



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2019-1282

**Webster
(Appellant)**

v.

**Secretary-General of the
International Seabed Authority
(Respondent)**

ORDER No. 368 (2020)

1. Mr. Andrew K. Webster (the Appellant) was a Budget and Internal Oversight Officer of the International Seabed Authority (ISA) on a fixed-term appointment, that had been extended until 29 March 2020. He alleges that on 15 April 2017, he was attacked and robbed in his duty station in Kingston, Jamaica, after which he took successive periods of sick leave. On 14 July 2017, the ISA advised the Appellant that his continued absence would be unauthorized and his lack of communication during his absence and leave had been deemed an abandonment of post under ISA Staff Rule 9.1(b). The ISA separated the Appellant from his service.

2. On 7 November 2017, the Appellant appealed the decision to the ISA's Joint Appeals Board (JAB/ISA). In response, the Secretary-General of the ISA (the Respondent) argued that the appeal before the JAB/ISA was not receivable since the required previous request for administrative review had not been submitted within the time limits established by ISA Staff Rule 11.2(a). The JAB/ISA determined that the appeal was receivable and recommended that the Respondent address the Appellant's request for administrative review as a matter of urgency. The Respondent subsequently decided not to follow the JAB/ISA's recommendation and stated that there was no basis to review the administrative decision and continued to argue non-receivability of the appeal to the JAB/ISA. Subsequent

to this, the JAB/ISA issued a procedural order indicating that their prior decision on receivability was “final”.

3. In its report of 21 March 2019, the JAB/ISA declined to recommend that the Secretary-General of the ISA review his decision to separate the Appellant from service but made certain findings of fact regarding the attack and allegations that he had been engaged in or he had been seeking to engage in other employment.

4. On 3 July 2019, the Appellant filed an appeal to this Tribunal and sought rescission of the decision that he abandoned his post and an order for payment of salary and entitlements to the end of his appointment, costs, oral damages, and a reimbursement for partial legal costs. In its answer to the appeal, submitted on 12 September 2019, the Respondent requested dismissal of the appeal on its merits but also reiterated arguments of the receivability of the appeal before the JAB/ISA and allegations of misrepresentations against the Appellant.

5. On 27 September 2019, the Appellant filed a Motion for Leave to File an Additional Pleading (the leave motion) seeking leave to file an additional pleading in response to the Respondent’s answer to the appeal. The Appellant’s response includes the following: (a) the Appellant’s pleading on the issue of receivability filed before the JAB/ISA; (b) a response to the Respondent’s use of a 15 June 2017 e-mail from the Appellant’s supervisor; and (c) a response to the Respondent’s assertions of alleged misrepresentations by the Appellant before the JAB/ISA.

6. In his response filed on 10 October 2019, the Respondent objects to the leave motion and reiterates that there are inconsistencies and misrepresentations in the Appellant’s arguments, in particular, on the issue of receivability and the circumstances regarding the e-mail of 15 June 2017.

7. The Appellant filed an Addendum to the leave motion in which he argues that the Respondent’s statement that it had already produced evidence (the 15 June 2017 e-mail) during the JAB/ISA proceedings was factually incorrect. The Respondent provided a response to the Addendum objecting to the Addendum as contrary to the Appeals Tribunal’s Rules of Procedure (the “Rules”). The Respondent argues that the Appellant’s evidence should have been produced during the JAB/ISA process and that new evidence should not be permitted now.

8. The Rules provide for the parties to file appeals, answers, cross-appeals and answers to cross-appeals. They do not provide for an Appellant to file comments on an answer.

9. Nevertheless, other pleadings may be allowed under Article 31(1) of the Rules as well as Practice Direction No. 1. Under Section II.A.3 of Practice Direction No. 1, an appellant may make “[a] motion requesting the permission of the Appeals Tribunal to file a pleading after the answer to the appeal” and the Appeals Tribunal may grant such a motion “if there are exceptional circumstances justifying the motion”.

10. In this instance, the Respondent raised issues in his 12 September 2019 answer (receivability, the 15 June 2017 e-mail, and allegations of misrepresentation) that the Appellant has not had the opportunity to respond to. In order to ensure procedural fairness, which encompasses the right of a party to not only know the case against them but also the right to an opportunity to respond to that case, we grant the Appellant’s motion to file additional pleadings.

11. It is exceptional that the Respondent, despite being a Respondent in the appeal, is challenging the JAB/ISA’s findings of fact and its decision on receivability. The Appellant’s reply to the Respondent’s answer to the appeal is relevant and material to the issues raised by the Respondent which the Appellant would not otherwise have an opportunity to address.

12. If we do not grant the leave motion, the Appellant would be prejudiced by not having the opportunity to respond to issues and allegations raised by the Respondent. This would be contrary to the principles of natural justice.

13. Therefore, we admit the Appellant’s reply to the Respondent’s answer to the appeal filed as Annex 1 to the Appellant’s Motion for Leave to File an Additional Pleading.

IT IS HEREBY ORDERED that the Appellant’s motion seeking leave to file additional pleadings **IS GRANTED**. The Registry of the Appeals Tribunal is instructed to add the additional pleading and the Respondent’s response thereto to the official case record.

Original and Authoritative Version: English

Dated this 24th day of February 2020
in Vancouver, British Columbia, Canada.

(Signed)
Judge Kanwaldeep Sandhu,
Presiding

Entered in the Register on this 24th day
of February 2020 in New York, United States.

(Signed)
Weicheng Lin, Registrar