



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case Nos. 2021-1520

Sergio Baltazar Arvizu Trevino

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 417 (2021)

1. On 18 December 2020, the United Nations Dispute Tribunal (UNDT) in New York issued Judgment No. UNDT/2020/211 in the case of *Arvizu Trevino v. Secretary-General of the United Nations*, whereby the UNDT rejected Mr. Sergio Baltazar Arvizu Trevino's application challenging the decision not to investigate his harassment complaint.
2. Mr. Arvizu Trevino appealed the UNDT Judgment to the United Nations Appeals Tribunal (Appeals Tribunal) on 12 February 2021, to which the Secretary-General filed his answer on 16 April 2021.
3. On 7 June 2021, Mr. Arvizu Trevino filed a Motion for Additional Pleadings, requesting that the Appeals Tribunal admit his additional arguments based on a letter attributable to the Assistant Secretary-General for Human Resources allegedly addressed to the Chair of the Fifth Committee of the General Assembly of the United Nations. The said letter was published on an external website on 11 December 2020. Mr. Arvizu Trevino seeks leave to adduce this additional evidence on the ground of exceptional circumstances, as this letter was relevant to his case but it was not available to him at the time of his UNDT application on 26 May 2020 and it could not have been part of the record before the UNDT before it issued the impugned Judgment on 18 December 2020.

4. On 18 June 2021, the Secretary-General filed his comments, requesting that the Appeals Tribunal dismiss the motion for lack of exceptional circumstances, or alternatively that he be given an opportunity to respond to the additional pleadings and evidence contained in the motion. The Secretary-General notes that Mr. Arvizu Trevino appealed the UNDT Judgment on 12 February 2021, but he did not address the letter and its contents in his appeal. In the view of the Secretary-General, Mr. Arvizu Trevino does not explain in his motion why he neglected to address the contents of the letter in his appeal when he had an opportunity to do so and why the Appeals Tribunal should permit him now to submit an additional submission that he could have included in his appeal.

5. Pursuant to Article 2(5) of the Statute of the Appeals Tribunal and Article 10(1) of its Rules of Procedure, the Appeals Tribunal may receive additional evidence from a party “[i]n exceptional circumstances” “if that is in the interest of justice and the efficient and expeditious resolution of the proceedings” and if “the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence” unless such evidence “was known to either party and should have been presented at the level of the Dispute Tribunal”.

6. Having reviewed the present case, the Appeals Tribunal firstly finds that the letter Mr. Arvizu Trevino now seeks to introduce on the record had been published on an external website on 11 December 2020, before the issuance of the UNDT Judgment on 18 December 2020 and therefore was likely to have been accessible to him then. Secondly, since the appeal was filed on 12 February 2021, Mr. Arvizu Trevino had two months to be appraised of such a letter before the filing of his appeal. Thirdly, it was incumbent upon Mr. Arvizu Trevino to establish otherwise, that is, that the evidence was not known to him before the appeal or that he only got to know it afterwards, which did not occur.

7. Under these circumstances, Mr. Arvizu Trevino’s argument that the letter was not known to him before the filing of the application to the UNDT is to no avail. Even after the filing of the application before the UNDT, a party may request leave to file additional evidence, particularly when this evidence is relevant and produced after such filing.

8. Any other aspect regarding the issues now on appeal is to be assessed by the Panel Members in due course.

IT IS HEREBY ORDERED that Mr. Arvizu Trevino's motion is **DENIED**.

Original and Authoritative Version: English

Dated this 15th day of July 2021
in Cabo Frio, Brazil.

(Signed)
Judge Martha Halfeld,
President

Entered in the Register on this 15th day
of July 2021 in New York, United States.

(Signed)
Weicheng Lin, Registrar