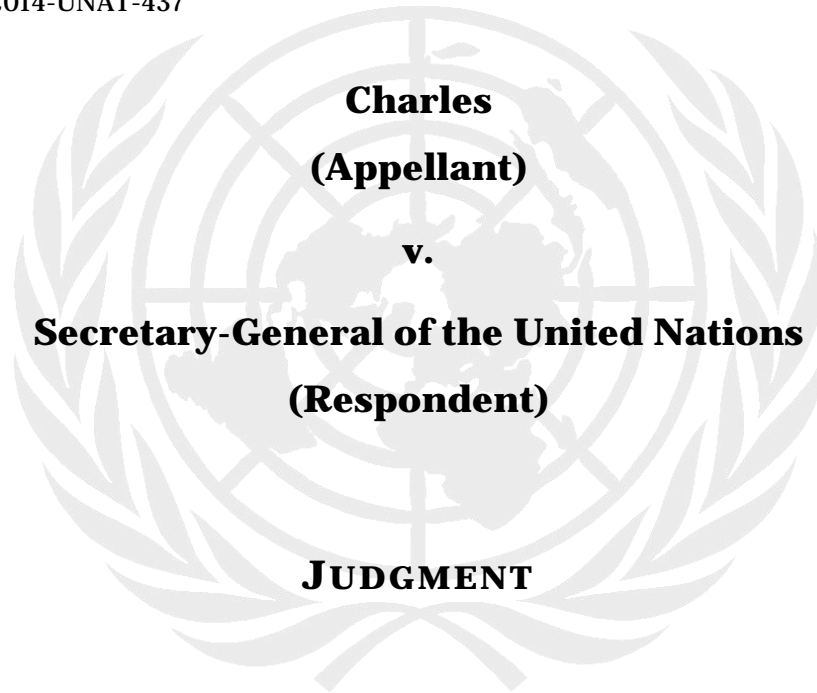




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-437



**Charles
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Richard Lussick Judge Rosalyn Chapman
Case Nos.:	2013-499 & 2013-502
Date:	27 June 2014
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Secretary-General:	Paul Oertly

JUDGE LUIS MARÍA SIMÓN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it two appeals (Case No. 2013-499 and Case No. 2013-502) filed by Mr. Lestrade Charles against two “Orders on Motion for Reinstatement” (Order No. 109 (NY/2013) and Order No. 110 (NY/2013)), both rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 25 April 2013 in the case of *Charles v. Secretary-General of the United Nations*. Mr. Charles appealed Order No. 109 on 21 June 2013 and Order No. 110 on 13 June 2013, and the Secretary-General of the United Nations filed his answers to both appeals on 7 August 2013.

Facts and Procedure

2. On 17 December 2010, Mr. Charles challenged before the UNDT *inter alia* the decision to fill a number of P-4 level posts in the Procurement Division of the Department of Management without issuing specific vacancy announcements.

3. On 12 January 2012, Mr. Charles challenged before the UNDT several “administrative decisions” pertaining to the performance assessment process for the periods of 2010 to 2011 and 2011 to 2012.

4. On 16 February 2012, Mr. Charles filed notices of withdrawal of his two applications before the UNDT citing personal reasons, including health reasons. By Order No. 30 (NY/2012) and Order No. 36 (NY/2012), both dated 17 February 2012, the UNDT closed the cases.

5. By Motions dated 25 September 2012 and 5 October 2012, Mr. Charles requested that his applications be reinstated.

6. By “Orders on Motions for Reinstatement” (Order No. 109 and Order No. 110) both dated 25 April 2013, the UNDT rejected Mr. Charles’ Motions. The UNDT stated that its Rules of Procedure only outline three situations in which the Tribunal, at the request of a party, may reopen a case after its final disposal, namely if this party applies for revision, interpretation or correction of judgment. The UNDT noted that Mr. Charles’ requests were not covered by these articles nor were they otherwise specifically envisioned in the Rules of Procedure. Therefore, the UNDT considered the Motions by virtue of the powers conferred on it by Article 7 of the UNDT Statute.

7. Affirming its findings in *Sheykiyani*, the UNDT however held that a withdrawal of a case could be rescinded if the party was in error about the meaning of the withdrawal. The UNDT was satisfied that Mr. Charles' requests for withdrawal had been freely filed in relation to the specific cases and Mr. Charles had been fully aware of the consequences of his withdrawal. The UNDT therefore dismissed the Motions.

8. On 13 June 2013 and 21 June 2013, respectively, Mr. Charles appealed.

9. On 21 June 2013, Mr. Charles filed motions requesting that his appeals be considered timely. By Order No. 143 and Order No. 144 dated 11 July 2013, the Appeals Tribunal decided that it "need not, at this time, determine whether Mr. Charles has the legal right to appeal Order No. 109 (NY/2013) [and Order No. 110 (NY/2013)] and, if he does, which time limit applies to such an appeal. Thus, Mr. Charles' request[s] for a waiver of time [are] denied without prejudice."

Submissions

Mr. Charles' Appeals

10. Mr. Charles contends that contrary to the UNDT finding, he did not file the motions seeking withdrawal at his own free will; rather he filed the motions "under extreme pressure". He withdrew his cases "in the hope that the retaliation and intimidation and discrimination by management would be discontinued".

11. It is generally accepted that a case can be reinstated based on general principles of law in the absence of any specific statutory provisions.

12. The Statute and Rules of Procedure of the Dispute Tribunal do not prohibit reinstatement of a withdrawn case and the UNDT may reinstate a case pursuant to Articles 19 and 36 of its Rules of Procedure.¹ The Orders accepting the withdrawal of the cases do not constitute final decisions regarding Mr. Charles' rights or the merits of the cases. The principle of *res judicata* does therefore not apply.

¹ Mr. Charles cites Articles 20 and 31, but presumably purports to make reference to Articles 19 and 36.

13. Mr. Charles challenges the UNDT's conclusion that he "was fully aware of the legal consequence of his withdrawal, namely the closure of this case". Contrary to the UNDT's finding, Mr. Charles was always of the view that a case could be reinstated upon presentation of justifiable reasons.

14. Mr. Charles requests that the Appeals Tribunal order the reinstatement of his cases for consideration of the merits by the UNDT.

The Secretary-General's Answers

15. The Secretary-General contends that the appeals are irreceivable because they fail to comply with the requirements applicable to appeals of interlocutory orders. First, the appeals are time-barred. Mr. Charles filed his appeals after the expiry of the statutory time limit for interlocutory appeals and failed to timely request an extension prior to the expiry of the time limit. Second, Mr. Charles has failed to assert or demonstrate any excess of jurisdiction or competence by the UNDT. Finally, with respect to Order No. 110 (NY/2013), the Secretary-General opines that Mr. Charles' appeals are irreceivable as they do not comply with the formal requirements of appeals of interlocutory orders.

16. In the alternative, the Secretary-General argues that the UNDT's Orders represent a reasonable exercise of the UNDT's discretion in case management. Mr. Charles has failed to show any error that would justify setting aside the UNDT Orders and it was entirely reasonable for the UNDT to consider Mr. Charles' withdrawal of his applications to remain valid and binding.

17. The Secretary-General requests that the Appeals Tribunal dismiss the appeals in their entirety.

Considerations

18. This Court holds that the appeals are receivable because they are addressed against judicial decisions which dispose of the cases before the UNDT. As the two appeals raise the same legal issues, we consolidate them in the interest of judicial economy and consistency.

19. Taking into account the consequences of the impugned decisions, their effect appears to be equivalent to the effect of a final judgment. Therefore, whether called judgments or orders becomes irrelevant to the task of deciding if they are appealable or not and within which time limits.

20. Both situations (an order disposing of a case following withdrawal and a final judgment) produce the closure of the case and this analogy leads this Tribunal to conclude in favour of the receivability of the identical mechanism to impugn the decision: an appeal.

21. Since we have decided that the current appeals are considered receivable *ratione materiae*, they must also be seen as timely, because they were submitted within the timeframe provided for appeals against judgments in Article 7 of the Rules of Procedure of the Appeals Tribunal.

22. There is no merit in the Secretary-General's observations about the non-receivability of the appeals.

23. Turning to the content of the appeals, this Tribunal will affirm the UNDT's decisions because the "motions for reinstatement" that were rejected were in fact irreceivable *ab initio* and they were deemed to be dismissed irrespective of their grounds.

24. This Court notes that General Assembly Resolution 63/253 states in paragraph 28 that "the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes".

25. There is no statute authorizing reinstatement of an application. A revision of a judgment, which is not applicable in this case, is restricted to exceptional grounds.

26. The requests filed by Mr. Charles aimed at reviving closed cases by attempting to eliminate the consequences of withdrawals, a recourse which is not provided for in the UNDT Statute. They cannot be granted by the Dispute Tribunal, or for that matter the Appeals Tribunal.

27. Thus, the requests were non-receivable and the UNDT's decisions that rejected them must be affirmed.

Judgment

28. The appeals are dismissed in their entirety and the UNDT's Orders on Motions for Reinstatement are affirmed.

Original and Authoritative Version: English

Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Chapman

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar