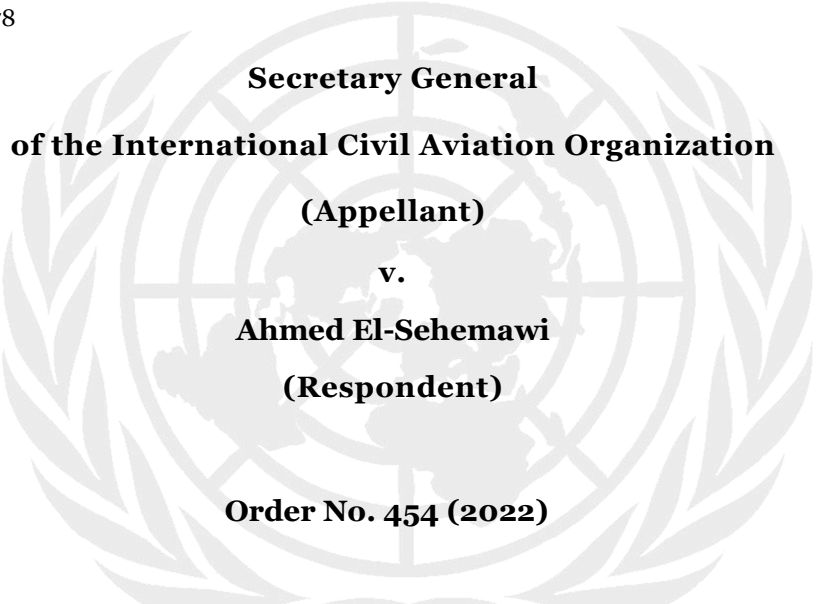




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2022-1678



Secretary General
of the International Civil Aviation Organization
(Appellant)
v.
Ahmed El-Sehemawi
(Respondent)
Order No. 454 (2022)

1. On 1 March 2022, the Appeals Board (the Board) of the International Civil Aviation Organization (ICAO) issued Order No. 4 (2022) in the case of *Ahmed El-Sehemawi against the Secretary General of the International Civil Aviation Organization (ICAO)*, whereby the Board made certain case management orders including the scheduling of a hearing and the attendance of certain witnesses (the Order). In 2019, and prior to its restructuring as a neutral first instance process as required by the Appeals Tribunal in its remand to the Board,¹ the Board found it was not competent to deal with Mr. El-Sehemawi's appeal as he had not identified an appealable administrative decision. On 18 March 2022, the Secretary General of ICAO filed an appeal of the above Order with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

2. On 4 April 2022, the Secretary General of ICAO filed a motion for a waiver of the page limit of the appeal brief of an interlocutory order because this is the first appeal directed against a decision of the new Board. Consequently, a significantly more extensive explanation of the factual and procedural history of the case than would be otherwise necessary of an appeal of an interlocutory order is warranted. The current appeal is not an ordinary "receivability" case as it involves issues concerning never before adjudicated

¹ *Ahmed El Sehemawi v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2020-UNAT-1034.

ICAO rules relative to the conduct of appeals by its newly reformed first instance process, the determination of which will significantly impact the rights and interests of the Organization. The Secretary General of ICAO seeks an increase of the page limit to 15 pages, enclosing a copy of the 15-page appeal brief as an annex.

3. On 13 April 2022, Mr. Ahmed El-Sehemawi (the Respondent) filed his objection to the motion. He says that waiving the page limit will only multiply and further entangle the appeal. In addition, in the appeal, the Secretary General of ICAO is seeking to reverse “the decision of the ICAO Appeals Board and granting a Summary Decision in favour of the ICAO Secretary General, dismissing the staff member’s appeal in its entirety for failure to identify an appealable administrative decision within the meaning of ICAO Staff Regulation 11.1”. But the Order did not address the issue of summary decision. The issue of the summary decision was the subject of another order issued on 14 January 2022 wherein the Board refused the Respondent’s request for a summary decision.

4. Article 8(2)(a) of the Appeals Tribunal’s Rules of Procedure provides that “(t)he brief that accompanies an appeal against an interlocutory order of the Dispute Tribunal shall not exceed five pages”. Article 14 provides that “the requirements of any article of the rules of procedure dealing with written proceedings” can be waived.

5. In addition to the parties’ submissions on the Motion, the Secretary General of ICAO includes in his Motion 22 annexes. I have reviewed the 15-page brief the Secretary General of ICAO seeks to file. This is triple the page limit required by Article 8(2)(a), with almost six pages consisting of factual and procedural history of the matter. In addition, the Order appealed is a case management order that only considered the scheduling of a hearing and the attendance of witnesses.

6. The Secretary General of ICAO is seeking a “summary decision” on the merits and a final judgment dismissing Mr. El-Sehemawi’s appeal. He also argues that the Board erred in refusing his request for a summary decision. However, the Board decision on the request for a summary decision is not the subject of the Order, but an earlier order dated 14 January 2022.

7. The time limit for appeal of the 14 January 2022 Order refusing a summary decision has passed. The ICAO Service Code provides that an appeal against a decision of the Board to the Appeals Tribunal is “under the conditions specified in the Statute of that Tribunal”. Article 7(1)(c) of the Appeals Tribunal Statute provides that the deadline for an appeal of an interlocutory order is “within 30 calendar days of the receipt of the interlocutory order”. Therefore, the Secretary General of ICAO is providing submissions and arguments on an order dismissing his request for a summary decision, and that has not been appealed. He is attempting to raise these arguments under the guise of appealing the Order, which is essentially a case management order.

8. Without getting into merits of the appeal itself, I decline the motion for an extensive waiver of the page limit given the Secretary General of ICAO’s 15-page brief covers background history and facts which could and should be expressed more succinctly and given the submissions in the brief may be beyond the scope of the appeal against the Order and more properly an appeal of the final judgment of the Board. Rather, the parties are encouraged to focus their submissions on the issues raised by the Order and its subsequent appeal by keeping within the required page limit.

IT IS HEREBY ORDERED that the motion for a waiver of the page limit is **DENIED**.

Original and Authoritative Version: English

Dated this 28th day of April 2022
in Vancouver, Canada.

(Signed)
Judge Kanwaldeep Sandhu,
Judge

Entered in the Register on this 28th day of
April 2022 in New York, United States.

(Signed)
Weicheng Lin
Registrar