



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2013-478

McCloskey

(Applicant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 173 (2014)

1. On 22 March 2013, the United Nations Dispute Tribunal in Geneva issued Judgment No. 2013/057 in *McCloskey v. Secretary-General of the United Nations*. The Secretary-General of the United Nations appealed the Judgment on 10 May 2013 and Mr. Peter McCloskey filed his answer on 12 July 2013.

2. On 4 February 2014, Mr. McCloskey submitted a “Motion to file fresh evidence and argument”. Attached to the motion are the Statement of 2012 Tax Settlement from the Income Tax Unit dated 23 October 2013 which notified Mr. McCloskey of the offsetting of his 2012 tax reimbursement in the amount of USD 52,874 against USD 52,696 overpaid to him in 2007, Mr. McCloskey’s undated request for management evaluation of the planned recovery, a letter dated 2 January 2014 from the Management Evaluation Unit (MEU) informing Mr. McCloskey of the postponement of any recovery action in respect of his 2007 taxes, and an e-mail dated 23 January 2014 notifying Mr. McCloskey that he would receive the refund. Mr. McCloskey confirms that he has received the refund.

3. On 18 February 2014, the Secretary-General filed his observations. He opposes the motion on the ground that it does not satisfy the threshold of “exceptional circumstances”. He maintains that the motion is a request to repeat arguments that Mr. McCloskey has already made in his answer of 12 July 2013. He argues that the postponement of the recovery pending the decision by this Tribunal on his appeal renders moot Mr. McCloskey’s claim that there has been a new administrative decision.

Finally, the Secretary-General submits that the communications from the Income Tax Unit and the MEU and Mr. McCloskey's arguments are not relevant to the issues before this Tribunal.

4. The Rules of Procedure of the Appeals Tribunal (Rules) provide for the parties to file appeals, answers, cross-appeals and answers to cross-appeals. There is no provision for any additional pleadings to be submitted by the parties. Nevertheless, the Appeals Tribunal has ruled that under Article 31(1) of the Rules additional pleadings may be allowed in "exceptional circumstances".¹

5. Article 2(5) of the Statute of the Appeals Tribunal (Statute) provides for the admission of additional documentary evidence "[i]n exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony" and if it is "in the interest of justice and the efficient and expeditious resolution of the proceedings".

6. The argument Mr. McCloskey now seeks to introduce is merely supplementary to that already submitted in his answer. I find that he has not demonstrated any "exceptional circumstances" which would allow the admission of the additional argument. As regards the accompanying documentation, I am not persuaded either that "exceptional circumstances" exist or that "the facts are likely to be established" as required by Article 2(5) of the Statute.

ACCORDINGLY, IT IS HEREBY ORDERED THAT Mr. McCloskey's motion seeking leave to submit fresh evidence and argument is denied.

Original and Authoritative Version: English

Dated this 25th day of February 2014 in
London, United Kingdom.

(Signed)
Judge Richard Lussick,
Duty Judge

Entered in the Register on this 25th day of
February 2014 in New York, United States.

(Signed)
Weicheng Lin, Registrar

¹ *Williams v. Secretary General of the International Civil Aviation Organization*, Order No. 161 (2013); *Brisson v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Order No. 150 (2013).