

JANUARY 2017 - TIPS AND INFORMATION NEWSLETTER

***ILOAT Holds Separation Agreement is Null and Void
Because of Duress on the Staff Member***

The ILOAT exceptionally delivered four judgments on 30 November 2016 in a special session for its 123rd Session – the balance of cases will be delivered on Wednesday 8 February 2017. In Judgment No. 3750, the Tribunal considered the enforceability of a separation agreement and whether it was procured by duress on the staff member. In March 2012, the Global Fund (GF) advised the staff member that she could stay with the GF if she successfully completed a performance improvement plan (PIP); alternatively, she could sign a separation agreement. The staff member requested a copy of her performance appraisal report for 2011 but it was not provided to her; nevertheless the administration advised that her performance was unsatisfactory. In May 2012, she decided to sign the separation agreement containing a clause providing that she agreed not to file any appeals concerning her employment. She did in fact file an appeal seeking reinstatement and damages.

The Appeals Board recommended that the appeal be dismissed since there was no evidence of duress and the waiver of appeals clause was enforceable.

In the Tribunal appeal, the GF stated that the reasons for the agreement (and termination) were not performance-based but inability to adapt to a new organizational environment. The Tribunal found this to be contrary to the several emails sent to the staff member at the relevant time which cited performance issues. According to the Tribunal by “leading the complainant to believe that she had underperformed, the Global Fund abused its authority and put the complainant under unlawful pressure, which vitiated her consent in signing the separation agreement.”

The Tribunal ordered reinstatement within one month of delivery of its judgment, and back pay in the amount the staff member would have earned if she had remained employed to date of reinstatement, and 20% interest on the latter amounts if they were not paid within the month and reinstatement effected.

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