

*Translated from French*

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

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**Mr. Castelli  
(Respondent/Applicant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Jean Courtial, Presiding Judge Inés Weinberg de Roca Judge Sophia Adinyira
Case No.:	2009-017
Judgment No.:	2010-TANU-037
Date:	1 July 2010
Registrar:	Weicheng Lin

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Counsel for Respondent/Applicant:	Nicholas Christonikos
Counsel for Appellant/Respondent:	Phyllis Hwang

**Judge Jean Courtial**, Presiding Judge

### **Synopsis**

1. The Secretary-General appealed against the judgment of the United Nations Dispute Tribunal ordering the administration to pay Mr. Castelli the relocation grant to which staff members employed for a year or longer are entitled. The United Nations Appeals Tribunal finds that unless an appointment contract is fake or fraudulent, it gives rise to entitlements for staff members upon the signing and acceptance by the latter of his/her letter of appointment. That holds true even where the administration improperly handled the recruitment process, provided that the staff member acted in good faith, i.e., where the impropriety was entirely attributable to the administration. In the instant case, in view of the procedural failure claimed by the administration and the fact that Mr. Castelli's good faith was not in question, the administration was not entitled to require an artificial break in service, in violation of the Staff Regulations and Mr. Castelli's rights, in order to deny him the relocation grant. The judgment of the Dispute Tribunal is hereby upheld.

### **Facts and procedure**

2. Mr. Castelli was recruited as a finance officer at the P-3 level, based in New York, for the United Nations Mission in Nepal, under a fixed-term contract of eight months and 28 days, beginning on 4 April 2007 and ending on 31 December 2007. The appointment was subsequently extended through 30 June 2008.

3. Before leaving Switzerland to take up his post in New York, Mr. Castelli requested clarification from the Department of Peacekeeping Operations as to his entitlements, including emoluments related to relocation expenses. On 22 March 2007, he was informed that he would receive \$1,200 upon submission of the F.10 form, and that, were his contract to be extended up to a year, he would collect the balance of his expenses. According to Mr. Castelli, the balance of the relocation grant was \$13,800. Upon his arrival in New York, he received \$1,200.

4. A six-month extension, from 1 January to 30 June 2008, extended Mr. Castelli's period of employment beyond a year. Continuous employment for over a year gives rise to entitlements not provided for staff members employed for less than a year. On 28 February 2008, Mr. Castelli was informed that he had to take a break in service for three days, from 4 to 6 March, 11 months after his initial start date. However, Mr. Castelli continued to work during those three days for which he was paid at the same rate.

5. On 31 March 2008, Mr. Castelli submitted a claim for the payment of entitlements applicable to staff who have served continuously for a year or longer, including the relocation grant. He subsequently tendered his resignation as of 18 April 2008, after one year and two weeks of continuous service.

6. When his claim was rejected, Mr. Castelli filed an application with the United Nations Dispute Tribunal, which found in his favour through judgment No. 2009/075 of 13 November 2009.

7. The Dispute Tribunal found that the administration had conceded that if the applicant had been employed continuously for a year or longer, he would have been

entitled to a relocation grant. The Dispute Tribunal noted that there had been no change in the staff member's employment status and found that the break in service was an artificial device that served no managerial purpose and was solely designed to help the administration evade the payment of the grant sought by Mr. Castelli.

8. The Dispute Tribunal found that Mr. Castelli had been with the administration under two successive contracts that were each for a period of less than a year. Therefore, neither of the contracts required review by the central review bodies. The Dispute Tribunal added that even assuming that the second contract had been drawn up in violation of rule 104.14 of the Staff Rules in effect at the time, which was applicable to appointments of one year or longer, the failure by the administration to abide by its own rules could not cause the second contract to be invalid. According to the Dispute Tribunal, the second contract could only be terminated in compliance with the relevant Staff Regulations, which had not been the case. A break in service had therefore not actually occurred.

9. The Dispute Tribunal ordered the administration to pay Mr. Castelli the balance of the relocation grant applicable at the time of the claim, with interest. The Secretary-General is appealing the judgment ordering the administration to pay Mr. Castelli the balance of the relocation grant.

#### **Submissions from parties**

##### **Appellant**

10. The Dispute Tribunal erred in law and in fact in ordering the payment of the relocation grant to Mr. Castelli. As a result, the order of payment should be annulled.

11. The administration had committed an error when it offered Mr. Castelli a second contract extending his period of employment by six months without submitting it to a central review body. However, the administration had acted promptly by requiring Mr. Castelli to take a break in service. The Dispute Tribunal had misunderstood the role of the central review bodies, which is not an end in itself, but is one aspect of compliance by the Secretary-General with his duty to implement in good faith the mandates of the General Assembly with respect to the management of human resources. The Dispute Tribunal's reasoning was inconsistent. On the one hand, it had found that the requirement of a review by a central review body did not apply to Mr. Castelli, since it only covered contracts of a year or longer; on the other hand, it had found that Mr. Castelli was entitled to a relocation grant, even as the grant was conditional on appointment for a year or longer. If it was the Dispute Tribunal's finding that Mr. Castelli had been employed under two separate and distinct contracts, it should not have found that he was entitled to the grant. The Dispute Tribunal had erred on a question of law in finding that rule 104.14 (h)(i) did not apply to Mr. Castelli.

12. The appellant contends that the Dispute Tribunal had erred on a question of fact in finding that the break in service required of Mr. Castelli appeared to be merely a device designed by the administration to withhold payment of an entitlement to a staff member. Since Mr. Castelli was recruited under an accelerated and less formal recruitment procedure, he was not entitled to the benefits offered to staff members recruited under a more formal procedure involving a central review body.

