UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-083

Beaudry

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT ON "REQUEST FOR GUIDANCE AND RULING ON ISSUES OF APPELLATE JURISDICTION, APPROACH AND RECONSIDERATION"

Before:	Judge Luis María Simón, Presiding Judge Kamaljit Singh Garewal Judge Inés Weinberg de Roca
Judgment No.:	2011-UNAT-129
Date:	8 July 2011
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant:	Bart Willemsen
Counsel for Appellant/Respondent:	Phyllis Hwang

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. An application for "reconsideration", "guidance", "ruling on issues of appellate jurisdiction" and "approach", or any application which, in fact, seeks a review of a final judgment rendered by the United Nations Appeals Tribunal (Appeals Tribunal) can, irrespective of its title, only succeed if it fulfills the strict and exceptional criteria established under Article 11 of the Statute of the Appeals Tribunal (discovery of a decisive fact previously unknown not due to negligence, clerical or arithmetical mistakes, and interpretation of the meaning).

2. In this respect, the applicant's arguments are irrelevant if they do not meet the requirements very clearly established in the Statute to ensure the finality of a judgment.

3. Neither can the parties rely on this Tribunal's "inherent power to reconsider" to obtain a revision expressly forbidden by the Statute from a rule based on the concept of *res judicata*, designed to avoid litigation *ad aeternum*, particularly applicable to the highest court of a judicial system.

4. The submission of such requests may constitute grounds for the adoption of disciplinary measures against the counsel who files them, as that conduct constitutes an abuse of litigation and the Organization's resources, waste of time and efforts for the other party, the Registry and the Tribunal itself.

Facts and Procedure

5. Louise Beaudry (Beaudry) challenged before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) a decision not to renew her appointment of limited duration. By Judgment No. UNDT/2010/039 dated 4 March 2010, the UNDT ruled in favour of Beaudry on the question of liability and found that the decision not to renew her appointment was in breach of her contractual right of due process and that she was entitled to compensation.

6. On 19 April 2010, the Secretary-General appealed the UNDT Judgment. On 27 October 2010, this Tribunal vacated the UNDT judgment holding that the UNDT

"erred on a question of fact resulting in a manifestly unreasonable decision in finding that the non-renewal of Beaudry's appointment was in breach of her rights".[1] Accordingly, it affirmed the Administration's decision not to renew Beaudry's appointment of limited duration.

7. Beaudry now seeks "guidance and ruling on issues of appellate jurisdiction, approach and reconsideration" with respect to the Judgment of the Appeals Tribunal.

Submissions

Beaudry's Application

8. Beaudry submits that the Appeals Tribunal vacated the UNDT judgment based on an error of fact, while the Secretary-General had alleged no errors of fact in his appeal. Beaudry submits that Article 2(1) of the Statute of the Appeals Tribunal does not permit this Tribunal to review an initial application *de novo* and to overturn *proprio motu* a first instance judgment on an argument that was not advanced on appeal. Beaudry accordingly asks the Appeals Tribunal to clarify what the parameters of its jurisdiction are and to determine whether it is within the jurisdiction of the Appeals Tribunal to consider and rule on an issue of fact or law which has not been advanced by either party during the appellate proceedings.

9. Beaudry suggests that, should the Appeals Tribunal confirm that it does have jurisdiction to conduct such an enquiry, it would have been incumbent on this Tribunal to invite representations by both parties on the new issue before entering such a ruling. In this regard, Beaudry points out that she had requested an oral hearing which the Appeals Tribunal had rejected because it found no need for further clarification of the issues arising from the Secretary-General's appeal.

10. Beaudry next asks the Appeals Tribunal to provide clarification on the standard of review applied by this Tribunal.

11. Beaudry contends that this Tribunal as the final judicial instance must have inherent jurisdiction to correct its own holdings in the interest of justice or "to repair

[1] *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-085.

fundamental unfairness". She requests that the Appeals Tribunal reconsider its Judgment en banc on the basis that it exceeded its appellate jurisdiction and departed from its own jurisprudence set forth in *Cohen*[2] that those parts of a trial judgment not challenged on appeal are final and binding upon the parties.

Secretary-General's Answer

12. The Secretary-General responds that counsel for Beaudry has in numerous other cases requested the Appeals Tribunal to review its own judgments by requesting "reconsideration", "interpretation" or "setting aside" of the judgments. These motions have all been rejected by the Appeals Tribunal.

13. The Secretary-General submits that the present motion constitutes the fifth attempt by Beaudry's counsel to re-open a case for which the Appeals Tribunal has rendered a final judgment and where none of the criteria for seeking revision, correction, or interpretation of a judgment are fulfilled. Counsel does not attempt to justify his request under Article 11 of the Statute of the Appeals Tribunal, but reiterates that the Appeals Tribunal "must have the inherent power to correct its own holdings in the interests [sic] of justice or to repair fundamental unfairness".

14. The Secretary-General submits that it is irrelevant how counsel entitles his requests ("reconsideration", "guidance", "interpretation" or "setting aside"). As long as the application does not meet the criteria of Article 11 of the Statute of the Appeals Tribunal, the Appeals Tribunal has no basis to review the matter.

15. The Secretary-General requests the Appeals Tribunal to dismiss the application in its entirety.

Considerations

16. An application for "reconsideration", "guidance", "ruling on issues of appellate jurisdiction" and "approach", or any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfills the strict and exceptional criteria established by Article 11 of the Statute of the

[2] Order No. 27 (2010), 24 November 2010.

Appeals Tribunal (discovery of a decisive fact previously unknown not due to negligence, clerical or arithmetical mistakes, and interpretation of the meaning).

17. As this Court stated in *Shanks* and *Costa*,[3] the authority of a final judgment – *res judicata* – cannot be so readily set aside. There are only limited grounds, as enumerated in Article 11 of the Statute of the Appeals Tribunal, for review of a final judgment.

18. In this respect, the applicant's arguments are irrelevant if they do not meet the requirements clearly established in the Statute to ensure the finality of a judgment.

19. Neither can the parties rely on the Tribunal's "inherent power to reconsider" to obtain a revision expressly forbidden by the Statute from a rule based on the concept of *res judicata*, designed to avoid litigation *ad aeternum*, particularly applicable to the highest court of a judicial system.

20. In the present case, the application filed by Beaudry does not fulfill the requirements of Article 11 of our Statute. It therefore becomes manifestly inadmissible.

21. This Tribunal must point out that the submission of applications like the one under examination may constitute grounds for the adoption of disciplinary (administrative) measures against the counsel who files them, as that conduct constitutes an abuse of litigation and of the Organization's resources, waste of time and efforts for the other party, the Registry and the Tribunal itself. If the present warning goes unheeded and such abusive behavior continues, this Tribunal will not hesitate to take appropriate measures.

[3] *Shanks v. the United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-26*bis*; *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063.

Judgment

22. This Tribunal dismisses the application in its entirety.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(*Signed*)	(*Signed*)	(*Signed*)
Judge Simón, Presiding	Judge Garewal	Judge Weinberg de Roca

Entered in the Register on this 29th day of August 2011 in New York, United States.

(*Signed*)

Weicheng Lin, Registrar