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UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2019/005  
Judgment  
No.: UNDT/2020/067  
Date: 5 May 2020  
Original: English

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**Before:** Judge Margaret Tibulya

**Registry:** Nairobi

**Registrar:**

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for the Applicant:**  
Self-represented

## **Background**

1. The Applicant is a former staff member of the United Nations Interim Force in Lebanon (“UNIFIL”).
2. On 28 January 2019, he filed an application contesting the decision of the Under-Secretary-General for Management (“USG/DM”) to authorise the withholding of his final entitlements to cover indebtedness to the Organization in accordance with staff rule 3.18(c)(ii) and withhold the issuance of any notification to the pension fund of his separation until he had satisfactorily settled all indebtedness to the Organization in accordance with paragraph 12 of ST/AI/155/Rev.2 (Personnel Payroll Clearance Action) as amended (“the contested decision”).
3. The Respondent replied to the application on 1 March 2019.
4. The Tribunal held a case management discussion (“CMD”) on 22 April 2020 subsequent to which the Respondent filed a motion requesting the Tribunal to conclude the matter for mootness. The Applicant filed a response to the said motion on 24 April 2020.
5. For the reasons set out further below, the Tribunal finds that the contested decision has been rendered moot. This application is accordingly dismissed.

## **Summary of the relevant facts**

6. On 5 December 2016, the Applicant underwent surgery for multiple benign tumour resection in his lumbar spine area. Between 15 February 2017 and April 2018, he had to return to hospital frequently for various check-ups and underwent several rounds of rehabilitation.<sup>1</sup>
7. On 1 September 2018, the Applicant resigned from the United Nations.<sup>2</sup>

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<sup>1</sup> Application, annex 2.

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to the Organization and to provide proof of payment so that they could inform United Nations Headquarters accordingly.<sup>8</sup> However, in a follow up memorandum dated 13 December 2018, the Chief/HRS informed the Applicant to disregard her earlier letter as the matter was still under consideration.<sup>9</sup>

14. On 5 February 2019, the Management Evaluation Unit (“MEU”) decided to uphold the contested decision.<sup>10</sup>

15. On 1 March 2019, the Chief/HRS informed the Applicant that as soon as he settled his indebtedness to the Organization, amounting to LBP3,925,649.65, UNIFIL would process his final separation entitlements and would release his P.35 form to the UNJSPF.<sup>11</sup>

16. After the application was filed, the Applicant settled his indebtedness to the Organization of USD1,195 through a payment by check dated 9 March 2019. He informed the Organization by e-mail on the same date.<sup>12</sup>

17.

Respondent was entitled to withhold any outstanding payments to the Applicant and to delay the release of the separation notification to the UNJSPF.

20. Information obtained at the CMD of 22 April 2020, however, is that the controversy between the parties was resolved during the pendency of this application. At the CMD, the Applicant confirmed that his pension was paid after he refunded monies he had been over paid. He now seeks new reliefs, specifically, compensation for the long period (nine months) it took for him to be paid and in addition he disputes the amount being paid to him as a pension.

21. The Tribunal notes that the complaint about the long period it took for the Applicant to be paid and the dispute over the amount of the pension paid to him are beyond the scope of this application since they were not subjected to management evaluation as required by art. 8.1(c) of the Dispute Tribunal's Statute and staff rule 11.2(a).

22. Turning to the issue of failure to release documents, the Tribunal finds that the Administration had proper legal grounds for refusing to issue the separation notification to the UNJSPF in accordance with staff rule 3.18(c)(ii), ST/AI/2009/1 (Recovery of overpayments made to staff members) and ST/AI/155/Rev.2 as amended. The Organization is permitted to use a staff member's pending entitlements to recover indebtedness to the Organization and it may also withhold the separation notification to the UNJSPF.<sup>14</sup>

23. The undisputed facts are that the Respondent promptly released the documents in issue to the UNJSPF after the Applicant met his obligation to settle his indebtedness to the Organization and the Applicant was paid his pension which means that there is no longer a live issue upon which this Tribunal can competently pass judgment. Any remedy issued would have no concrete effect.<sup>15</sup>

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<sup>14</sup> See for example in *Aliko* 2015-UNAT-539, para. 43.

<sup>15</sup> See for example in *Crotty* 2017-UNAT-763, para. 16 and *Kallon* 2017-UNAT-742, para. 44.

## **Judgment**

24. The Tribunal finds that the contested decision has been rendered moot. This application is accordingly dismissed.

*(Signed)*

Judge Margaret Tibulya

Dated this 5<sup>th</sup> day of May 2020

Entered in the Register on this 5<sup>th</sup> day of May 2020

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi