



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

Case Nos. 2010-169 & 170

**Ghahremani
(Appellant)**

v.

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

JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Luis María Simón
Judge Inés Weinberg de Roca

Judgment No.: 2011-UNAT-171

Date: 21 October 2011

Registrar: Weicheng Lin

Counsel for Appellant: Winston Sims

Counsel for Respondent: Wambui Mwangi

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Considering that the two appeals raise a common set of facts, and that consolidating them will serve judicial economy and consistency without changing or affecting the rights of the parties, Appeal Case No. 2010-169 and Appeal Case No. 2010-170 are joined.
2. Mr. Mohsen Ghahremani, a former staff member of the United Nations Office at Vienna (UNOV), separated from service in December 1996. On 27 October 1999, UNOV barred him from entering its premises. Mr. Ghahremani requested administrative review of this decision. He subsequently asked for a copy of his Official Status File (OSF) and documents relating to the decision to bar him from entering the UNOV premises. His request was rejected.
3. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) has jurisdiction over applications filed by a staff member, a former staff member or a person making claims in the name of an incapacitated or deceased staff member with respect to an administrative decision that is alleged to be in noncompliance with the terms of appointment or the contract of employment.
4. At the time UNOV barred him from entering its premises Mr. Ghahremani was not a staff member. Consequently, he cannot complain that the decision was in noncompliance with his terms of appointment or contract of employment. The UNDT thus correctly held that the application was non-receivable *ratione personae*.
5. With respect to the second appeal, Mr. Ghahremani, as a former staff member, is entitled to have access to his files for the period corresponding to his former employment with UNOV. However, since the reasons for gaining access to his files relate to a decision which has no bearing on Mr. Ghahremani's former status as a staff member of UNOV, the UNDT correctly held that the application was not receivable.
6. Both appeals are dismissed and the UNDT Judgments are affirmed.

Facts and Procedure

7. Considering that the two separate appeals filed by Mr. Ghahremani raise a common set of facts, and that consolidating them will serve judicial economy and consistency without changing or affecting the rights of the parties, we join the two cases.

8. Mr. Ghahremani began working for UNOV on 12 October 1983 as a Messenger at the G-2 level. On 31 December 1996, his fixed-term appointment expired and he left the Organization. Thereafter, he held various short-term appointments, the last of which for five days from 22 February 1999 to 26 February 1999.

9. On 27 October 1999, UNOV barred Mr. Ghahremani from entering its premises. At the time Mr. Ghahremani was working for the United Nations Industrial Development Organization (UNIDO) in Vienna under a six-month special services agreement (SSA) covering the period from 1 July 1999 to 31 December 1999.

10. Mr. Ghahremani initiated arbitration proceedings at UNIDO and the parties settled. On 7 August 2000, Mr. Ghahremani was permitted to re-enter the UNOV premises.

11. On 6 August 2006, Mr. Ghahremani's counsel requested a copy of his client's OSF and all documents related to Mr. Ghahremani, from January 1995 onwards, referring to the communications to and from the United Nations Safety and Security Section.

12. On 8 August 2006, Director, UNOV Division of Management, refused to accede to that request given the time that had lapsed since Mr. Ghahremani had last been a staff member in 1996. His subsequent request for the same was also refused.

13. Mr. Ghahremani launched two appeals, one against the decision to bar him from the UNOV premises, and the other against the decision to deny his counsel's access to his OSF and other documents related to the decision to bar him from entering the UNOV premises. The two cases were subsequently transferred to the UNDT in Geneva.

14. In Judgment No. UNDT/2010/075 dated 30 April 2010, Judge Cousin rejected Mr. Ghahremani's application against the denial of his counsel's access to his OSF and other documents. He recalled that Mr. Ghahremani was a UNOV staff member until 31 December 1996, and that the contested decision to bar him from the UNOV premises was taken on 27 October 1999. Judge Cousin found that if Mr. Ghahremani was entitled to have access to his complete file,

that entitlement exist[ed] only in so far as consultation of the file relate[d] to events during the period when he was an employee and was therefore subject to the Staff Regulations and Rules. In the case in point, the request for access to the applicant's file relate[d] to a decision of 27 October 1999 barring him from VIC [Vienna International Center, same as UNOV premises] which ha[d] no connection with his former status as a staff member.

Judge Cousin held that, as the contested decision could not have adversely affected Mr. Ghahremani's terms of appointment as a former staff member, the application was not receivable before either the former Administrative Tribunal or the UNDT.

15. In Judgment No. UNDT/2010/076 also dated 30 April 2010, Judge Cousin rejected Mr. Ghahremani's application against the decision to bar him from entering the UNOV premises as non-receivable *ratione personae*. Judge Cousin found that on 27 October 1999 when UNOV barred him from entering its premises Mr. Ghahremani was not a staff member. As the holder of an SSA contract Mr. Ghahremani was "no longer subject on that date to the Staff Rules and the barring cannot have adversely affected his terms of appointment as a former staff member".

16. Mr. Ghahremani appeals both Judgment No. UNDT/2010/075 and Judgment No. UNDT/2010/076.

Submissions

Mr. Ghahremani's Appeals

17. Mr. Ghahremani repeats the pleas that he made before the Joint Appeals Board (JAB) in Vienna. In addition, he maintains that the UNDT failed to exercise its jurisdiction and made errors in fact and law. Mr. Ghahremani requests that the United Nations Appeals Tribunal (Appeals Tribunal) order the Respondent to produce all documentation or evidence

related to the decision to bar him from entering the UNOV premises, and that this Court find his appeal receivable.

18. Mr. Ghahremani reiterates his request for the remedies that he sought before the JAB in Vienna: namely, a total of eight years' net base salary; a total of USD 50,000 for his counsel; a position with the United Nations; an apology from the Secretary-General; the removal of his name from the list of "unwanted persons"; the revocation of the decision "not to employ" him; and the removal of all references to the "incident" from his files.

Secretary-General's Answers

19. The UNDT correctly concluded that the contested decision to refuse Mr. Ghahremani access to his OSF and other documents did not adversely affect his terms of appointment as a former staff member, as at the material time he was not a staff member subject to the Staff Regulations and Rules, and the request for such access was related to a security incident that occurred when Mr. Ghahremani was not a UNOV staff member, but an individual contractor under an SSA.

20. The UNDT also correctly concluded that the contested decision to bar Mr. Ghahremani from entering the UNOV premises was not receivable, as on the date of the contested decision Mr. Ghahremani was not a staff member, a necessary prerequisite for him to gain access to the United Nations' internal justice system, and that the contested decision did not relate to Mr. Ghahremani's former terms of appointment as a UNOV staff member.

Considerations

Judgment No. UNDT/2010/075

21. This Court has considered the issue as to whether the entitlement of a former staff member to inspect his or her OSF exists in so far as the consultation of the file relates to events that took place at a time when he or she was not an employee of the Organization.

22. Mr. Ghahremani appeals the denial of access to all files and documents related to the decision to bar him from entering the UNOV premises. He requests access to his OSF and other documents in order to obtain copies related to the barring.

23. Mr. Ghahremani, as a former staff member, is entitled to have access to his files that correspond to the period of his former employment with UNOV.

24. However, since the reasons for gaining access to his files relate to a decision which has no bearing on his status as a former staff member of UNOV, the UNDT correctly held that the application was not receivable.

Judgment No. UNDT/2010/076

25. This Court must consider the following issue: Was the UNDT competent to hear and determine a contested decision that had no connection with Mr. Ghahremani's former terms of employment or a right arising from his status as a staff member?

26. Article 2(1) of the Statute of the Dispute Tribunal reads:

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;...

27. Article 3 of the Statute of the UNDT confers upon the Dispute Tribunal jurisdiction over applications filed by a staff member, a former staff member or a person making claims in the name of an incapacitated or deceased staff member.

28. At the time UNOV barred him from entering its premises, Mr. Ghahremani was not a staff member. Consequently, he cannot complain that the decision was not in compliance with his terms of appointment or contract of employment.

29. As the holder of an SSA contract, Mr. Ghahremani was no longer subject on that date to the Staff Regulations and Rules and the barring cannot have adversely affected his terms of appointment as a former staff member. Accordingly, the Dispute Tribunal rightly rejected Mr. Ghahremani's application as non receivable *ratione personae*.¹

Judgment

30. The appeals are dismissed. Judgment No. UNDT/2010/075 and Judgment No. UNDT/2010/076 are affirmed.

Original and authoritative version: English

Done this 21st day of October 2011 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Simón

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 2nd day of December 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar

¹ Cf. *Sims v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-154.