



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2023-1814

Fernando Salon

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

Order No. 532 (2023)

1. The United Nations Dispute Tribunal (UNDT) issued Judgment No. UNDT/2023/029 on 18 May 2023 in the case of *Salon v. Secretary-General of the United Nations*, dismissing the application as not receivable.

2. On 14 June 2023, Mr. Fernando Salon (Appellant) filed an appeal of the Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal), which was registered as Case No. 2023-1814. On 14 August 2023, the Secretary-General (Respondent) filed the answer, submitting, *inter alia*, that Mr. Salon had included documents in the appeal which, in accordance with Article 2(5) of the UNAT Statute, were not properly before Tribunal.

3. On 17 August 2023, Mr. Salon filed a Motion for additional pleadings. He argues that there are exceptional circumstances, namely key evidence¹ which the Respondent attempts to ignore and disregard, and the Respondent's answer is directly oriented at depriving him of justice. Mr. Salon submits that the evidence proves that he requested management evaluation, making his application receivable. He requests the UNAT to accept all the information and the Annexes as included in his submissions made to the UNAT through the e-filing portal. He further requests, referring to Article 9(5) of the UNAT Statute, that the UNAT require the Management Evaluation Unit (MEU) of the

¹ No annexes are attached to the Motion; as additional evidence, Mr. Salon refers to Annexes 2, 4, 6, 7, 7a, 7b, 8, 9a, 9b, 10a, 10b, and 11 submitted with his appeal.

Department of Management Strategy, Policy and Compliance to respond to his request submitted on 27 June 2022.

4. On 28 August 2023, the Secretary-General filed his comments on the Motion, requesting that the Motion be dismissed. The Secretary-General submits that the arguments in Mr. Salon's Motion do not constitute exceptional circumstances and that he merely seeks to cure his failure to request admission of the additional evidence as required by Article 2(5) of the UNAT Statute (including his failure to submit his "request for management evaluation" of 27 June 2022, which was available to him when he filed his application). In addition, the Secretary-General argues that admission of the additional evidence would not be in the interest of justice and the efficient and expeditious resolution of the proceedings, they do not show that he requested management evaluation from the MEU and, thus, do not undermine the correctness of the Judgment in this regard.

5. Article 31(1) of the Appeals Tribunal's Rules of Procedure and Section II.A.3 of the Appeals Tribunal's Practice Direction No. 1 provide that a motion to file an additional pleading may be granted if there are "exceptional circumstances justifying the motion".

6. Article 2(5) of the Appeals Tribunal's Statute (Statute) reads: "In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings."

7. The Appeals Tribunal has consistently held that, where an additional pleading merely consists of supplementary arguments to those already submitted in an appeal or answer, there are no "exceptional circumstances' which would allow the admission of the additional argument".²

8. Mr. Salon is self-represented before the Appeals Tribunal and was similarly self-represented before the Dispute Tribunal. He states that he did not provide additional evidence as he was still waiting for a response to his complaint of June 2022, and he did not know that the issue was a lack of management evaluation. Given Mr. Salon's status as a self-represented litigant, I accept that his lack of knowledge of the legal issues and

² *Nastase v. Secretary-General of the United Nations*, UNAT Order No. 506 (2023), para. 7; *McCloskey v. Secretary-General of the United Nations*, UNAT Order No. 173 (2014), para. 6.

process is an exceptional circumstance and, as such, the additional evidence (Annexes 2, 4, 6, 7-11) should be properly admitted in the appeal to ensure the Appeals Tribunal has all of the evidence it requires to make a proper determination of the issues.

9. For these reasons, I grant the Motion. In order to ensure the Secretary General has sufficient opportunity to respond to the additional evidence, I allow the Secretary-General two weeks or 14 days from the date of this Order to provide submissions in response to the additional evidence and their relevance, if any, to the appeal.

IT IS HEREBY ORDERED that Mr. Salon's 17 August 2023 Motion for Additional Pleadings is **GRANTED**.

Original and Authoritative Version: English

Decision dated this 8th day of September 2023
in Vancouver, Canada.

(Signed)
Judge Kanwaldeep Sandhu,
President

Order published and entered in the Register on this
8th day of September 2023 in New York, United States.

(Signed)
Juliet Johnson,
Registrar