one end of the continuum lies a minimal level and at the other end a level of extreme severity. Between these two extremes is the appropriate level and the task of determining this level is properly entrusted to the Tribunal which has seen or has heard the individual giving evidence and describing his feelings and emotional state.

d. The Tribunal has to be satisfied that the damage as described was attributable to action taken by the Respondent.

e. Where the unlawful act was performed maliciously or was high-handed and without due regard for the legitimate concerns and
feelings of the staff member it is bound to have aggravated the feelings of distress and will accordingly attract a higher award.

f. The Tribunal has to take into account that the assessment arrived at should be appropriate for the harm suffered. To award a paltry sum will discredit the policy underlying such awards as will an excessive award. Accordingly the Tribunal has to bear in mind the principle of appropriateness and proportionality.

g. Finally, the Tribunal will remind itself that it has no power to award exemplary or punitive damages and that the award must be truly compensatory.

41. The median amount of compensation for non-pecuniary harm in final judgments of the United Nations Dispute Tribunal and the Appeals Tribunal in the period of 1 July 2009 to 31 December 2012 was USD 17,000 (see paragraph 147 of A/68/346, Report of the Secretary-General on the Administration of Justice at the United Nations dated 23 August 2013). Thus, the amount of USD 17,000 is a useful reference point when assessing compensation for non-pecuniary harm, considering, of course, that in any particular case the circumstances may justify a higher or lower award.

42. The Applicant testified that he found the behavior of UNRWA staff very stressful. He believes that the Agency acted in bad faith with the intention of causing him distress and anxiety. He stated that the timing of the termination caused additional stress – he was informed of the decision to terminate his appointment one month before his wedding and the termination took effect the day after his wedding. The Applicant also alluded to documents he filed with the Tribunal which he submitted showed that he suffered from stress-related abdominal pain resulting in a visit to the emergency room of the Arab Medical Centre, Amman on 15 January 2012. He also stated that the Agency delayed the provision of tax information to the Internal Revenue Service of the United States, which resulted in further stress and anxiety and damaged his reputation with the IRS. He accepted that this delay did not result in any monetary loss.
43. The Respondent submitted that any stress that the Applicant suffered was self-induced, drawing attention to paragraph 128 of Judgment No. 035 (2013) in which the Tribunal stated that “[t]he Applicant is not blameless in this affair”. The Respondent also submitted that the documents filed by the Applicant did not show a diagnosis of stress-related abdominal pain.

44. The Applicant’s subjective assessment of the degree of anxiety and stress he suffered is understandable but it is precisely that. It is subjective and is to be given appropriate weight but it cannot be decisive. The Tribunal has to try its best, given the available information and evidence, to arrive at a reasoned assessment which will, insofar as it is possible to do so, be as objectively based as possible. Such an assessment has regard to the range of awards made to date and the applicable legal principles. The Tribunal has taken into account the document from the Arab Medical Centre, Amman and the Applicant’s evidence and submissions. Taking into consideration the foregoing principles and the evidence, both oral and documentary, the Tribunal finds that the Applicant suffered a moderate degree of anxiety and stress and that he is mistaken in submitting that any damage is to be assessed at the top end of the range of awards made to date.

45. **The Respondent is ordered to pay to the Applicant the sum of USD 8,000 as moral damages.**

**Conclusion**

46. The sums to be paid to the Applicant as a compensatory award are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary</td>
<td>USD 18,506.95</td>
</tr>
<tr>
<td>Post Adjustment</td>
<td>USD 7,957.99</td>
</tr>
<tr>
<td>Non-Removal Allowance</td>
<td>USD 432.06</td>
</tr>
<tr>
<td>Annual Leave</td>
<td>USD 3127.60</td>
</tr>
<tr>
<td>Moral damages</td>
<td>USD 8,000</td>
</tr>
<tr>
<td><strong>SUB-TOTAL</strong></td>
<td><strong>USD 38,024.60</strong></td>
</tr>
</tbody>
</table>
Termination Indemnity  USD 9,983.54  
DEDUCTIONS  USD 9,983.54  
TOTAL:  USD 28,041.06.

47. The sum of USD 28,041.06 is to be paid to the Applicant by the Respondent within 60 days from date this Judgment becomes executable, during which period interest at the US Prime Rate applicable as at that date shall apply. If the sum is not paid within the 60-day period, an additional five per cent shall be added to the US Prime Rate until the date of payment.

(Signed)

______________________________
Judge Goolam Meeran
Dated this 13th day of March 2014

Entered in the Register on this 13th day of March 2014

(Signed)

______________________________
Laurie McNabb, Registrar, UNRWA DT, Amman