



UNITED NATIONS DISPUTE TRIBUNAL

---

Case No.: UNDT/GVA/2012/011

Judgment No.: UNDT/2013/052

Date: 14 March 2013

English

Original: French

---

**Before:** Judge Jean-François Cousin

**Registry:** Geneva

**Registrar:** René M. Vargas M.

JOHNSON

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**JUDGMENT**

---

**Counsel for Applicant:**  
Robbie Leighton, OSLA

**Counsel for Respondent:**  
Karen Farkas, UNHCR

## **Introduction**

1. By application filed with the Registry of the Tribunal on 26 January 2012, the Applicant contests the decision whereby the Income Tax Unit, United Nations Secretariat, refused to communicate to her the fiscal status regarding her 2010 tax position.

2. She requests the Tribunal to order the Income Tax Unit to issue this fiscal status and to proceed with the reimbursement of the 2010 staff assessment that was wrongfully deducted from her salary because she was required to use her foreign income tax credit of USD13,999. She also requests that this amount be accompanied by interest calculated at the prevailing rate as from the date on which she should have been reimbursed. She further demands reimbursement of the costs that she incurred in connection with this case.

## **Facts**

3. From 2003 to February 2006, the Applicant, a national of the United States of America, earned a tax credit in her country of origin while she was working in Switzerland for a consulting company.

4. In June 2006, the Applicant entered the service of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Geneva on a fixed-term appointment that was subsequently extended.

5. In May 2007, she informed the Income Tax Unit that her tax credit totalled USD58,381.

6. On 1 April 2011, the Applicant was hired by the United Nations Development Programme (UNDP) in New York.

7. In April 2011, the Applicant, who wished to obtain from the Organization reimbursement of the staff assessment deducted from the salary she had received in 2010, submitted her 2010 income tax return to the Income Tax Unit. On that

tax return, the amount of USD13,999 appeared under the “foreign tax credit” heading.

8. Since August 2011, the Applicant has made several requests to the Income Tax Unit to communicate to her the status of her fiscal situation for the year 2010.

9. On 17 August 2011, the Tribunal rendered its Judgment *Johnson* UNDT/2011/144, regarding the Applicant’s staff assessment for the years 2007 to 2009.

10. On 3 October 2011, the Applicant submitted a request for management evaluation to the Deputy High Commissioner for Refugees, referencing Judgment *Johnson* UNDT/2011/144.

11. On 4 October 2011, the Chief of the Income Tax Unit informed the Applicant that the aforementioned judgment was under appeal and that he was unable to reimburse the 2010 staff assessment until a decision had been taken.

12. On 17 October 2011, the Applicant was informed that her request for management evaluation was under consideration.

13. On 26 January 2012, the present application was filed with the Tribunal.

14. On 29 February 2012, the Respondent requested the Tribunal to suspend the proceedings pending the decision of the Appeals Tribunal in *Johnson* UNDT/2011/144. By Order dated 2 March 2012, the Tribunal rejected this request.

15. On 16 March 2012, the Respondent submitted his comments, requesting the Tribunal to reject the application.

16. On 29 June 2012, the Appeals Tribunal rendered its judgment in *Johnson* 2012-UNAT-240, which confirmed in its entirety the judgment in *Johnson* UNDT/2011/144.

17. By Order No. 159 (GVA/2012) of 12 November 2012, the Tribunal informed the parties that the Application would be adjudicated without a hearing and invited them to file any objections.

18. By Order No. 170 (GVA/2012) of 5 December 2012, the Tribunal invited the Respondent to file additional new comments taking into account the outcome of the Appeals Tribunal's judgment in *Johnson* 2012-UNAT-240.

19. On 14 December 2012, the Respondent submitted his comments, maintaining that the application had been rendered moot.

20. By Order No. 173 (GVA/2012) of 19 December 2012, the Tribunal suspended the proceedings concerning this application until the Applicant had informed it whether the dispute had been resolved.

21. By Order No. 29 (GVA/2013) of 5 March 2013, the Tribunal requested the parties to inform it whether the dispute had been amicably resolved.

22. On 11 March 2013, the Applicant submitted comments to the effect that the dispute had not been amicably resolved; this was confirmed by the Respondent on 12 March 2013.

### **Parties' submissions**

23. The Applicant's contentions are:

a. The Income Tax Unit refused to reimburse the deductions from her salaries and other emoluments received from the Organization in the course of the year 2010 on the grounds that she had used a foreign tax credit, thereby reducing her liability to the United States Internal Revenue Service ("IRS"). Thus, she was required to carry the double burden of paying income tax to the IRS and the staff assessment;

b. The Tribunal, by its Judgment *Johnson* UNDT/2011/144, decided that foreign income tax credits constituted a tax payment method and that the Income Tax Unit could not require staff to use it to reduce their income tax paid to the United States of America. The Tribunal had confirmed her claim

in respect of 2009. The present case concerns the deductions taken in 2010 and the Tribunal's decision must be the same. The Tribunal's judgment in respect of 2009 was confirmed by the Appeals Tribunal in *Johnson* 2012-UNAT-240 and the Administration must accept the consequences of this and reimburse to her for 2010 the amount that she would have received if she had not used her tax credit of USD13,999;

c. In her most recent comments, she states that she has no objection to the Tribunal waiting to take a decision in her case pending the Appeals Tribunal's decision on the request for interpretation of its Judgment in *Johnson* 2012-UNAT-240, submitted to it by the Respondent.

24. The Respondent's contentions are:

a. In his most recent comments, he first maintains that the Application has become moot since the Income Tax Unit has abandoned its previous position and no longer required the Applicant to use her foreign income tax credit on her 2010 income tax return;

b. He also draws to the Tribunal's attention that the circumstances in the present case are not the same as that of the case that has already been adjudicated.

### **Consideration**

25. The Applicant first contests the decision whereby the Income Tax Unit, United Nations Secretariat, refused to communicate to her the status of her fiscal situation for the year 2010. The Tribunal notes that the said status of her fiscal situation was placed in the file for the present case and was then transmitted to the Applicant. Thus, there is no further need to rule on the Applicant's request.

26. The Applicant then contests the decision whereby the Income Tax Unit refused to reimburse the staff assessment that was deducted from her salary and other emoluments in the course of the year 2010.

27. Staff regulation 3.3 applicable at the time of the events provided as follows:

(a) An assessment at the rates and under the conditions specified below shall be applied to the salaries and such other emoluments of staff members as are computed on the basis of salary ... provided that the Secretary-General may, where he or she deems it advisable, exempt from the assessment the salaries and emoluments of staff members engaged at locality rates.

...

(f) Where a staff member is subject both to staff assessment under this plan and to national income taxation in respect of the salaries and emoluments paid to him or her by the United Nations, the Secretary-General is authorized to refund to him or her the amount of staff assessment collected from him or her provided that:

(i) The amount of such refund shall in no case exceed the amount of his or her income taxes paid and payable in respect of his or her United Nations income;

(ii) If the amount of such income taxes exceeds the amount of staff assessment, the Secretary-General may also pay to the staff member the amount of such excess;

(iii) Payments made in accordance with the provisions of the present regulation shall be charged to the Tax Equalization Fund ...

28. The Tribunal notes that the Respondent, as a result of the judgment in *Johnson* UNDT/2011/144, which was confirmed in its entirety by the Appeals Tribunal's judgment of 29 June 2012 in *Johnson* 2012-UNAT-240, no longer contests that the total amount that the Applicant owed to the IRS for the year 2010 was USD16,008 and that the fact that the Applicant used a foreign income tax credit of USD13,999 to pay part of these taxes cannot be taken into account by the Income Tax Unit to reduce the amount to be paid by the Unit.

29. However, the Income Tax Unit of the Secretariat refuses to reimburse what was wrongfully deducted from her salary in the course of the year 2010. The Tribunal must therefore rule on this question.

30. In comments that are utterly insufficient in quality and in quantity, the Respondent maintains that the application has become moot since, in light of the Judgment of the Appeals Tribunal, it no longer contests that staff members who are United States nationals cannot be required to use their foreign income tax

credits to reduce their tax liability. The Tribunal must reject this argument since it fails to respond to the Applicant's request for reimbursement of the amount that was wrongfully deducted from her salaries.

31. Subsequently in the last reply, the Respondent maintains that the proceedings in the present case could be suspended pending the Appeals Tribunal's decision on his request for interpretation of its judgment in *Johnson* 2012-UNAT-240. While it is not for this Tribunal to anticipate the Appeals Tribunal's ruling on this request for an interpretation, it must recall however that since the Appeals Tribunal completely rejected the appeals against the judgment in *Johnson* UNDT/2011/144 that were submitted by the Secretary-General and by the Applicant, the latter judgment has been confirmed in its entirety. Furthermore, the Tribunal must note that the Respondent has submitted no serious comments on the Applicant's requests for reimbursement of the deductions withheld.

32. This Tribunal therefore considers that the jurisprudence thus confirmed by the Appeals Tribunal must be fully applicable to the present case, which concerns the deductions withheld in 2010 from the Applicant's salaries. Therefore, for the same reasons as those set out in Judgments *Johnson* UNDT/2011/144 and *Johnson* 2012-UNAT-240, it is appropriate to order the Secretary-General to reimburse to the Applicant the staff assessment deducted from her salaries and other emoluments for the year 2010. The amount to be reimbursed to the Applicant shall be calculated by the Income Tax Unit of the United Nations by taking into account that the income tax due by the Applicant to the IRS in 2010 amounted to USD16,008, which was partially paid by using the income tax credit of USD13,999. To determine the amount to be reimbursed, the Income Tax Unit cannot take into account eventual overpayments received by the Applicant in previous years until the previous Judgment *Johnson* UNDT/2011/144 has been executed, which as outlined above, became entirely executable once appeals against it were rejected by the Appeals Tribunal.

33. Lastly, the Applicant claims reimbursement of the costs that she has had to incur in respect of these proceedings. Article 10, paragraph 6, of the Tribunal's Statute authorizes it to award costs against a party only if that party has manifestly

abused the proceedings before it. While the Tribunal considers that the Respondent, by its insufficient replies, has complicated a case that had been simplified by the Appeals Tribunal's decision confirming the judgment of this Tribunal in *Johnson* UNDT/2011/144, it nonetheless decides that the Respondent did not abuse the proceedings in the present case.

### **Conclusion**

34. In view of the foregoing, the Tribunal DECIDES:

- a. The case is referred to the Income Tax Unit, United Nations Secretariat, in order for that Unit to proceed as soon as possible, in accordance with the principles set out above, with the calculation of the amounts to be refunded to the Applicant for the year 2010;
- b. The amounts awarded shall bear interest at the United States Prime Rate with effect from the date on which the Applicant should have received the refund until payment of the said amounts. An additional five per cent shall be added to the United States Prime Rate 60 days from the date this Judgment becomes executable;
- c. All the other claims are dismissed.

*(Signed)*

Judge Jean-François Cousin

Dated this 14<sup>th</sup> day of March 2013

Entered in the Register on this 14<sup>th</sup> day of March 2013

*(Signed)*

René M. Vargas M., Registrar, Geneva