



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case Nos. 2018-1142, 2018-1153 & 2018-1145

Harris
(Appellant/Respondent)

v.

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

Order No. 320 (2018)

1. On 15 December 2017, the United Nations Dispute Tribunal in Geneva issued Judgment No. UNDT/2017/094/Corr.1 and Judgment No. UNDT/2017/095/Corr.1 in the case of *Harris v. Secretary-General of the United Nations*.

2. On 16 January 2018, Mr. Bryan Galakpai Harris filed an appeal of Judgment No. UNDT/2017/094/Corr.1 to the United Nations Appeals Tribunal (Appeals Tribunal) (Case No. 2018-1142), and the Secretary-General filed an answer on 26 March 2018. On 13 February 2018, the Secretary-General appealed the same UNDT Judgment (Case No. 2018-1153). The appeals were consolidated by Order No. 315 (2018) dated 16 April 2018. On 23 January 2018, Mr. Harris filed an appeal of Judgment No. UNDT/2017/095/Corr.1 (Case No. 2018-1145) to which the Secretary-General filed an answer on 26 March 2018. The appeals have been set down for hearing in the next session of the Appeals Tribunal commencing on 18 June 2018 in New York.

3. On 11 April 2018, Mr. Harris filed the following three motions: Motions No. 1 and No. 2 are entitled “Motion[s] for leave to gather and submit additional evidence, as well as an extra 6 months for proper representation by a fully qualified legal counsel” filed in Case No. 2018-1142 and Case No. 2018-1145, respectively, and Motion No. 3 is entitled “Motion for leave to gather and submit additional evidence, for the UNAT Case No. 2018/1142, and UNAT Case No. 2018/1145” and was filed in Case No. 2018-1153. The Secretary-General filed separate responses to all three motions on 23 April 2018.

4. In Motions No. 1 and No. 2, Mr. Harris states that for health reasons he feels unable to continue to represent himself and, therefore, requests leave to gather and submit additional evidence and six months to establish his legal team. Moreover, Mr. Harris asks the Appeals Tribunal to “[s]ubpoena (...) the [United Nations Headquarters] Human Resource Office for the detailed documentation on the recommendation which le[d] to the termination of [his] health [i]nsurance, as well as the subsequent separation [from] service notice” and the “Field Personnel Division for the detailed documentation on [his] Special Leave request”. He submits that his poor health should be considered an exceptional circumstance and that the additional evidence will prove that the Administration’s actions were unreasonable and his extended sick leave beyond his control.

5. In his response to Motions No. 1 and No. 2, the Secretary-General asserts that since Mr. Harris has yet to adduce the additional evidence he is seeking leave to submit, the Secretary-General is unable to comment on the nature of the prospective evidence at this stage but that Mr. Harris has failed to identify any new elements or exceptional circumstances and merely reiterates factual submissions set forth in his appeals. The Secretary-General claims that all relevant documents have been submitted before the UNDT so that there is sufficient evidence in the written record for the Appeals Tribunal to decide on the matters and argues that Mr. Harris could have placed his request before the UNDT. Consequently, the Secretary-General asks for the motions to be dismissed on this point. As to Mr. Harris’ request for additional time, the Secretary-General states that he presently has no objection.

6. In Motion No. 3, Mr. Harris states that he will submit additional evidence and asks the Appeals Tribunal for a “full dismissal” of the Secretary-General’s appeal of Judgment No. UNDT/2017/094/Corr.1 as the appeal, in his view, constitutes an abuse of process. Mr. Harris’s motion further contained the following statement:¹

To Ms. Francis[c]a Lagos Pola, and the entire respondent’s team, I am humbled by your advanced legal knowledge (...), will like to publicly state, as an Information Communication Technology Professional, I’m by no way in challenge of your legal authority, instead pray *you’ll at some point feel the impact of this ordeal*, me and my family will have to suffer for the remain[der] of our li[ves], or perhaps the public opinion to follow.

¹ Emphasis added.

7. In his response to Motion No. 3, the Secretary-General asserts that Mr. Harris has not submitted any arguments for the dismissal of the appeal and given no indication as to what the prospective evidence is and how this additional evidence will establish other relevant facts for the dismissal. As regards the above-cited statement on Ms. Lagos Pola, the Secretary-General requests the Appeals Tribunal to determine if “such assertion conforms to the standards of decorum to which pleadings before [the Appeals Tribunal] are to be held and to take any further action that it deems appropriate to enforce such standards”.

8. The Appeals Tribunal may admit additional evidence, in terms of Article 2(5) of the Appeals Tribunal Statute (Statute) and Article 10(1) of the Appeals Tribunal Rules of Procedure (Rules) where an applicant shows: i) exceptional circumstances; ii) it will be in the interest of justice and the efficient and expeditious resolution of the proceedings to receive the additional evidence; and, iii) the evidence was not known to either party and should have been presented at the UNDT level.

9. It is evident from the motions filed by Mr. Harris that he may benefit from legal assistance to further prosecute his appeals and motions to adduce additional evidence. He clearly requires a postponement of the appeal for those purposes. The Secretary-General has no objection to the postponement of the appeal, but requests that the motions be dismissed. However, it will better serve the interests of justice to determine the motions once Mr. Harris has consulted counsel on the need (if any) for additional evidence to be adduced in the appeal. There will be no prejudice to the Secretary-General in postponing the appeal until the next session of the Appeals Tribunal commencing on 15 October 2018 in New York, provided the motions are amended and/or determined timeously. The following directions issued under Article 31(1) of the Rules are aimed at achieving that result.

IT IS HEREBY ORDERED that:

a) The appeals in Case Nos. 2018-1142, 2018-1145 and 2018-1153 are postponed to the session of the Appeals Tribunal commencing on 15 October 2018 in New York.

b) Mr. Harris is directed to file any amended motions relating to admission of additional evidence in the appeals on or before 31 August 2018.

Original and Authoritative Version: English

Dated this 11th day of May 2018 in Cape Town,
South Africa.

(Signed)
John Murphy
President

Entered in the Register on this 11th day of
May 2018 in New York, United States.

(Signed)
Weicheng Lin
Registrar