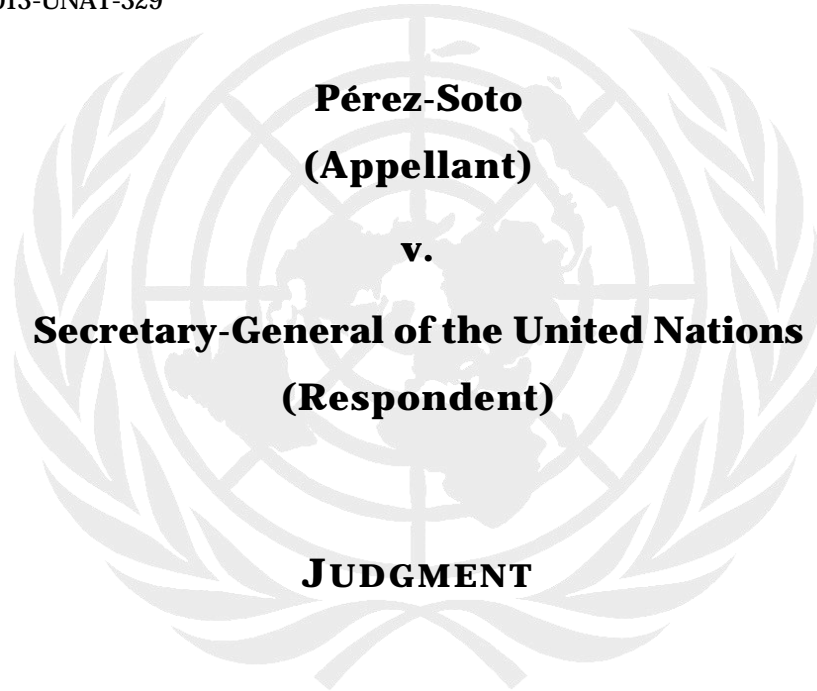




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-329



Before:	Judge Sophia Adinyira, Presiding Judge Inés Weinberg de Roca Judge Rosalyn Chapman
Case No.:	2012-358
Date:	21 June 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	John Stompor

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Renán Pérez-Soto against Judgment No. UNDT/2012/078, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 30 May 2012 in the case of *Pérez-Soto v. Secretary-General of the United Nations*. Mr. Pérez-Soto appealed on 30 July 2012, and the Secretary-General answered on 1 October 2012.

Facts and Procedure

2. Mr. Pérez-Soto entered the service of the United Nations in 1989, as an Associate Programme Budget Officer at the P-2 level.

3. On 31 June 2003, Mr. Pérez-Soto was reassigned within the Department of Management from his P-2 level position as Associate Programme Budget Officer in the Office of Programme Planning, Budget and Accounts (OPPBA) to the position of Associate Human Resources Officer, Office of Human Resources Management (OHRM). He appealed this decision to the former Joint Appeals Board (JAB), which found in his favour, concluding that the contested decision was influenced by extraneous factors and constituted an abuse of authority, and recommended, *inter alia*, payment of five months' net base salary and the completion of his outstanding performance appraisals. In September 2005, the Secretary-General accepted these recommendations.¹

4. Effective 18 October 2004, Mr. Pérez-Soto was assigned back to OPPBA, with a new role in the Contributions Service. He requested administrative review of this decision and asked to be either reassigned to the position he had previously held in OPPBA or to be temporarily returned to his position in OHRM. His request for administrative review was not successful and nor was his appeal to the JAB:

[T]he [JAB] Panel *unanimously finds* no evidence that the decision to reassign [Mr. Pérez-Soto] back to OPPBA suffered from procedural flaws or was otherwise tainted by arbitrariness or ill-motivation. It therefore *unanimously concludes* that the reassignments constituted a valid exercise of managerial discretion, and *decides* to make no recommendation in the present appeal.

... However, the Panel also *unanimously considers* that, in view of the shortcomings in implementation of the decision, of the contentious environment

¹ According to the Appellant, the Secretary-General paid the compensation but did not complete the outstanding appraisals.

among the parties even prior to implementation indicative of a breakdown in trust, and of the consequent likelihood of future conflict, an intervention ... [(third party conciliation or mediation)] ...would appear crucial to re-establishing a productive and equitable working environment. (Emphasis in original.)

5. The Secretary-General accepted these recommendations and, by letter dated 13 April 2007, the Under-Secretary-General for Management requested the parties “to participate in good faith in an intervention such as mediation or conciliation ... and to report back to [her] Office within three months on the steps taken to do so”. According to Mr. Pérez-Soto, no such efforts were made. His subsequent application to the former Administrative Tribunal was transferred to the UNDT.

6. In its Judgment No. UNDT/2012/078, the UNDT first addressed the scope of the case before it, concluding that it was limited to the decision to reassign Mr. Pérez-Soto from OHRM to OPPBA. On that issue, the UNDT found that the decision to reassign Mr. Pérez-Soto was made in the best interests of the Organization and was “a matter of operational necessity caused in large part by [his] intractable attitude to any decision made about him by management”. He failed to satisfy his burden of proving that the decision to reassign him back to OPPBA was made in bad faith and the UNDT did not find ulterior motives. Whilst stating that, “[a]s a matter of good staff relations and courtesy, it would be usual for a manager to discuss the possibility of reassignment with a staff member before making the final decisions”, the UNDT held that the fact that this did not occur was “not a breach of the rules and caused no prejudice to him”.

Submissions

Mr. Pérez-Soto’s Appeal

7. Mr. Pérez-Soto requests the Appeals Tribunal to modify the Dispute Tribunal’s findings of fact with respect to the scope of his request for administrative review and the outcome of the JAB proceedings.

8. He submits that the UNDT erred in limiting the scope of his case and in considering his situation a lateral reassignment, rather than an illegal redeployment.

9. He further submits that the UNDT failed to exercise its jurisdiction and erred in law with respect to documents either not produced by the Respondent or produced but not properly analysed, and in failing to hold a second case management hearing.

10. Mr. Pérez-Soto asks the Appeals Tribunal to reverse the UNDT Judgment and find in his favour, “awarding exceptional maximum compensation ... based, among other things, on clear *prima facie* cases on unlawfulness [and] obstruction of justice amounting to irreparable damages” or, in the alternative, to remand his case to the UNDT.

The Secretary-General’s Answer

11. The Secretary-General submits that the UNDT correctly concluded that Mr. Pérez-Soto was legally reassigned.

12. He further submits that Mr. Pérez-Soto has failed to establish any error of the UNDT with respect to jurisdiction or on questions of fact or law, justifying reversal of its Judgment. The Secretary-General contends that the UNDT properly limited the scope of the case before it and managed the case within its discretion.

13. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

Considerations

14. Mr. Pérez-Soto appeals the decision of the UNDT on the grounds of errors in procedure and questions of law and fact, which have resulted in a manifestly unreasonable decision.

Procedural Errors

15. Mr. Pérez-Soto submits that the UNDT erred on a matter of procedure by not affording him a second case management hearing; and, further, for not sanctioning the Secretary-General for not submitting documents.

16. We do not find any merit on this ground of appeal.

17. The Appeals Tribunal notes that the UNDT held a directions hearing on 1 December 2010. It then held case management hearings on 11 October 2011 and 13 February 2012, after which it decided to hear the case on its merit.

18. The Appeals Tribunal also notes that the UNDT was satisfied that the parties had filed all documents relevant to Mr. Pérez-Soto's receivable claims.

19. Article 19 of the UNDT Rules of Procedure provides: "The Dispute Tribunal may at any time, either on an application of a party or its own initiative, issue any order or give any direction which appears to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties."

20. The UNDT has broad discretion with respect to case management and is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties.²

21. The Appeals Tribunal will not interfere lightly with the discretion of the UNDT in the management of cases. Mr. Pérez-Soto has failed to establish the UNDT made any errors in procedure warranting reversal of the Judgment.

22. The appeal fails on this ground.

Errors in fact and law

23. Mr. Pérez-Soto submits that the UNDT failed to exercise the jurisdiction vested in it by failing to address his right to a current job classification and closing of his evaluative past, including the issue of his performance appraisal.

24. It is noted that Mr. Pérez-Soto repeatedly raised these matters before and during the hearings at the UNDT. Mr. Pérez-Soto was repeatedly informed by the UNDT that it was limited to deciding only the issue of his reassignment to OPPBA, as his appeal against the initial reassignment from OPPBA to OHRM had previously been adjudicated upon.

25. Mr. Pérez-Soto also raised other matters which the UNDT considered were not properly before the Tribunal, as Mr. Pérez-Soto did not seek administrative review of these impugned

² *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-62.

administrative decisions. This was a mandatory requirement of former Staff Rule 111.2(a). The UNDT properly declined jurisdiction and the appeal therefore fails on this ground.³

26. The principal issue, then, before the Dispute Tribunal was whether the decision to reassign Mr. Pérez-Soto from OHRM to the Contributions Service, OPPBA, was a lawful exercise of discretion.

27. The UNDT found that the decision to reassign Mr. Pérez-Soto was made in the best interests of the Organization and he failed to prove that the decision was tainted and made in bad faith. Mr. Pérez-Soto appeals against these findings.

28. Staff Regulation 1.2(c) provides: “Staff members are subject to the authority of the Secretary-General and assignment by him or her to any activities or offices of the United Nations. ...”

29. Staff Regulation 1.2(c) thus gives the Secretary-General broad discretionary powers when it comes to organization of work. It is well established that, notwithstanding the width of the discretion conferred by this Regulation, it is not unfettered and can be challenged on the basis that the decision was arbitrary or taken in violation of mandatory procedures or based on improper motives or bad faith.

30. Mr. Pérez-Soto before us merely repeated the submissions he made before the UNDT.

31. We find that the UNDT considered whether Mr. Pérez-Soto was assigned to a proper position, whether the authority to reassign him was properly delegated and whether the decision was in the best interests of the Organization. The UNDT found that:

In this case, the Applicant had repeatedly protested against his original transfer to OHRM. The Respondent accepted and acted on the recommendations of the JAB about that transfer. The reasons for the original transfer to OHRM no longer existed. The purpose of the transfer of the Applicant back to OPPBA was to restore him to the office he had not wanted to leave in the first place albeit in a different position.

³ *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035; *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049; *Syed v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-061.

The Tribunal finds that the decision to transfer the Applicant back to OPPBA was made in the best interests of the Organization.⁴

32. We recall what this Tribunal stated in *Sanwidi*:

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines 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. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Tribunal to substitute its own decision for that of the Secretary-General.⁵

33. The UNDT correctly judged the validity of the Secretary-General's exercise of discretion in administrative matters. We affirm the finding by the UNDT that the reassignment of Mr. Pérez-Soto was lawful.

34. From the foregoing, the appeal fails.

Judgment

35. The appeal fails and is hereby dismissed. The UNDT Judgment is affirmed.

⁴ Judgment No. UNDT/2012/078, para. 63.

⁵ *Sanwidi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-084, para. 40.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Adinyira, Presiding
21 June 2013

(Signed)

Judge Weinberg de Roca
21 June 2013

(Signed)

Judge Chapman
28 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar