



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

Judgment No. 2013-UNAT-316

**Basenko
(Applicant)**

v.

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

JUDGMENT ON APPLICATION FOR REVISION

Before: Judge Jean Courtial, Presiding
Judge Mary Faherty
Judge Inés Weinberg de Roca

Case No.: 2010-132

Date: 28 March 2013

Registrar: Weicheng Lin

Counsel for Applicant: Self-represented

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-139, *Basenko v. Secretary-General of the United Nations*, which was rendered on 11 March 2011. Ms. Karina Basenko filed her application on 13 October 2011, and the Secretary-General filed his comments on 8 December 2011.

Facts and Procedure

2. Ms. Basenko was to join the United Nations Office at Vienna as an unpaid intern on 1 October 2009. The offer of internship was withdrawn, however, on 9 September 2009. Ms. Basenko applied to the United Nations Dispute Tribunal, which found that it was not competent to hear her application because she was neither a current nor a former staff member. Ms. Basenko then appealed to this Tribunal. In its Judgment No. 2011-UNAT-139, the Appeals Tribunal rejected Ms. Basenko's appeal, on the basis that she was an intern and, as such, did not have standing before the Dispute Tribunal, but that, in any event, there was no evidence of violation of any of her fundamental rights.

3. Ms. Basenko now seeks revision of the Appeals Tribunal Judgment.

Submissions

Ms. Basenko

4. Ms. Basenko submits that the fact that the Appeals Tribunal cited an earlier judgment¹ was unknown to her when she filed the appeal. She became aware of *Gabaldon* on 14 September 2011, when she received the English translation of the Judgment in her case.

5. Ms. Basenko maintains that the facts of her case are similar to those of *Gabaldon*, in that neither she nor Mr. Gabaldon received a letter of offer. She appears to suggest that, as such, they should be treated alike. Ms. Basenko stresses that she never accepted the withdrawal of the offer of an internship.

¹ *Gabaldon v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-120.

Secretary-General

6. The Secretary-General submits that the *Gabaldon* judgment is neither a new nor a decisive fact within the meaning of Article 11 of the Statute of the Appeals Tribunal.
7. The Secretary-General also submits that Ms. Basenko's assertion that the facts of her case are similar to those of *Gabaldon* such as to warrant revision of the Judgment under appeal is unfounded. In the present case, the offer of an internship to Ms. Basenko created only the possibility of an internship; it could not create an employment relationship between her and the Organization.

Considerations

8. Article 11(1) of the Statute of the Appeals Tribunal states:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement 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.

9. The reference made by the Appeals Tribunal to the precedent *Gabaldon* in its Judgment No. 2011-UNAT-139, incidentally only with the view of introducing an *obiter dictum*, obviously cannot be regarded "as a decisive fact which was, at the time the judgment was rendered, unknown to the Appeals Tribunal" within the meaning of Article 11.
10. We do not see any valid ground for revision of Judgment No. 2011-UNAT-139 within the purview of Article 11 in Ms. Basenko's application. Thus, her application is not receivable.

Judgment

11. Ms. Basenko's application is dismissed.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in Paris, France, and New York, United States.

(Signed)

(Signed)

(Signed)

Judge Courtial, Presiding

Judge Faherty

Judge Weinberg de Roca

Entered in the Register on this 22nd day of April 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar