



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-399

**Eggesfield
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Counsel for Respondent/Applicant:

Robbie Leighton

Counsel for Appellant/Respondent:

Paul Oertly

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary General of the United Nations of Judgment No. UNDT/2012/208, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 31 December 2012 in the case of *Eggesfield v. Secretary General of the United Nations*. On 1 March 2013, the Secretary General filed an appeal and Mr. Martin Eggesfield filed his answer on 3 May 2013.

Facts and Procedure

2. The parties do not dispute the following facts:¹

... [Mr. Eggesfield] joined the United Nations in 1996 as a Communications Technician at the FS-4 level. He served in several peacekeeping missions before joining [United Nations Mission in Côte d'Ivoire (UNOCI)] in or around 2003. Since 1 January 2008, [he] served as a Chief Communications Officer at the FS-6 level on a fixed-term contract. ...

... On or around 19 August 2010, whilst under appointment with UNOCI, [Mr. Eggesfield] applied for a position with [United Nations Assistance to the Khmer Rouge Trials (UNAKRT)] (Phnom Penh, Cambodia), at the FS-5 level. On 8 June 2011, [he] received an offer of appointment from the United Nations Department of Economic and Social Affairs ("DESA") for a position with UNAKRT at the FS-5 level. [DESA] provides administrative and human resources support to UNAKRT.

... [Mr. Eggesfield] accepted the offer on 10 June 2011, indicating that he would be able to travel to UNAKRT on 10 July 2011. His letter of appointment stated that it was for a fixed-term appointment of one year "in the Secretariat of the United Nations". The letter was counter-signed by an official of the Office of Human Resources Management ("OHRM") of the United Nations Secretariat "[o]n behalf of the Secretary-General".

... On 10 June 2011, [Mr. Eggesfield] informed the Chief Civilian Personnel Officer ("CCPO") of UNOCI of his acceptance of the offer from UNAKRT. He also advised him that he would therefore not seek a renewal of his appointment with UNOCI, which was due to expire on 30 June 2011. [Mr. Eggesfield] requested the CCPO to arrange his repatriation to Brisbane, Australia. ...

...

¹ Impugned Judgment, paras. 5-8, 11-13.

... On 3 October 2011, [Mr. Eggesfield] requested that the Assistant Secretary-General, OHRM, reinst

(a) A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within twelve months of separation from service may be reinstated in accordance with conditions established by the Secretary-General.

(b) On reinstatement the staff member's services shall be considered as having been continuous ...

(c) If the former staff member is reinstated, it shall be so stipulated in his or her letter of appointment.³

18. On 4 November 2011, the Administration denied Mr. Eggesfield's request for retroactive reinstatement on the following grounds:

... UNOCI and UNAKRT were separate entities independent of each other. ... [B]ecause [Mr. Eggesfield's] contracts with the two entities were "not linked, connected in any way administratively, budgetary or by mandate and are mission/project related, there is no basis in fact or rationale for a reinstatement when moving from one entity to another. ... [R]einstatement per staff rule 4.18 is subject to conditions set by the Secretary-General which include staff selection procedures ... ⁴

19. On 16 January 2012, the Secretary-General accepted the recommendation of the Management Evaluation Unit to uphold the contested decision, stating:

... The Administration has discretion whether to reinstate a former staff member or not.

In this regard, ... Staff Rule 4.18(a) provides for reinstatement "in accordance with conditions established by the Secretary-General". ... [T]his language suggests that additional criteria will determine whether reinstatement is granted or whether a new appointment is offered. ... [S]uch conditions for reinstatement have not yet been established ... Therefore, these additional criteria are currently generated from the practice of the Organization.

... [S]ince the introduction of the new Staff Rules ... reinstatement has been granted in three cases, where the involved staff members were reinstated in the same offices of their respective department. ... [I]n practice the criterion was established, that reinstatement requires re-employment in the same office under the same conditions of service.

³ The criterion of being "in accordance with the conditions established by the Secretary-General" was added in 2011, with the promulgation of ST/SGB/2011/1. It did not exist in prior versions of the rules pertaining to reinstatement.

⁴ Impugned Judgment, para. 12.

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Secretary-General.”⁶ Nevertheless, the Dispute Tribunal has a duty to consider whether the Secretary-General exercised his discretion in a proper manner to determine “if the decision is legal, rational, procedurally correct, and proportionate. The Tribunal can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse”.⁷

24. It was incumbent upon the Secretary-General to act within a reasonable time to establish “conditions” for reinstatement of staff members after Staff Rule 4.18(a) was amended to require him to do so. However, he concedes that he has not yet promulgated an administrative issuance establishing conditions for reinstatement under Staff Rule 4.18(a). This failure to establish conditions for reinstatement prejudices staff members who seek reinstatement.

25. Past practices cannot and do not substitute for an administrative issuance establishing conditions for reinstatement within the requirement of Staff Rule 4.18(a).⁸ Similarly, “conditions” set by managers that are not part of a published promulgation can

case, remand is not available because Mr. Eggesfield has retired from service with the Organization. Thus, based on the Administration's failure to lawfully consider his request for reinstatement and to comply with Staff Rule 4.18(a), the Appeals Tribunal awards moral damages to Mr. Eggesfield in the amount of USD 5,000.

Judgment

28. The Secretary-General's appeal is dismissed and Judgment No. UNDT/2012/208 is affirmed, in part, and vacated, in part, as follows: the rescission of the administrative decision is affirmed; and the reinstatement of Mr. Eggesfield and the award to him of corresponding entitlements and benefits are vacated. Mr. Eggesfield shall be awarded USD 5,000 as moral damages, to be paid to him within 60 days from the date of the issuance of this Judgment to the parties. If payment is not timely made, interest shall be applied, calculated as follows: five per cent shall be added to the US Prime Rate from the date of expiration of the 60-day period to the date of payment.

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Simón

Entered in the Register on this 13th day of May 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar