



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

Case No. 2011-202

Worsley
(Appellant/Respondent on Cross-Appeal)
v.
Secretary-General of the United Nations
(Respondent/Appellant on Cross-Appeal)

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Sophia Adinyira
Judge Mary Faherty

Judgment No.: 2012-UNAT-199

Date: 16 March 2012

Registrar: Weicheng Lin

Counsel for Appellant/Respondent on Cross-Appeal: Self-Represented

Counsel for Respondent/Appellant on Cross-Appeal: Amy Wood

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Ms. Maureen Worsley against Judgment No. UNDT/2011/024 issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 27 January 2011 in the case of *Worsley v. Secretary-General of the United Nations*.
2. The Appeals Tribunal has previously held “that the services provided by OSLA [the Office of Staff Legal Assistance] and the manner in which the representation is implemented can have an impact on a staff member’s terms of appointment and therefore can fall within the jurisdiction of the UNDT, without interfering with the professional independence of [the] counsel[s]”¹ who practice for OSLA.
3. We affirm the UNDT Judgment that the right of staff members to receive assistance by OSLA does not amount to a right to representation.

Facts and Procedure

4. Ms. Worsley joined the United Nations on 10 July 1994 and is currently serving as a staff member in the Conference Services Department in the United Nations Office at Geneva (UNOG) at the G-4 level.
5. In July 2009, Ms. Worsley contacted OSLA regarding her intent to file grievances against the Organization. In February 2010, after initially having an OSLA Legal Officer from the New York Office appointed to her, her case was reassigned to an OSLA Legal Officer in the Geneva Office.
6. On 24 February 2010, Ms. Worsley called the OSLA Legal Officer assigned to assist her with her case and left a voicemail in which she stated that she was “probably going to report [the OSLA Legal Officer] to the bar council”. In response to this voicemail, as well as other prior statements made by Ms. Worsley, the Chief of OSLA sent her an e-mail in which he stated that she had “repeatedly been uncooperative and abusive” towards the OSLA Legal Officer and that

¹ *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-135.

“there are limits to what [they] can do if a client is being consistently uncooperative”. Consequently, the Chief of OSLA informed Ms. Worsley that under the circumstances “OSLA will no longer be able to provide [her] with any legal assistance and representation”.

7. On 16 April 2010, Ms. Worsley submitted a letter to the Management Evaluation Unit (MEU) in which she requested management evaluation as a result of the difficulties she had been experiencing in pursuing a claim against the Organization, including as a result of her relationship with OSLA. On 26 April 2010, the MEU informed Ms. Worsley that her filing was not receivable as it was unclear what administrative decision she was contesting. On 28 May 2010, Ms. Worsley amended her letter and stated that she was contesting OSLA’s refusal to provide her with legal assistance “in filing requests for management evaluation and sorting out the problems [she] had experienced as a U[nited] N[atations] staff member”. On 13 July 2010, the MEU informed Ms. Worsley that they were “unable to find any evidence that OSLA had acted improperly in exercising its discretion” and that “OSLA’s decision to refuse to continue to provide legal assistance to [Ms. Worsley] on the basis that the lawyer/client relationship had broken down irretrievably was a reasonable exercise of its discretion”.

8. On 13 July 2010, Ms. Worsley filed an application with the UNDT. On 13 September 2010, the Secretary-General filed his reply to Ms. Worsley’s application and on that same day OSLA filed an “Application for Joinder of a Party & Submissions Re: Receivability”. On 19 October 2010, the Dispute Tribunal rejected OSLA’s application for Joinder.²

9. On 16 November 2010, the Secretary-General submitted a motion on receivability. The Dispute Tribunal held an oral hearing on 19 November 2010 and, on 2 December 2010, ordered that Ms. Worsley submit comments on the Secretary-General’s submission. On 27 January 2011, the Dispute Tribunal issued Judgment No. UNDT/2011/024 in which it stated that it had jurisdiction over Ms. Worsley’s application and that the contested decision had been properly taken by OSLA. Ms. Worsley’s application was dismissed.

10. On 21 February 2011, Ms. Worsley requested an extension of time to appeal the UNDT Judgment. The Appeals Tribunal denied Ms. Worsley’s request on 4 March 2011. On 15 March 2011, Ms. Worsley appealed Judgment No. UNDT/2011/024 and, on 2 May 2011, the Secretary-General filed both an answer to Ms. Worsley’s appeal and a cross-appeal. On 10

² UNDT Order No. 79 (GVA/2010).

June 2011, Ms. Worsley submitted an answer to the cross-appeal. On 15 June 2011, Ms. Worsley filed additional comments on the Secretary-General's answer to her appeal against Judgment No. UNDT/2011/024. On 21 June 2011, the Appeals Tribunal ordered that the additional comments filed by Ms. Worsley would not be included as part of the case file.³

Submissions

Ms. Worsley's Appeal

11. Ms. Worsley submits that the Dispute Tribunal erred in stating that she did not substantiate her claims that OSLA did not "make the necessary concessions in view of her disability". Ms. Worsley contends that the 30 January 2006 medical statement that she included in her original application clearly identified her disabilities and how her interaction with people may result in her having "less self control (may shout or swear)" of herself.

12. Ms. Worsley contends that the Dispute Tribunal also erred in stating that the mutual trust between the parties had already broken down prior to the 24 February 2010 e-mail from OSLA. Ms. Worsley submits that no evidence of the contentious voicemail was submitted to the UNDT and that the e-mail did not refer to the voicemail as causing the breakdown in trust between the parties.

13. Ms. Worsley also points out that while OSLA does have discretionary powers, such powers are "not unfettered".⁴ Ms. Worsley requests that Judgment No. UNDT/2011/024 be reversed and that she be awarded the financial remedies she requested in front of the UNDT.

Secretary-General's Answer

14. The Secretary-General submits that the UNDT correctly interpreted Staff Rule 11.4(d) in that while it clearly states that staff members have the right to receive legal assistance from OSLA, such a right has to be distinguished from the right to be represented by OSLA. Consequently, while "OSLA is under obligation to provide 'proper advice', it may withdraw its services when the circumstances warrant such a course of action".

³ *Worsley v. Secretary-General of the United Nations*, Order No. 53 (2011).

⁴ *Asaad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-021.

15. The Secretary-General further submits that the consent form signed by staff members that seek OSLA's assistance clearly states that OSLA may withdraw its services, including in situations where there is a breach of trust between the parties.

16. The Secretary-General contends that Ms. Worsley specifically claimed that OSLA ceased representing her as a result of her disability thereby discriminating against her. However, as correctly determined by the UNDT, the Secretary-General submits that Ms. Worsley did not meet "the burden of proving on a preponderance of the evidence that discrimination occurred".⁵

17. The Secretary-General submits that Ms. Worsley's contention that the Dispute Tribunal did not take her medical statements into account when determining whether OSLA discriminated against her is incorrect and does not establish an error that would warrant a reversal of the UNDT's Judgment. Furthermore, the Secretary-General submits that in *Messinger*⁶ the Appeals Tribunal clearly established that "it is not sufficient for an appellant to state that he or she disagrees with the findings of fact or to repeat the arguments submitted before the UNDT" as the Judge hearing a case "has a broad discretion to determine the...weight to be attached to such evidence".

18. The Secretary-General submits that seeing that Ms. Worsley submitted the 24 February 2010 e-mail as part of her request for management evaluation, she cannot now claim that this communication did not clearly establish that there was a breakdown in communication between the parties or that the Dispute Tribunal erred in reaching such a conclusion based on the evidence that was submitted.

19. The Secretary-General submits that Ms. Worsley's request for costs is not sustainable as Article 10(6) of the UNDT Statute only provides for the award of costs if one of the parties, which is not the case here, abused the legal proceedings.

Secretary-General's Cross-Appeal

20. The Secretary-General submits that while he prevailed against Mr. Worsley on the merits in front of the UNDT, the Dispute Tribunal ruled against him with regard to the issue

⁵ *Azzouni v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-081.

⁶ *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

of receivability. Consequently, the Secretary-General submits that his cross-appeal regarding whether OSLA's decision not to represent Ms. Worsley "constitutes an administrative decision" is receivable.

21. The Secretary-General submits that in light of the jurisprudence of both the Dispute Tribunal and the Appeals Tribunal, an administrative decision can be defined as a decision that "(i) carries direct legal consequences; (ii) is taken by the Administration; and (iii) is of unilateral and individual application",⁷ namely that it affects the rights and obligations of a staff member directly.

22. The Secretary-General submits that the Dispute Tribunal erred in determining that OSLA's decision affected Ms. Worsley's rights, and was therefore an administrative decision, as it was contradicted by its own reasoning that Ms. Worsley did not have a right to legal representation by OSLA.

23. The Secretary-General contends that the Dispute Tribunal erred in considering that OSLA was not distinct from the Secretary-General and that its decision was therefore considered to have been taken by the Administration seeing that, in this case, it based its reflection on the specific context of OSLA's Joinder request. The Secretary-General submits that while it is reasonable to consider that OSLA's position in the present matter would be represented fairly by the Secretary-General, it would not be reasonable to "extrapolate from this that OSLA and the Secretary-General are not 'distinct'". Seeing that OSLA represents staff members in actions against the Secretary-General, OSLA cannot also be considered indistinguishable from the Secretary-General. The Secretary-General therefore submits that the UNDT erred in considering that "acts and omissions of OSLA constitute 'administrative decisions'".

24. The Secretary-General also submits that the UNDT erred on a question of law in finding that he was accountable, and could therefore be held liable, for the acts and omissions of OSLA in the performance of its operational functions. The Secretary-General contends that several jurisdictions, including the UNDT and the Tribunals of the International Monetary Fund and the World Bank, have found that as a result of the operational independence of an entity such as OSLA, whose purpose is to advocate on behalf

⁷ See Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V.

of staff members, an organization that “does not have effective control over the acts and omission of such an entity [...] cannot be held liable for them”. Consequently, the decisions of such an entity cannot be considered to be administrative decisions that fall within the purview of, in this case, the UNDT seeing that the Secretary-General has no effective control over OSLA.

25. Finally, the Secretary-General submits that the Dispute Tribunal, by trying to avoid leaving certain areas of “administrati[ve] activity out of any meaningful legality” exceeded the limits of its jurisdiction as defined by Article 2 of the UNDT Statute.

26. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment on the ground that Ms. Worsley’s appeal was not receivable.

Ms. Worsley’s Answer to the Cross-Appeal

27. Ms. Worsley submits that the Secretary-General’s cross-appeal is not receivable due to the fact that the UNDT originally found in his favour.

28. Ms. Worsley contends that seeing that OSLA is part of the Administration of Justice System, it is therefore part of the Administration. Furthermore, according to section 3.1 of ST/SGB/2010/3, the Executive Director is accountable to the Secretary-General and “the latter must be able to control the performance of the service provided to the staff by the General Assembly”. Consequently, it cannot be disputed that the services provided by OSLA are under the Secretary-General’s control.

29. Ms. Worsley submits that the issue before the Appeals Tribunal is not whether the Secretary-General has any power over the content of OSLA’s briefs, but rather the fact that he has the power to implement the decisions taken by the General Assembly which, in this case, is to provide legal assistance to staff members. Ms. Worsley submits that OSLA’s decision to represent a staff member has to be subject to some type of control. As such, “[t]he present case does not concern the operational independence of OSLA but rather the implementation of a decision of the General Assembly”.

30. Ms. Worsley requests that the Appeals Tribunal find that the Dispute Tribunal did not err in finding her application receivable and either find the Secretary-General’s cross-appeal non-receivable or dismiss it on the merits.

Considerations

31. The Appeals Tribunal recalls that it previously held “that the services provided by OSLA and the manner in which the representation is implemented can have an impact on a staff member’s terms of appointment and therefore can fall within the jurisdiction of the UNDT, without interfering with the professional independence of [the] counsel[s]”⁸ that practice for OSLA.⁹

32. The Secretary-General himself contends that Staff Rule 11.4(d) clearly states that staff members have the right to receive legal assistance from OSLA, a right which has to be distinguished from the right to be represented.

33. If staff members have a right to receive legal assistance from OSLA, it logically follows that the implementation of this right can have an impact on the staff members’ terms of appointment and therefore, as stated above, can fall within the jurisdiction of the UNDT and the Appeals Tribunal.

34. In this case, Ms. Worsley appeals the UNDT Judgment because she considers that the UNDT erred by not taking into account how her disabilities may have affected her interaction with her counsel, thereby resulting in a breakdown of their relationship.

35. Article 12 of the Rules of Procedure of the UNDT states:

1. A party may present his or her case to the Dispute Tribunal in person, or may designate counsel from the Office of Staff Legal Assistance or counsel authorized to practice law in a national jurisdiction.

2. A party may also be represented by a staff member or a former staff member of the United Nations or one of the specialized agencies.

36. The discretionary power of OSLA not to represent a person is not unfettered. However, in the present case there is no evidence that OSLA’s decision was based on Ms. Worsley’s disability. Furthermore, in addition to repeating arguments that the UNDT already thoroughly considered in its Judgment, Ms. Worsley does not show how OSLA’s actions affected either her rights or her case.

⁸ *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-135.

⁹ *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-135.

37. We affirm the UNDT Judgment with regard to its decision that the right of staff members to receive assistance from OSLA does not amount to a right to be represented by OSLA.

Judgment

38. The appeal and cross-appeal are dismissed.

Original and Authoritative Version: English

Dated this 16th day of March 2012 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Faherty

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar