



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

Judgment No. 2024-UNAT-1464



**Eduardo Alvear
(Appellant)**
v.
**Secretary General
of the International Civil Aviation Organization
(Respondent)**
Judgment

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Katharine Mary Savage Judge Abdelmohsen Sheha
Case No.:	2023-1835
Date of Decision:	28 June 2024
Date of Publication:	1 August 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Christopher M. Petras

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Mr. Eduardo Alvear, a G-6 External Events Coordinator, Revenue and Product Management (RPM) Section with the International Civil Aviation Organization (ICAO), contested the following purported decisions before the former Advisory Joint Appeals Board (AJAB):¹

a) A Desk Audit Report with classification results of my assigned duties was completed in July 2019, however a copy (including the final rating and supporting comments) was not provided to me, in accordance with United Nations Classification Standards.

b) September 2017 to present, I have been subject to the discriminatory and arbitrary application of Staff Rule 105.3, in contravention of United Nations overtime policies governing staff in my field of expertise (ie. conference services).

2. On 19 May 2023, the ICAO Appeals Board (Appeals Board)² dismissed the application as not receivable (the impugned Decision).

3. Mr. Alvear appeals to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

4. For the reasons that follow, we dismiss the appeal and affirm the impugned Decision.

Facts and Procedure

5. On 19 September 2019, Mr. Alvear wrote to Mr. J stating his understanding that a desk audit on job classification had been completed and a recommendation had been submitted to Human Resources on 28 July 2019. He was informed that Ms. I, the Classification Officer, was dealing with the matter.³

6. On 17 October 2019, Mr. Alvear wrote to Ms. I requesting a copy of the desk audit report and in the absence of a response he wrote to Mr. J with a copy to Mr. D requesting a copy of the notice of classification results pointing out “it’s been 94 days since the desk audit was completed and the results submitted to [the Recruitment Office]”. Mr. J replied on 30 October informing him

¹ Appeals Board Decision No. ICAO/2023/003 dated 19 May 2023 (impugned Decision), para. 2.4.

² Previous Appeals Tribunal decisions held that the prior ICAO Staff Regulations and Rules provided a process that involved an Advisory Joint Appeals Board (AJAB) that was not a valid “neutral first stance process” as mandated by Article 2(10) of the Appeals Tribunal Statute and the 2010 United Nations-ICAO agreement. As a result, ICAO suspended that process and instituted a new legal framework for a “neutral first instance process” consistent with the Appeals Tribunal judgments. Amendments to ICAO Staff Regulations and Rules were published on 7 October 2021 establishing an Appeals Board. As a result, in the present case, Mr. Alvear’s appeal was filed before the former AJAB, while the subsequent submissions were filed before the Appeals Board, which ultimately issued the impugned Decision.

³ Impugned Decision, para. 3.2.

that since ICAO only had one classification officer and Ms. I was on sick leave, she would deal with the matter on her return to the office.⁴

7. On or about 27 January 2020, Mr. Alvear sent an undated Inter-Office Memorandum (IOM) to the Acting Director, Bureau of Administration and Services (A/D/ADB). In the IOM, Mr. Alvear complained that “[b]etween 2012 and 2018, [he had been] subjected to an array of recruitment, classification, and resource allocation inequities which culminated in an appeal for a ‘desk audit’ in July 2018”. He added that “in accordance with UN guidelines” he should have been provided with a copy of the desk audit report.⁵

8. On 20 March 2020, Mr. Alvear submitted ICAO Form 177, “Staff Member Request for Administrative Review by the Secretary-General”, seeking review of the two purported decisions referred to at paragraph 1 above.⁶

9. The AJAB Secretary considered that Form 177 was incomplete and wrote to Mr. Alvear on 24 March 2020 advising him that further details were required of the contested decision, including the author of the contested decision, as well as the date he had received written notification thereof. The AJAB Secretary emphasized that these formal steps were very important to comply with, including the deadlines that ought to be observed.⁷

10. On 9 April 2020, Mr. Alvear submitted his amended Form 177 which in essence described the same purported administrative decisions with an additional comment regarding the failure on the part of the A/D/ADB to respond to his request to intervene to resolve the issues.⁸

11. On 15 April 2020, Mr. Alvear was informed that his request for administrative review had been rejected on grounds that he had failed to identify an administrative decision as required under ICAO Staff Regulation 11.1 and further that his request for administrative review was time-barred, since it had not been submitted within the period of 30 days as required under former ICAO Staff Rule 111.1(5),⁹ i.e. by 27 March 2020.¹⁰

⁴ *Ibid.*

⁵ *Ibid.*, para. 3.3.

⁶ ICAO Secretary General’s reply before the Appeals Board, Exhibit 41.

⁷ Impugned Decision, para. 2.5.

⁸ *Ibid.*, para. 2.6

⁹ Former ICAO Staff Rules, 11 February 2020.

¹⁰ *Ibid.*, paras. 2.7 and 2.8; ICAO Secretary General’s reply before the Appeals Board, Exhibit 45.

12. On 14 May 2020, Mr. Alvear submitted an appeal (ICAO Form 178) to the AJAB, raising the same two issues relating to post reclassification and discriminatory allocation of overtime.¹¹

The impugned Decision

13. On 19 May 2023, the Appeals Board dismissed Mr. Alvear's application. It held that:¹²

Reading [the January 2020 IOM] as a whole in the context and background of this case it would appear that at the very least at the end of January 2020 [Mr. Alvear] had formulated in his mind the belief that a decision had been made not to upgrade the post he encumbered to G-7 but that it should remain as being appropriately assessed as G-6.

14. The Appeals Board held that:¹³

a) no administrative decision had been communicated to [Mr. Alvear] so he was unable to name the decision maker or the date that the decision was made,

b) no allegations were made of specific breaches of ICAO's internal law but it was alleged that United Nations Classification Standards and overtime policies were breached,

c) the claim that he should have been provided with a copy of the Desk Audit Report including final rating and supporting comments may be construed as being consistent with [Mr. Alvear's] acknowledgement that there was no contestable administrative decision of which he was notified and if he believed that a decision had been made that the post that he encumbered was not rated at G-7 or higher he did not specify this as the contested decision,

d) the claim regarding disparity of treatment in the allocation of overtime was not adequately particularized and in any event [Mr. Alvear]'s reliance on United Nations overtime policies was misplaced. In essence no contestable administrative decision with specific application to [Mr. Alvear] had been identified.

15. The Appeals Board further found that:¹⁴

[Mr. Alvear] failed to identify a contestable administrative decision of individual application to him so the question whether [Mr. Alvear] could in the circumstances infer that there was an implied decision/s is difficult to answer simply because no such decision had been identified in the request for administrative review. Even if it could be said that [Mr. Alvear] had identified one or more contestable administrative decisions, he failed to submit a timely request for administrative review by the Secretary-General within 30 calendar days of any such implied decisions as required under Staff Rule 111.1(5).

¹¹ Mr. Alvear's Appeal, Annex 4.

¹² Impugned Decision, para. 3.5.

¹³ *Ibid.*, para. 3.7.

¹⁴ *Ibid.*, para. 3.9.

16. The Appeals Board concluded that the appeal was not receivable and that it had no jurisdiction to consider it.¹⁵

17. On 4 August 2023, Mr. Alvear filed an appeal, and the Secretary General of ICAO filed an answer on 25 September 2023.

18. On 20 June 2024, the Appeals Tribunal issued Order No. 564 (2024) requesting that the parties submit additional pleadings and evidence regarding the question of whether—and in the affirmative, when—Mr. Alvear had received the final job description and the desk audit report.

19. On 21 June 2024, the Secretary General of ICAO submitted additional pleadings in response to the Order.

20. On 24 and 25 June 2024, respectively, Mr. Alvear submitted additional pleadings and evidence in response to the Order.

21. On 25 June 2024, the Secretary General of ICAO submitted comments on Mr. Alvear's additional pleadings and evidence.

Submissions

Mr. Alvear's Appeal

22. Mr. Alvear submits that the ICAO Staff Rules as currently drafted create a lacuna when the office requesting classification fails to notify the staff member who is left to infer that an implied decision has been taken. This, he contends, “speaks to procedural abuse that precludes staff from exercising their rights while absolving management from accountability [for] abuse of authority”.

23. Mr. Alvear claims that there are no measures in place at ICAO that ensure pay equity. He has been subject to four section reorganizations and one lateral transfer at ICAO, all absent of any provision for post classification scrutiny and review. He alleges that core duties were arbitrarily added, diluted and/or removed without any regard for an official (and legitimate) job description. He contends that this raises serious concerns about Human Resources' oversight and governance at ICAO.

¹⁵ *Ibid.*, para. 5.1.

24. Mr. Alvear further claims that he has been subject to retaliation in the form of “career development malpractice” due to his attempts to resolve pay equity concerns. He submits that his managers ignored his requests for classification review at several intervals (2002-2022), verbally citing senior management bias or apathy. Mr. Alvear also raises “serious concerns about the methodology of the desk audit evaluation which in [his] view did not adhere to United Nations standards or best practices”.

25. Mr. Alvear seeks to submit his appeal “on humanitarian grounds”. He submits that the denial of pay is a violation of the principle of “equal pay for equal work” which is a right granted under Article 23(2) of the Universal Declaration of Human Rights. He seeks compensation for the violation of his rights in the amount of three years’ net base salary; and moral damages “for the longstanding pain and suffering this matter has inflicted on [his] health (including but not restricted to a diagnosed anxiety disorder)”.

The ICAO Secretary General’s Answer

26. The ICAO Secretary General submits that Mr. Alvear has failed to identify any of the five grounds of appeal as referred to in Article 8(2) of the UNAT Rules of Procedure and Article 2(1) of the 2021 United Nations-ICAO Agreement on access to the United Nations internal justice system, and the relevant UNAT case law. He has made no argument to challenge the Appeals Board’s decision that his appeal was not receivable. Mr. Alvear merely reiterates the arguments he made in his application, without even acknowledging the Appeals Board’s receivability decision, much less showing how the Appeals Board erred in a manner that invalidates the impugned Decision.

27. The Secretary General of ICAO further contends that:¹⁶

[Mr. Alvear’s] cut-and-paste submission in this case is so frivolous as to be an affront to the earnestness of these proceedings, not only imposing significant expense on the Organization in the form of the fee paid to the Appeals Tribunal to adjudicate this facially defective appeal, but also thoughtlessly commanding the time and effort of the Respondent and this Court with the same arguments that were made to, and rejected by, the Appeals Board, without even a minimally good faith attempt to demonstrate any error on the part of the Board.

¹⁶ ICAO Secretary General’s Answer, para. 8.e.

28. The Secretary General of ICAO contends that as such, it is an abuse of the appeals process, warranting an award of costs pursuant to Article 9(2) of the UNAT Statute.

29. The Secretary General of ICAO asks that the Appeals Tribunal affirm the impugned Decision, dismiss the appeal in its entirety, and award costs against Mr. Alvear in the amount of USD 500 for abuse of process and for filing a frivolous appeal.

Considerations

30. The issue in the appeal is whether the Appeals Board erred in determining that Mr. Alvear's request for review was not receivable.

Failure to identify grounds of appeal

31. We agree with the ICAO Secretary General that Mr. Alvear failed to identify his grounds of appeal or allege errors committed by the Appeals Board as required by Article 2(1) of the Appeals Tribunal Statute.

32. The Appeals Tribunal has consistently emphasized that, on appeal, a staff member cannot merely repeat the arguments that did not succeed before the first instance body. The function of the Appeals Tribunal is to determine if the first instance body made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Appeals Tribunal Statute which is replicated in the United Nations-ICAO agreement. An appellant has the burden of identifying the alleged defects in the impugned judgment and stating the grounds relied upon in asserting that the judgment is defective.¹⁷

33. We do not disagree that Mr. Alvear repeats the same arguments he made before the AJAB. However, we also consider that he is self-represented, and we have previously held that there must be some leeway given to self-represented parties in this regard.¹⁸ Therefore, we will review the merits of the appeal.

¹⁷ *Mohammad Yahya Al Othman v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1196, para. 103; *Cherneva v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-870, para. 30; *Kule Kongba v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-849, para. 19.

¹⁸ *Ali Mohammad Hammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2024-UNAT-1435, para. 15.

34. The substantive issue in this appeal is whether the Appeals Board erred in finding that the request for review was not receivable on the basis that Mr. Alvear failed to identify appealable administrative decisions regarding i) the non-receipt of the desk audit report completed in July 2019 and ii) the application of the ICAO Staff Rules and policies regarding overtime.

35. ICAO Staff Regulation 11.1 provides that each “staff member shall have the right to a review in accordance with the rules established pursuant to this Article in the following cases: ... c) any administrative decision which it is alleged constitutes non-observance of a contract of employment, or of the terms of the ICAO Service Code, or non-observance of established administrative practices in such a way as adversely to affect the individual”.

36. Former ICAO Staff Rule 111.1(5)¹⁹ provides that:

A staff member who wishes to appeal the decision referred to in Staff Regulation 11.1 shall, as a first step, submit a properly completed Form 177, *Staff Member Request for Administrative Review by the Secretary General*, to the Secretary of the AJAB within 30 calendar days of the date the staff member received written notice of the decision. Failure by the staff member to properly complete Form 177 shall not stay or otherwise affect the deadline for submission.

37. Mr. Alvear requested a review of the following in his Form 177:

a) A Desk Audit Report with classification results of my assigned duties was completed in July 2019, however a copy (including the final rating and supporting comments) was not provided to me, in accordance with United Nations Classification Standards.

b) September 2017 to present, I have been subject to the discriminatory and arbitrary application of Staff Rule 105.3, in contravention of United Nations overtime policies governing staff in my field of expertise (ie. conference services).

38. The Secretary General of ICAO says that the Form 177 (along with the amended Form 177) did not comply with ICAO Staff Rule 111.1(5) as it did not identify an appealable administrative decision.

39. It is well-settled that before an administrative decision can be contested and held to be in non-compliance with the contract of employment of a staff member it must be shown to

¹⁹ Former ICAO Staff Rules, 11 February 2020.

adversely affect the rights or expectations of the staff member and have a direct legal effect.²⁰ “Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.”²¹

40. In some circumstances, the determination of what is an administrative decision is difficult and important because the consequences of that determination can deprive a staff member of a right of review or appeal.

Application of overtime rules and policies

41. Regarding Mr. Alvear’s complaint regarding overtime and resource allocation concerns since 2017, these concerns are of general application which do not identify an appealable administrative decision.

42. In *Adnan-Tolon*, we determined that the staff member’s complaints regarding overtime compensation over the years and the failure of the Administration to “acknowledge it” does not amount to an appealable administrative decision.²²

43. Here, Mr. Alvear’s complaint regarding the denial of “numerous” overtime advance approval requests from September 2017 to 31 December 2019 does not identify a specific administrative decision. There is no evidence to show that the Administration requested overtime work specifically for Mr. Alvear nor that he sought compensation for a specific overtime worked and the request for that specific overtime was denied. There must be a specific, recognizable decision, declaration or ruling made by the Administration (express or implied) that can then be challenged and on which the review deadlines can be imposed.

44. Similarly, we have held that decisions such as decisions by the Administration to redeploy staff or not to reverse the redeployment or to properly staff a section are decisions of general

²⁰ *Michaud v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-761, para. 50, citing *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28, citing *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481 (and citations therein).

²¹ *Ngokeng v. Secretary-General of the United Nations*, Judgment, 2014-UNAT-460, para. 26, citing former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V. See also *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-365, para. 14; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-313, para. 19; *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304, paras. 26-28.

²² *Adnan-Tolon v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-970, para. 30.

application that may have an indirect impact on a staff member's working conditions, but they do not produce direct legal consequences, individually, to the staff member's terms of employment.²³

45. Mr. Alvear makes general complaints about "non-promotion/non-selection, training allotment, and employment contract biases ... over the course of [his] career at ICAO" but does not identify an appealable administrative decision by any objective measure. This is a complaint of various policy decisions of general application, perhaps with unsatisfactory practical consequences to Mr. Alvear, but producing no direct legal consequences in relation to his terms of employment and no specific appealable administrative decision.

46. Therefore, we find that the Appeals Board did not err in finding that this request for review was not receivable.

Provision of the desk audit report

47. However, regarding Mr. Alvear's complaint that he did not receive the desk audit classification results for his position, we find that the Appeals Board erred in finding this was not an administrative decision. We are satisfied that the Administration's failure to provide the desk audit results was an implied administrative decision.

48. In certain instances, an administrative decision can be "implied" and "[n]ot taking a decision is also an administrative decision challengeable before the United Nations Appeals Tribunal."²⁴ "[T]he absence of a response to a claim or complaint can in certain circumstances constitute an appealable administrative decision where it has direct legal consequences."²⁵

49. In the present case, the Administration failed to notify and provide the results of the desk audit review despite Mr. Alvear's numerous requests. It is correct that they did not explicitly violate the ICAO Staff Rules because the ICAO Staff Rules created a lacuna on a requirement on the Administration to notify a staff member of a classification decision.

50. Former (and current) ICAO Staff Rule 102.2(13) provides that "[a]ll classification decisions shall be communicated to the requesting office of the post, along with a copy of the approved job description. A copy of the vacancy notice, or reclassification notice, as applicable,

²³ *Ibid.*, para. 31.

²⁴ *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-030, para. 1.

²⁵ *Cohen v. Registrar of the International Court of Justice*, Judgment No. 2017-UNAT-716, para. 37.

shall be provided to the requesting office prior to publication.” There is no requirement to notify the staff member of the classification decision.

51. However, there is an implicit obligation on the Administration to ensure that the staff member receives timely notice of a decision impacting their employment contract. The Administration should provide notice to the staff member for the review and appeal process to operate meaningfully.

52. When a staff member is notified, former (and current) ICAO Staff Rule 102.2(14) states that:

Within one month of being notified of the classification decision, the supervisor and/or incumbent of a post who disagree(s) with the classification decision may request a second classification review... [that] shall be carried out independently...[and] [f]ollowing completion of the second classification review, if the supervisor, the incumbent or both continue to disagree with the classification decision, they may submit a statement explaining the grounds for disagreement to [the Deputy Director, Bureau of Administration and Services, Human Resources].

53. In the impugned Decision, the Appeals Board recognized the lacuna and acknowledged that the effect of this absence of notification is that the staff member is left to infer that an implied decision has been taken and that this “may” deprive the staff member of the benefit of the recourse procedures in the ICAO Staff Rules.²⁶

54. There is no dispute that a decision was made to maintain Mr. Alvear’s job classification. This is confirmed in Ms. I’s 6 January 2020 e-mail and the job description signed on 2 January 2020 to maintain the classification of Mr. Alvear’s post of G-6 Events Coordinator.

55. However, Mr. Alvear did not receive timely notice of that decision and it was not communicated to him within a reasonable time despite his requests for updates. On or about 27 January 2020, he sent an undated IOM to the A/D/ADB in which he requested “a copy of the classification results, including the final rating and supporting comments” and that his “job description ... be revised”.²⁷ He did not receive a response to the IOM and therefore, had no recourse but to proceed to file an application to the former AJAB on the basis of non-receipt of the classification result and report.

²⁶ Impugned Decision, para. 4.3.

²⁷ ICAO Secretary General’s reply before the Appeals Board, Exhibit 39.

56. Despite this lack of notice and response however, the matter is now moot as he has since received the desk audit report and the signed job description during the review and appeal processes.

57. On 20 June 2024, the Appeals Tribunal issued Order No. 564 (2024) requesting clarification of information provided in the form of additional pleadings and any supporting information.

58. Despite the caveat that the parties' submissions may not exceed the scope of the Order, Mr. Alvear took the opportunity to provide further submissions to bolster his previous submissions and provide new evidence including evidence of events after the fact. In support, he uploaded 19 documents, including documents related to the revision of the job description, performance reviews, employment history, credentials, a misconduct investigation, and Glassdoor salary scales. To the extent that these documents do not comply with the terms of the Order, we will disregard them.

59. After receipt of the parties' relevant information in response to this Order, we find that Mr. Alvear has now received both the relevant desk audit report and the signed job description.

60. In his additional pleading in response to the Order, Mr. Alvear responded that the Administration "never provided me with the final Desk Audit Report" but then admits that Exhibit 36 contained in the ICAO Secretary General's reply before the Appeals Board (which he would have received) is the final and authoritative report.

61. On 23 July 2019, Ms. M, an external classification expert, sent Mr. Alvear an e-mail confirming receipt of his proposed revisions and corrections to the draft audit report which she had accepted. She stated: "the desk audit report attached is the version I will use to complete the job classification".²⁸

62. Further, on 16 September 2022, Ms. I sent an e-mail to Mr. Alvear confirming his earlier receipt of the desk audit report, which in part provided: "Here is the email thread I promised to send you. I am also attaching the desk audit report that was submitted ... (you had already received this)."²⁹

²⁸ Secretary General's Comments in response to Order No. 564 (2024), Annex 1.

²⁹ *Ibid.*, Annex 2.

63. Also, the ICAO Secretary General subsequently provided the documentation for the classification of Mr. Alvear's post submitted by Ms. M to Ms. I on 28 July 2019, including "rating, rationale and final desk audit report", to Mr. Alvear on 22 December 2022 as Exhibit 36 to the ICAO Secretary General's reply before the Appeals Board.

64. And finally, the Administration provided the final job description to Mr. Alvear on 22 December 2022 as Exhibit 39 to its reply.

65. In these circumstances, the Appeals Tribunal has previously held that:³⁰

A judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to joining issue have deprived the proposed resolution of the dispute of practical significance; thus placing the matter beyond the law, there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect. The mootness doctrine is a logical corollary to the court's refusal to entertain suits for advisory or speculative opinions.

66. Mr. Alvear's challenge of not receiving a copy of the desk audit report (including the final rating and supporting comments) is no longer a controversy as he has now received it. Consequently, proceeding with his challenge of the Administration's failure to provide this report and to adjudicate this challenge would have no actual real effect and any judicial ruling would be purely academic.

67. Therefore, we do not accept the appeal on this ground.

68. We have examined the appeal from different angles but find that the only possible outcome is dismissal. Every staff member is entitled to a review of an administrative decision (explicit or implied). However, Mr. Alvear appears to now be in a quandary as what he contested was the implicit administration decision of failing to provide him with a copy of the desk audit report, which is now without controversy, and not the classification decision itself. The purpose of receiving the report and job description is that the receipt constitutes notification of the decision on Mr. Alvear's job classification that he can then request be reviewed. Therefore, upon receipt of the report and job description (which occurred during the AJAB/Appeals Board process), if he wished to request a review of his job classification and

³⁰ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 44.

the outcome of the report, he should have requested that review within deadlines provided under the ICAO Staff Rules after receipt of the report and therefore, the classification decision.

69. Mr. Alvear says he seeks the opportunity to state his case on “humanitarian grounds”. We recognize that our decision may seem unfair to him as the Administration did not respond to his requests and only provided the requested information in its submission to the Appeals Board. However, we cannot allow an appeal on humanitarian grounds or any grounds beyond the scope of the appeal and our jurisdiction.

70. Nevertheless, we agree with the Appeals Board when it recognized the lacuna in the ICAO Staff Rules that could have deleterious effects to the rights of a staff member and recommend that the ICAO should review and address this in the future.

71. The appeal fails on both counts.

72. Finally, we do not accept the ICAO Secretary General’s request for costs. We do not find that Mr. Alvear abused the appeal process or that his appeal is frivolous, even less so given the difficulties presented by the lacuna in the ICAO Staff Rules.

Judgment

73. Mr. Alvear's appeal is dismissed, and Appeals Board Decision No. ICAO/2023/003 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Savage

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 2nd day of August 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar