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UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES

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Case No 2011-247

Ortiz  
(Appellant)

v.

The Secretary General of the International Civil Aviation  
Organization  
(Respondent)

JUDGMENT

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Before: Judge Jean Courtial, Presiding  
Judge Luis María Simón  
Judge Inés Weinberg de Roca

Judgment No.: 2012-TANU-231

Date: 29 June 2012

Registrar: Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Respondent: Christopher M. Petras



### Facts and Procedure

6. Mr. Ortiz was appointed to ICAO on 1 October 2009 under a three-year contract as a Technical Officer, Airworthiness, Flight Safety Section, in the Air Navigation Bureau at the P-4 Level. Mr. Ortiz's contract contained a clause making his appointment conditional on a one-year probationary period.

7. On 26 August 2010, the Chief, Flight Operations Section (Chief) and the Chief, Staff Services Section, met Mr. Ortiz and informed him that he would not complete his probationary period successfully. Consequently, he was notified of the decision to terminate his appointment in a letter dated 1 September 2010.

8. On 7 September 2010, Mr. Ortiz asked the Secretary-General to reconsider this decision. Having heard nothing from the Secretary-General, Mr. Ortiz lodged an appeal with AJAB on 23 September 2010. In a letter dated 29 September 2010, Mr. Ortiz was informed of the Secretary-General's decision to uphold the termination of his appointment.

9. On 3 May 2011, AJAB delivered its conclusions, whereby, as well as making recommendations regarding enforcement of Staff Rules, it advocated payment of nine months' net base salary to Mr. Ortiz. On 5 July 2011, the Secretary-General informed Mr. Ortiz that he would not follow all AJAB's recommendations and that, "in the spirit of compromise", he wished to pay Mr. Ortiz three months' net base salary.

10. On 18 August 2011, Mr. Ortiz lodged an appeal with the United Nations Appeals Tribunal against the Secretary-General's decision. On 21 October 2011, the Secretary-General filed his answer.

11. On 4 November 2011, Mr. Ortiz filed a motion for the Authorization to File Supplement to Appellant's Appeal and the Secretary-General filed his answer opposing the motion on 15 November 2011.

### Submissions

#### Mr. Ortiz's Appeal

12. Mr. Ortiz maintains that the Secretary-General of ICAO did not exercise his authority correctly, and overstepped it, by not giving him the opportunity to improve his performance. Furthermore, Mr. Ortiz contends that ICAO did not follow the *Service Code* and the relevant guidelines.

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Appeals Tribunal has held that while its “authority is not unfettered”

Mr. Ortiz's Motion for authorization to File Supplement to Appellant's Appeal

28. On 4 November 2011, Mr. Ortiz filed a request to submit a further statement based on evidence that had recently come to light, raising questions as to whether the decision not to prolong the probationary period, thus depriving him of the opportunity to respond to his performance issues, was based on improper motives and a lack of good faith.

Secretary-General's answer to the Motion for Authorization to File Supplement to Appellant's Appeal

29. The Secretary-General opposes Mr. Ortiz's request and maintains that the latter, in raising facts that have already been put before AJAB, has not identified exceptional circumstances which would justify the further filing of additional evidence or that would be likely to help the Appeals Tribunal.

Considerations

30. An appeal has been brought before the Appeals Tribunal opposing the decision whereby the Secretary-General of ICAO ruled on Mr. Ortiz's complaint against his decision of 1 September 2010 to dismiss him as of 30 September 2010.

31. The Secretary-General decided not to follow entirely AJAB's Opinion No. 125, which had unanimously concluded that the Administration had failed to apply various norms and had breached Mr. Ortiz's rights by deciding to terminate his employment. AJAB had recommended that ICAO pay the Appellant compensation equivalent to nine month's net base salary at the rate in effect as of 1 October 2010. The Secretary-General has only accepted in dretas only a in (ct ang facf )]-2(eal )5.0174 T. T2(ehe )-5017





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51. The Secretary-General's challenged decision, notified to Mr. Ortiz on 5 July 2011, is hereby rescinded.

52. The administrative decision of termination is hereby rescinded. As an alternative to rescission, the Appeals Tribunal orders payment of compensation equivalent to nine months' net base salary at the rate in effect as of 1 October 2010, along with interest at US Prime Rate on the date on which the principal is due, and running from that date (1 October 2010) until the date of payment of the compensation.

53. This Judgment shall be implemented within a period of 60 days as from the date on which the original in French was notified to the Respondent. If it is not implemented within that period of 60 days, the US Prime Rate shall be increased by 5 per cent from the date of expiry of the 60-day period until the actual date of payment of the compensation.

Original and Authoritative Version: French

Done this 29th day of June 2012 in Geneva, Switzerland.

*(Signed)*

Judge Courtial, Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Weinberg de Roca

Entered in the Register of the Court on this 12th day of September 2012, in New York, United States.

*(Signed)*

Weicheng Lin, Registrar

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