



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2022-1675

Timothy Kennedy

(Applicant)

v.

Secretary-General of the United Nations

(Respondent)

ORDER No. 450 (2022)

1. On 29 October 2021, the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) issued Judgment No. 2021-UNAT-1184 in the case of *Timothy Kennedy v. Secretary-General of the United Nations*, in which the UNAT granted Mr. Kennedy's appeal in part, vacated the decision selecting the disciplinary sanctions and instructed the Administration to issue a new decision on disciplinary sanctions with adequate reasons.
2. In a letter dated 22 February 2022, the Assistant Secretary-General for Human Resources advised Mr. Kennedy of her decision to impose on him the disciplinary measures of a written censure with a loss of four steps in grade.
3. On 8 March 2022, Mr. Kennedy filed an application for revision of Judgment No. 2021-UNAT-1184. At the same time, he filed a motion for leave to adduce the new decision of 22 February 2022 into evidence as part of his application for revision.
4. On 28 March 2022, the Secretary-General filed his response, in which he requests that the Appeals Tribunal reject the motion, because the additional evidence relates to a new administrative decision, and not to a revision of the UNAT's Judgment in his case.
5. The Applicant's motion to admit new evidence as part (indeed the central part) of his application for revision of the UNAT's Judgment is misconceived.

6. Article 11(1) of the UNAT's Statute governs the motion. It provides:

Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

7. The UNAT dismissed Mr. Kennedy's appeal against the UNDT's decision that he had committed misconduct but set aside the decision of the United Nations Dispute Tribunal (UNDT) upholding the sanction(s) imposed for that misconduct. The UNAT remanded the matter of assessment of sanction for reconsideration (and provided considerable guidance for this task) and re-decision by the Respondent.

8. The document (and issue) that Mr. Kennedy now seeks to introduce is the Respondent's decision of the sanction it imposed recently on Mr. Kennedy for his misconduct. While, unsurprisingly, that document evidences a decision made after the UNAT's Judgment was delivered, the fact of the decision and its content (the Administration's decision) was not in existence when the UNAT's Judgment was issued. The Article 11(1) test is one that is based on the existence of a fact at, and before, that time, but, critically, the absence of knowledge or awareness of that fact by the parties or the Tribunal. The decision document sought to be admitted in the application for revision does not meet the first essential element of that test, that is, it was not in existence and so could not have been put before the UNAT before it issued its Judgment.

9. Nor is an application to the Tribunal to revise its Judgment the appropriate vehicle for Mr. Kennedy to challenge the Administration's recent decision. That should be by the process under which justiciable administrative decisions are challenged, namely, management review followed by an application to the UNDT if that does not resolve the dispute. Thereafter, there will remain rights of further appeal to the UNAT. Although this may appear to Mr. Kennedy to be cumbersome or unduly technical, there is very arguably no ability under the Statute to shortcut or leapfrog that process.

10. In the foregoing circumstances, Mr. Kennedy is invited (indeed recommended) to re-consider the viability of his application for revision of the UNAT's Judgment.

11. Accordingly, the Applicant's motion to admit new evidence must be, and is, denied.

IT IS HEREBY ORDERED that Mr. Kennedy's motion for additional evidence is **DENIED**.

Original and Authoritative Version: English

Dated this 29th day of March 2022
in Auckland, New Zealand.

(Signed)
Judge Graeme Colgan,
President

Entered in the Register on this 29th day
of March 2022 in New York, United States.

(Signed)
Weicheng Lin,
Registrar