



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

Judgment No. 2013-UNAT-352

**Cohen
(Applicant)**

v.

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

JUDGMENT ON APPLICATION FOR REVISION

Before:	Judge Rosalyn Chapman, Presiding Judge Luis María Simón Judge Inés Weinberg de Roca
Case No.:	2012-345
Date:	21 June 2013
Registrar:	Weicheng Lin

Counsel for Applicant:	Edwin Nhliziyo
Counsel for Respondent:	Amy Wood

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for revision of Judgment No. 2011-UNAT-131, *Cohen v. Secretary-General of the United Nations*, which was rendered on 8 July 2011. Ms. Judith Cohen filed her application on 23 July 2012, and the Secretary-General filed his comments on 13 August 2012.

Facts and Procedure

2. From September 2001, Ms. Cohen was employed as a procurement assistant with the United Nations Mission in the Democratic Republic of the Congo. On 24 July 2007, she was formally charged with having solicited and received money from a private company in return for favors in the awarding of contracts and the processing of invoices, and she was summarily dismissed for this serious misconduct on 11 January 2008.

3. On 12 July 2010, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2010/118, in which it concluded that the Secretary-General had not presented facts supporting the grounds for misconduct and summary dismissal. The UNDT rescinded the administrative decision and ordered: reinstatement of Ms. Cohen or, in lieu thereof, payment of two years' net base salary plus interest at eight per cent; compensation for lost earnings in the amount of 30 months' net base salary plus interest at eight per cent; and compensation for due process violations in the amount of two months' net base salary.

4. On 8 July 2011, the United Nations Appeals Tribunal issued Judgment No. 2011-UNAT-131, granting, in part, the appeal of the Secretary-General and amending the Judgment of the UNDT. More specifically, the Appeals Tribunal determined that the amount of compensation awarded by the UNDT was excessive under Article 10(5)(b) of the UNDT Statute, which limits compensation to no more than 24 months' net base salary unless "exceptional circumstances" exist and the UNDT sets forth reasons therefore. Thus, the Appeals Tribunal reduced the amount of pecuniary damages for loss of earnings awarded to Ms. Cohen under Article 10(5)(b) of the UNDT Statute from 30 months' net base salary to 24 months' net base salary, and also amended the amount of interest awarded to comply

with this Tribunal's decision in *Warren*.¹ However, the Appeals Tribunal upheld the UNDT's order of reinstatement with in lieu payment of two years' net base salary under Article 10(5)(a) of the UNDT Statute, as well as the award of two months' net base salary for violation of Ms. Cohen's due process rights.

Submissions

Ms. Cohen's Application

5. Ms. Cohen submits that subsequent to the issuance of the Judgment, she discovered the following "new facts", which were not known earlier and require revision of the Judgment: (1) the Fifth Activity Report of the Office of Administration of Justice (OAJ Report) covering the period of 1 July to 31 December 2011; (2) exceptional circumstances existed because "it took three years to clear [Ms. Cohen's] name"; (3) the Secretary-General did not appeal another case, *M'bra v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/185, that was similar to her case, thereby displaying bias; and (4) she was not fully compensated in violation of *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/192, which "delineates the need to put a staff member in the position they would have been in if the unlawful action had not taken place. ... Any decision that violates this principle should not be allowed to stand".

The Secretary-General's Answer

6. The Secretary-General argues that the paragraph of the OAJ Report cited by Ms. Cohen cannot form a basis for revision of the Judgment because it is merely a summary of the Judgments of the United Nations Appeals Tribunal.

7. The Secretary-General further argues that a particular Judgment by the UNDT is a legal development, not a "fact" within the meaning of Article 11(1) of the Appeals Tribunal Statute.

8. The Secretary-General also contends that the decision not to appeal UNDT Judgment No. UNDT/2010/185 does not demonstrate "bias" and that claim is wholly unfounded.

¹ *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.

9. In the alternative, the Secretary-General claims that because Ms. Cohen applied for revision on 23 July 2012, almost nine months after the Judgment was rendered and in contradiction with Article 11(1) of the Statute of the Appeals Tribunal, she is now time-barred.

Considerations

10. Article 11(1) of the Appeals Tribunal Statute (Statute) provides that:

... either party may apply to the Appeals Tribunal for a revision of a judgment on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment.

Article 24 of the Rules of Procedure of the Appeals Tribunal (Rules) contains similar provisions.

11. The Statute and Rules set out the material elements which a moving party must show for revision to be granted: (1) a new fact which, at the time the judgment was rendered, was unknown to the Appeals Tribunal and the moving party; (2) such ignorance was not due to the negligence of the moving party; and (3) the new fact would have been decisive in reaching the original decision.

12. “No party may seek revision of the judgment merely because that party is dissatisfied with the pronouncement of the Tribunal and wants to have a second round of litigation.”²

13. This Tribunal has fully considered the grounds for revision set forth by Ms. Cohen in the application for revision, and determines that none of them meets the requirements of Article 11(1) of the Statute and Article 24 of the Rules. In fact, none of the grounds for revision listed in the application are “new facts”. Rather, the listed grounds are merely new legal arguments and an attempt by Ms. Cohen to re-litigate her case – and to complain that the decision of the Appeals Tribunal, which reduced the amount of damages awarded to her, did not fully consider her plight. The parties have had ample opportunity to litigate their case.

² *Muthuswami et al. v. United Nations Joint Staff Pension Board*, Judgment No. 2011-UNAT-102, para. 11 (citing former Administrative Tribunal Judgement No. 894, *Mansour* (1998)).

Judgment

14. The application for revision is dismissed.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Chapman, Presiding

28 June 2013

(Signed)

Judge Simón

28 June 2013

(Signed)

Judge Weinberg de Roca

21 June 2013

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

(Signed)

Weicheng Lin, Registrar