



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2021-1594

Robert Sheffer

(Appellant)

v.

**Secretary-General of the
International Maritime Organization**

(Respondent)

ORDER No. 435 (2022)

1. On 7 May 2021, the Staff Appeals Board (SAB) of the International Maritime Organization (IMO) rendered a decision in respect of an appeal filed by Mr. Robert Sheffer, on remand from the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). Mr. Sheffer had appealed the decision to reject his reclassification request and confirm his post at its current level. The SAB found in Mr. Sheffer's favor by ordering *inter alia* that the contested decision be rescinded, and another reclassification exercise be carried out for Mr. Sheffer's post. But the SAB dismissed Mr. Sheffer's claim for an award of reasonable legal costs incurred for engaging an outside counsel and decided that there be no order as to costs.
2. On 5 August 2021, the Secretary-General of the IMO appealed the SAB decision to the Appeals Tribunal.
3. On 11 October 2021, Mr. Sheffer filed an answer, in which he raised the issue of costs. In his view, the SAB had only decided that the issue of costs be further considered by the IMO in the current review of the Appeals Procedure, and having failed to move the IMO to establish a new SAB to consider the narrow issue of costs, Mr. Sheffer, in his answer, requested that the Appeals Tribunal "opine on whether" the Appeals Tribunal ought to award reasonable legal costs to him incurred for the UNAT process and whether

the IMO should award him reasonable legal costs for having successfully argued his case before the SAB.

4. On 5 November 2021, the Secretary-General of the IMO filed a motion to strike out portions of Mr. Sheffer's answer relating to costs, especially paragraphs 4.1 and 4.2. In his view, Mr. Sheffer's arguments about costs amount to a cross-appeal in disguise, and to allow them to remain in the answer would deprive the Secretary-General of the IMO of his right to answer a properly filed cross-appeal.

5. On 16 November 2021, Mr. Sheffer responded to the motion. He maintains that the arguments related to costs in his answer are not a cross-appeal, because he did not seek to appeal the SAB decision. In his view, the SAB made no order as to costs; it only held that the issue of costs "be further considered by IMO". (Underline in original)

6. The Rules of Procedure of the Appeals Tribunal (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, or an answer to an answer.

7. While paragraph 1.3 of Mr. Sheffer's answer brief seeks "reasonable legal costs incurred in defending the Appeal", and this is both not challenged by the Secretary-General of IMO on the strike out motion and is a remedy that is available to Mr. Sheffer, Mr. Sheffer's claim to an award of costs is broader than relates simply to the instant appeal. At paragraphs 4.1 and 4.2 of his answer, Mr. Sheffer seeks costs for the whole of the history of this litigation going back over more than two years and encompassing separate cases that are now before the UNAT for the third time.

8. In addition to seeking costs in respect of cases that have been decided finally some time ago, Mr. Sheffer faces the difficulty presented to him by Article 9(2) of the Statute of the Appeals Tribunal, which only allows the Tribunal to award costs against a party where there has been manifest abuse of the appeal's process. This is a high threshold to be established before costs can be awarded. It would, however, be inappropriate to attempt to determine that question on an interlocutory motion such as must be decided now.

9. Mr. Sheffer's strongest argument in support of his application for costs is that the IMO's internal justice system, unlike that of the United Nations, does not provide for legal representation of staff in such matters as is provided by the United Nations in the form of

OSLA. IMO staff must, therefore, bring and respond to proceedings unrepresented, or, especially if these involve complex legal questions such as have featured in Mr. Sheffer's cases, by engaging external counsel at a cost. So, despite Article 9(2) referred to above, should the same rules apply to IMO staff (or indeed staff of other international agencies which use the United Nations internal justice system) as are applied to the United Nations staff? This is an important question of principle that is not confined to Mr. Sheffer's case.

10. Accordingly, I am not prepared to strike out Mr. Sheffer's pleadings concerning costs. They are not so clearly doomed to failure that they should not be argued and decided. However, the Secretary-General of IMO must be given an opportunity to respond to those claims and so, pursuant to Article 18bis(1) of the Rules, for the fair and expeditious management of the case and to do justice to the parties, I allow the Secretary-General of IMO a period of 30 days, following receipt by him of this Order, to file and serve his Answer to those parts of Mr. Sheffer's Answer of 11 October 2021 dealing with questions of costs.

IT IS HEREBY ORDERED that the IMO Secretary-General's motion is **DENIED**, but that **he may have the period of 30 days following receipt of this Order to file and serve his Answer to those parts of Mr. Sheffer's Answer dated 11 October 2021 dealing with questions of costs.**

Original and Authoritative Version: English

Dated this 5th day of January 2022
in Auckland, New Zealand.

(Signed)
Judge Graeme Colgan,
President

Entered in the Register on this 5th day
of January 2022 in New York, United States.

(Signed)
Weicheng Lin, Registrar