13. The Dispute Tribunal had committed an error in law in finding that under rule 104.14 (h)(i) Mr. Castelli's appointment need not have been reviewed by a central review body. Appointment for a specific mission should be clearly distinguished from appointment against a Headquarters-based support post. Mr. Castelli had not been appointed for a mission.

### **Respondent**

14. The judgment of the Dispute Tribunal was reasonable in that it awarded him neither more nor less than full compensation for the expenses he had incurred, as required for his and his wife's relocation to New York.

15. The appellant had failed to show why the judgment was manifestly unreasonable. His appeal only repeats the same arguments he had submitted unsuccessfully to the Dispute Tribunal. His claims are either not substantiated by any evidence, are irrelevant or are simply erroneous.

16. By filing such a frivolous appeal, the appellant has manifestly abused the appeals process and forced the respondent to dedicate time and effort to his defence.

17. The respondent prays the Appeals Tribunal to uphold judgment No. 2009/075 of the Dispute Tribunal and award him the amount of \$10,000 as costs.

### **Considerations**

18. This case is about the claim filed by Mr. Castelli for the relocation grant provided for in section 11 of administrative instruction ST/AI/2006/5 on excess baggage, shipments and insurance in effect at the material time. Section 11 of the administrative instruction states that internationally recruited staff members entitled to unaccompanied shipment "may opt for a lump-sum payment in lieu of the entitlement. This lump-sum option shall be known as a 'relocation grant'."

19. The Dispute Tribunal found in its judgment that the administration had conceded that continuous employment for a period of one year or longer gives rise to entitlement to such a grant, regardless of whether the period exceeding a year is a result of a single contract, or two consecutive contracts. The appellant did not dispute that finding, which is entirely consistent with rule 107.21 (h) of the Staff Rules, in effect at the time, which entitles staff members with appointments of less than a year to the same benefits, "[w]here the appointment or assignment is extended for a total period of one year or longer".

20. However, the appellant contends that the Dispute Tribunal erred on a question of law and a question of fact by failing to recognize that the second contract by which Mr. Castelli's appointment was extended beyond a year was invalid, because it had not been submitted for review by a central review body. He submits that it was incumbent upon the administration to respond by requiring the staff member to take a break in service in order to cure that defect.

21. We recognize that rule 104.14 (h)(i) of the Staff Rules, promulgated in ST/SGB/2003/1, made all appointments of one year or longer subject to review by the central review bodies. To find otherwise would be to deprive rule 104.14 (h)(i) of any meaning and effect such as would allow it to be circumvented.

22. However, the Appeals Tribunal finds that the administration could not infer from such impropriety that it could require Mr. Castelli to take a break which would operate to deny him the relocation grant to which he was entitled, since his cumulative period of employment exceeded one year.

23. The contracts by which the Organization employs staff members, including fixed-term contracts covered by the Staff Regulations, are not regular contracts, given the particular relationship established between staff members and the Organization. Such contracts are for the most part governed by the Regulations, which set out the basic conditions of service, and by the Staff Rules and the Secretary-General's administrative instructions.

24. Unless it is fake or fraudulent, a staff member's appointment contract gives rise to entitlements upon the signing and acceptance by the staff member of his/her letter of appointment. This holds true even where the administration improperly handled the recruitment process, provided that the staff member acted in good faith, i.e., where the impropriety was entirely attributable to the administration. While staff members' acquired rights do not operate to prevent the General Assembly from supplementing or amending the provisions of the Staff Regulations, as stipulated in regulation 12.1 of the new Regulations, the administration may not subvert the entitlements of a staff member by abusing its powers, in violation of the provisions of the Staff Regulations and Staff Rules.

25. In this case, there was no provision in Mr. Castelli's letter of appointment or in the Staff Regulations and Rules that would allow the administration to require him to take a break in service tantamount to terminating his appointment contract and reappointing him three days later. In this regard, the Dispute Tribunal did not commit an error of law when it referred to Chapter IX, article 9.1 (b) of the version of the Staff Regulations in effect at the time, which provided that the Secretary-General could only terminate a staff member's fixed-term contract for one of the reasons specified in paragraph (a) or as specified in the letter of appointment. None of those reasons was cited in the present case.

26. Where the administration commits an irregularity in the recruitment procedure, it falls to it to take such measures as are appropriate to correct the staff member's situation. It is only where such correction is manifestly impossible to effect owing to the nature or gravity of the irregularity that the administration may terminate a staff member. However, if the staff member has acted in good faith, he or she is entitled to compensation for the damage suffered as a result. In this case, in view of the irregularity referred to by the administration and the fact that Mr. Castelli's good faith was never called into question, the administration could not have created an artificial break in service, in violation of the Staff Regulations and Mr. Castelli's rights, in order to deny him the entitlement of a relocation grant.

27. In conclusion, while the Dispute Tribunal's choice of language was too strong in some instances, which the Appeals Tribunal does not endorse, and while we do not entirely agree with the Dispute Tribunal's reasoning, its findings were not tainted by any error of law or of fact.

28. The Appeals Tribunal upholds the Dispute Tribunal's judgment ordering the appellant to pay the respondent the relocation grant. In the circumstances of the instant case, the Appeals Tribunal does not deem it appropriate to award costs to the respondent.

**Judgment**

29. The judgment of the United Nations Dispute Tribunal ordering the respondent to pay the relocation grant is upheld. The appeal is rejected.

Done on this 1st day of July 2010 at New York, United States of America.

Original: French

*(Signed)* Judge Courtial, Presiding

*(Signed)* Judge Weinberg de Roca

*(Signed)* Judge Adinyira

Entered in the Register on this 16th day of August 2010 in New York, United States of America.

*(Signed)* Weicheng Lin, Registrar  
United Nations Appeals Tribunal

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