



1. Employment History

1.1 The Applicant joined the Organization on 4 May 1997 on a contract of limited duration as a translator/interpreter in the Department of Peacekeeping Operations. On 9 June 1998, the Applicant joined the United Nations Observer Mission in Angola (MONUA) on a contract of limited duration as a translator/interpreter. From 1 July 1998, the Applicant was extended on several short-term contracts until 1 March 1999 when she separated from service. On 24 June 2001, the Applicant was re-appointed to a temporary post as translator/interpreter with

procedure required under ST/AI/1999/16 as required under paragraph (ii) above, the Tribunal shall publish a separate judgment on the merits of the case; and

(v) The Administration is ordered to pay the Applicant compensation equivalent to three months' net base salary for the delay in complying with the procedures required under ST/AI/1999/16.”

2.2 On 30 March 2010, the United Nations Appeals Tribunal (UNAT) issued UNAT Judgment Number 2010-UNAT-003. On 13 May 2010, the Respondent filed a “Request for Clarification on Judgment Remanding Case for Institution of the Correct Procedure”, requesting clarification on the effect, if any, of the Appeals Judgment vis-à-vis the Judgment of this Tribunal remanding this case for institution of the correct procedure under ST/AI/1999/16 – “Termination of appointment for reasons of health”. On 17 May 2010, the Tribunal issued an “Order on the Respondent’s Application for Interpretation of Judgment” in which it rejected the Respondent’s request.

2.3 On 20 May 2010, the Respondent filed a request for extension of time to 3 June 2010 to comply with the requirements of paragraph 2.1 (iii) above of UNDT Judgment No. 089 (2010). The Respondent’s request was granted on 24 May 2010. On 3 June 2010, the Respondent filed his submissions on the progress made towards concurrence on the institution of the correct procedure required under ST/AI/1999/16 in the present case (“Submission on Concurrence”).

3. *Respondent’s Submission on Concurrence*

3.1 The Respondent’s submissions on concurrence are summarized below:

(i) In separate proceedings, UNAT issued its Judgment on the Applicant’s appeal against a decision taken by the Standing Committee of the United Nations Joint Staff Pension Board (“UNJSPB Standing Committee”), relating to the same injury as is the subject of the present

proceedings¹. Therein, UNAT rescinded the contested decision of the UNJSPB Standing Committee taken at its meeting on 15 July 2009 to reject the Applicant's request for a disability benefit and remanded the matter to the UNJSPB Standing Committee to review its decision on the basis of the reasons set out in the judgment.

(ii) The Respondent submits that the question as to whether the Applicant is incapacitated within the meaning of article 33 (a) of the UNJSPF Regulations, such as to give rise to her entitlement for a disability benefit remains a live issue as a result of the UNAT Judgment. In particular, the Respondent notes that UNAT opined that it was not in a position to rule on the basis of uncertain and disputed facts, namely

4. Considerations

4.1 Legal Issues

4.1.1 In UNDT Judgment No. 089 (2010), the Tribunal considered the following to be the legal issues arising out of this application:

- (i) Whether the administrative decision of the Under-Secretary-General for Management (“USG/DM”), dated 31 July 2007, not to renew the Applicant’s fixed-term appointment due to the Applicant’s inability to resume her professional activities with ICTR in Arusha was informed by improper motive.
- (ii) Whether the USG/DM abused her discretionary authority in her decision not to renew the Applicant’s fixed-term appointment.
- (iii) Whether or not the Applicant had any expectancy of renewal of her appointment under the terms of her appointment.
- (iv) Whether or not the Applicant’s appointment was terminated.
- (v) Whether the proper legal procedures for dealing with the Applicant’s service-incurred disability were complied with.
- (vi) Whether the Applicant was entitled to have been placed on continuous special leave with pay during the period 28 March 2007 to 31 July 2007.
- (vii) Whether the Applicant was adequately compensated for her loss of

(ii) The Applicant's fixed-term appointment was in fact improperly terminated and it was disingenuous for the Respondent to argue that "it was allowed to run until the end of the term and was not renewed on medical grounds."

(iii) The administrative decision not to renew the Applicant's fixed-term appointment due to the Applicant's inability to resume her professional activities with ICTR in Arusha was informed by improper motive.

(iv) T

(ii) Article 33 (a) of the Pension Fund Regulations provides that entitlement to a disability benefit is recognized only when the Board finds a staff member “to be incapacitated for further service in a member organization reasonably compatible with his or her abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration”.

(iii) It follows from article 33 (a) that the service of which it is necessary to assess the reasonable compatibility with the abilities of a staff member who is suffering from an impairment that is permanent or of long duration and who is requesting disability benefit must be understood as the duties which the staff member could perform, taking into account his or her state of health, in a member organization and which correspond to the duties performed by the staff member on the date of his or her separation, or at least duties commensurate with his or her education and professional qualifications.

(iv) UNAT was not in a position to rule on the basis of uncertain and disputed facts, namely whether it is actually possible for the Applicant to perform the duties of a translator in a member organization, or at least duties commensurate with her education and professional qualifications and which are reasonably compatible with her impairment, taking into account the duties actually required of a translator and the technology available to compensate for her inability to use a computer keyboard and that for this reason, the Standing Committee should reconsider the Applicant’s request after carrying out the required checks, for example finding out from the translation services of member organizations what technology is available that might compensate effectively for the appellant’s impairment and to what extent it would compensate for that impairment in the light of the duties actually required of a translator in those organizations.

(v) UNAT rescinded the decision taken by the Standing Committee at its meeting on 15 July 2009 with regard to the Applicant’s request and remanded

5. Judgment

5.1 The Tribunal recalls paragraph 8.8 of UNDT Judgment No. 089 (2010) where it stated as follows:

“8.8 Having found that the Applicant was incapable of further service to the organization, section 2 of ST/AI/1999/16 becomes operable and the Administration should then have submitted a request to the United Nations Staff Pension Committee (“the Committee”) for the determination of whether the Applicant should be awarded a disability benefit pursuant to section 3.4 of ST/AI/1999/16. **It is only when the Committee has decided to award a disability benefit that a recommendation for the termination of a staff member’s appointment under staff regulation 9.1 (a) or (b) can be made for approval by the Assistant Secretary-General for Human Resources Management on behalf of the Secretary-General.**”

