



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

Judgment No. 2014-UNAT-395

**Johnson
(Respondent/Applicant)**

v.

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

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Mary Faherty
Judge Richard Lussick

Case No.: 2013-474

Date: 28 March 2014

Registrar: Weicheng Lin

Counsel for Respondent/Applicant: Robbie Leighton
Counsel for Appellant/Respondent: Phyllis Hwang

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General against Judgment No. UNDT/2013/052, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 14 March 2013 in the case of *Johnson v. Secretary-General of the United Nations*. The Secretary-General appealed on 8 May 2013 and Ms. Moira Johnson answered on 8 July 2013.

Facts and Procedure

2. The following findings by the UNDT are uncontested:¹

... From 2003 to February 2006, the Applicant, a national of the United States of America, earned a tax credit in her country of origin while she was working in Switzerland for a consulting company.

... In June 2006, the Applicant entered the service of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Geneva on a fixed-term appointment that was subsequently extended.

... In May 2007, she informed the Income Tax Unit that her tax credit totalled USD 58,381.

... On 1 April 2011, the Applicant was hired by the United Nations Development Programme (UNDP) in New York.

... In April 2011, the Applicant, who wished to obtain from the Organization reimbursement of the staff assessment deducted from the salary she had received in 2010, submitted her 2010 income tax return to the Income Tax Unit. On that tax return, the amount of USD 13,999 appeared under the “foreign tax credit” heading.

... Since August 2011, the Applicant has made several requests to the Income Tax Unit to communicate to her the status of her fiscal situation for the year 2010.

... On 17 August 2011, the Tribunal rendered its Judgment *Johnson* UNDT/2011/144, regarding the Applicant’s staff assessment for the years 2007 to 2009.

3. The UNDT found that “foreign tax credits granted to individuals ... are a payment method like others and that [Ms. Johnson] must therefore be regarded both as having been subject to United States taxation on income received from the Organization, and as having discharged that tax obligation”.² The UNDT therefore ordered that the Secretary-General refund

¹ *Johnson v. Secretary-General of the United Nations*, Judgment No. UNDT/2013/052, paras. 3-9.

² *Johnson v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/144, para. 18.

Ms. Johnson the amount of the staff assessment deducted from her salary and other emoluments for 2009. It further decided that the amounts awarded would “bear interest at the United States Prime Rate with effect from the date on which [Ms. Johnson] should have received the refund until payment of the said amounts”.³

... On 3 October 2011, the Applicant submitted a request for management evaluation to the Deputy High Commissioner for Refugees, referencing Judgment *Johnson* UNDT/2011/144.

... On 4 October 2011, the Chief of the Income Tax Unit informed the Applicant that the aforementioned judgment was under appeal and that he was unable to reimburse the 2010 staff assessment until a decision had been taken.

... On 17 October 2011, the Applicant was informed that her request for management evaluation was under consideration.

... On 26 January 2012, the present application was filed with the Tribunal.

... On 29 February 2012, the Respondent requested the Tribunal to suspend the proceedings pending the decision of the Appeals Tribunal in *Johnson* UNDT/2011/144. By Order dated 2 March 2012, the Tribunal rejected this request.

... On 16 March 2012, the Respondent submitted his comments, requesting the Tribunal to reject the application.

... On 29 June 2012, the Appeals Tribunal rendered its judgment in *Johnson* 2012-UNAT-240, which confirmed in its entirety the judgment in *Johnson* UNDT/2011/144.

... By Order No. 159 (GVA/2012) of 12 November 2012, the Tribunal informed the parties that the Application would be adjudicated without a hearing and invited them to file any objections.

... By Order No. 170 (GVA/2012) of 5 December 2012, the Tribunal invited the Respondent to file additional new comments taking into account the outcome of the Appeals Tribunal’s judgment in *Johnson* 2012-UNAT-240.

... On 14 December 2012, the Respondent submitted his comments, maintaining that the application had been rendered moot.

... By Order No. 173 (GVA/2012) of 19 December 2012, the Tribunal suspended the proceedings concerning this application until the Applicant had informed it whether the dispute had been resolved.

³ *Ibid.*, para. 40.

... By Order No. 29 (GVA/2013) of 5 March 2013, the Tribunal requested the parties to inform it whether the dispute had been amicably resolved.

... On 11 March 2013, the Applicant submitted comments to the effect that the dispute had not been amicably resolved; this was confirmed by the Respondent on 12 March 2013.⁴

4. On 14 March 2013, the UNDT issued Judgment No. UNDT/2013/052. The UNDT found that its jurisprudence in *Johnson*, confirmed by the Appeals Tribunal, applies to the case at bar which concerns the amount of the staff assessment deducted from Ms. Johnson's salary and other emoluments for 2010. The UNDT held as follows:

... [F]or the same reasons as those set out in Judgments *Johnson* UNDT/2011/144 and *Johnson* 2012-UNAT-240, it is appropriate to order the Secretary-General to reimburse to [Ms. Johnson] the staff assessment deducted from her salaries and other emoluments for the year 2010. The amount to be reimbursed to the Applicant shall be calculated by the Income Tax Unit of the United Nations by taking into account that the income tax due by the Applicant to the [United States Internal Revenue Service] in 2010 amounted to USD 16,008, which was partially paid by using the income tax credit of USD 13,999. To determine the amount to be reimbursed, the Income Tax Unit cannot take into account eventual overpayments received by the Applicant in previous years until the previous Judgment *Johnson* UNDT/2011/144 has been executed, which as outlined above, became entirely executable once appeals against it were rejected by the Appeals Tribunal.⁵

5. The Secretary-General appeals the UNDT Judgment.

Submissions

The Secretary-General's Appeal

6. The Secretary-General submits that the UNDT erred in concluding that the Judgment of the Appeals Tribunal in the 2009 *Johnson* case applies to Ms. Johnson's 2010 claim. While the Secretary-General did not rescind his original decision requiring Ms. Johnson to apply her foreign tax credits to her 2009 taxes until the end of the appeals process, the circumstances underlying the settlement of the 2010 taxes differ. In accordance with the Appeals Tribunal's jurisprudence in the 2009 *Johnson* case, Ms. Johnson was informed on 30 November 2012 that

⁴ *Johnson v. Secretary-General of the United Nations*, Judgment No. UNDT/2013/052, paras. 10-22.

⁵ *Ibid.*, para. 32.

the Organization had rescinded the contested decision and was no longer requiring her to use her foreign tax credits for her 2010 tax returns.

7. The Secretary-General contends that the UNDT erred in concluding that the rescission of the decision to require Ms. Johnson to apply her foreign tax credits did not render her application moot. The UNDT erred in ruling – by implication – that the Administration cannot rescind a contested administrative decision once formal challenges to the contested decision are already underway. In accordance with the Tribunals’ jurisprudence, such contested administrative decisions may result in the imposition of additional administrative requirements for the staff member. In the present case, the filing of an amended tax return would constitute such additional administrative requirement.

8. The Secretary-General requests that the Appeals Tribunal vacate the UNDT Judgment; confirm that Ms. Johnson should re-file her tax returns for 2010 so that she does not claim her foreign tax credits; and that, should she decline to re-file her tax returns for 2010, the Organization has no obligation to reimburse her for choosing to apply her foreign tax credits.

Ms. Johnson’s Answer

9. Ms. Johnson submits that the 2009 *Johnson* case and the present case deal with identical factual circumstances. Contrary to the Secretary-General’s assertion, the factual change caused by the Secretary-General’s offer to allow her to re-file her 2010 taxes does not affect the issues in the case or render her application moot. This offer does not represent a rescission of the original unlawful decision. A rescission would place the parties in the position they would have been in had the unlawful decision not been taken. The Secretary-General’s offer does not put Ms. Johnson back in the position she would have been in as Ms. Johnson has not had the opportunity to use her tax credits as she would have wanted to for the past years. The jurisprudence is clear that the correct mechanism for placing her back in the position she would have been in is the reimbursement of the value of the tax credits she was forced to use.

10. Ms. Johnson submits that the UNDT Judgment does not imply that the Secretary-General cannot rescind administrative decisions in the course of ongoing formal challenges to such decisions. To the contrary, the Secretary-General can rescind administrative decisions in the course of ongoing formal challenges; however, the Secretary-General’s offer does not represent a rescission. Furthermore, the Secretary-General’s contention that the

rescission of a contested administrative decision can result in the imposition of additional administrative requirements for the staff member is not contested and is irrelevant to the case at bar. The cases quoted by the Secretary-General in support of his contention pertain to decisions denying staff members a right or entitlement which can be contrasted with the administrative decision in question where “the Secretary-General used property belonging to [Ms. Johnson] as his own to dispose of it in an illegal fashion”.

11. Ms. Johnson submits that the Secretary-General’s contention that she should re-file her taxes has been placed before and rejected by the Appeals Tribunal twice. By bringing the same complaints again, the Secretary-General refuses to accept the rulings of the Appeals Tribunal which constitutes an abuse of process.

12. Ms. Johnson asks that the Appeals Tribunal dismiss the appeal in its entirety and award costs against the Secretary-General for abuse of process.

Considerations

13. In Judgment No. 2012-UNAT-240, the Appeals Tribunal affirming Judgment No. UNDT/2011/144 in its entirety, clearly states that the utilization of foreign tax credits constitutes a reimbursable payment method (2009 *Johnson* case).

14. The 2009 *Johnson* case and the present case deal with identical factual circumstances. Being aware of this circumstance, the Chief of the Income Tax Unit informed Ms. Johnson on 4 October 2011 that he was unable to reimburse her 2010 staff assessment until a decision by the Appeals Tribunal was taken in the 2009 *Johnson* case.

15. The Appeals Tribunal rendered its Judgment on 29 June 2012, affirming Judgment No. UNDT/2011/144 in its entirety. The Secretary-General requested interpretation of Judgment No. 2012-UNAT-240, and on 21 June 2013, the Appeals Tribunal rejected the application for interpretation (Judgment No. 2013-UNAT-355).

16. The Secretary-General contends that following the issuance of Judgment No. 2012-UNAT-240 on 29 June 2012 it was clear that he could no longer require staff members to apply their foreign tax credits to reduce tax liability. This change is a material difference for the future. On 30 November 2012, Ms. Johnson was informed that the decision to require her to apply her foreign tax credits for the 2010 tax returns had been rescinded.

17. The Secretary-General thus contends that the present appeal has been rendered moot. However, we are satisfied that this is not the case since, with regard to the 2010 tax credits, Ms. Johnson had already complied with the now rescinded decision. Ms. Johnson used her foreign tax credit in 2010, *before* the Organization changed its policy and rescinded its decision to require her to apply her foreign tax credits for her 2010 tax returns.

18. The Appeals Tribunal therefore orders that the Secretary-General reimburse to Ms. Johnson the staff assessment deducted from her salaries and other emoluments for the year 2010. The amount is to be determined in accordance with paragraph 32 of the UNDT Judgment.

19. Ms. Johnson has not demonstrated that she has incurred costs in this case. Accordingly, her request for costs is denied.

Judgment

20. The Secretary-General's appeal is dismissed and the UNDT Judgment is upheld. The Secretary-General is ordered to reimburse to Ms. Johnson the staff assessment deducted from her salary and other emoluments for the year 2010 *within ten (10) calendar days* of the date of this Judgment.

Original and Authoritative Version: English

Dated this 28th day of March 2014 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Faherty

(Signed)

Judge Lussick

Entered in the Register on this 28th day of March 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar