UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1389

Maryam H. Wathanafa
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Gao Xiaoli Judge Katharine Mary Savage
Case No.:	2022-1749
Date of Decision:	27 October 2023
Date of Publication:	27 November 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Sètondji Roland Adjovi
Counsel for Respondent:	Noam Wiener

40. We do not agree with Ms. Wathanafa's contention. It is true that the separation notice mentioned her retirement. However, the UNDT rightly accepted that this reason had been given "in error".[33] The Administration recognized its error, understood as an error of law regarding the interpretation and application of Article 28 of the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund (UNJSPF).[34] In normal circumstances, when a contested decision is based on that reason alone, the recognition of error in that reason renders the decision baseless, and the Administration has the obligation to withdraw it. Absent withdrawal, the judge shall rescind the baseless decision. This is, however, not the case here. The recognition of error regarding the age of retirement does not impact the lawfulness of the contested Decision as it relied on a different legal reason of abolition of post. Undisputed by Ms. Wathanafa, the abolition of the post she encumbered was based on verifiable facts, including a clear pattern of chronological events preceding the issuance of the contested Decision and following it. These facts were examined by the UNDT and were found sufficient to uphold the contested Decision.

41. Therefore, we find that the UNDT did not err in fact when it did not consider the indicated separation on retirement to be the reason for the contested Decision.

Whether the UNDT, having previously suspended the contested Decision because of its prima

43. Suspending the implementation of a contested decision (suspension of action or suspension d'exécution), pending management evaluation, is governed by Article 2(2) of the UNDT Statute. It reads:

> The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation, where the decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

44. The UNDT is therefore authorized, upon request of the moving party, to suspend the implementation

47. Hence, findings made for suspension of action do not restrict the UNDT in its judicial review on the merits. Albeit being enforceable, an order for suspension of action does not have a res judicata effect vis-à-vis3J 0 Tc (e)-3.1 ( )-0.6-14 (ts)]0.001 Tc 09(H)0.8 (e)-5.1 (n)4.1 ( )- 4.4 (t)]

Judgment

52.