



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2022-1753

Flamur Kazazi

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

Order No. 533 (2023)

1. The United Nations Dispute Tribunal (UNDT) in Nairobi issued Judgment No. UNDT/2023/087 on 22 September 2022 in the case of *Kazazi v. Secretary-General of the United Nations* (the Judgment), dismissing Mr. Kazazi's application that challenged the Administration's decision to impose on him the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity.
2. On 20 November 2022, Mr. Kazazi filed an appeal of the Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal), which was registered as Case No. 2022-1753. On 23 January 2023, the Secretary-General filed his answer.
3. On 6 August 2023, Mr. Kazazi filed a Motion for additional pleadings before the Appeals Tribunal. Relying on the principle of equality of treatment that should be applied to all the staff members, Mr. Kazazi requests the Appeals Tribunal to "take judicial notice" of AAN,¹ in which the appellant was given a "lesser sanction" of separation from service, with compensation in lieu of notice, and with termination indemnity for sexual harassment and sexual assault. Mr. Kazazi submits that AAN was published on 31 July 2023 and that he was consequently unable to cite it in his appeal.

¹ *AAN v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1366.

4. Mr. Kazazi also refers to the Compendium of Disciplinary Measures cited by the Secretary-General before the UNDT and requests to be granted a termination indemnity consistent with the other cases.

5. On 17 August 2023, the Secretary-General filed his comments on the Motion, requesting that the Motion be dismissed. The Secretary-General contends that Mr. Kazazi failed to properly address the issue of proportionality of the disciplinary measure before the Appeals Tribunal and cannot use the Motion to expand the scope of his appeal or otherwise supplement it.

6. The Secretary-General also submits that Mr. Kazazi failed to demonstrate any exceptional circumstances justifying the introduction of additional pleadings and recalls that the issuance of a judgment by the Appeals Tribunal does not amount to an exceptional circumstance. On the contrary, the Secretary-General observes that in the Motion, Mr. Kazazi rather merely expresses his dissatisfaction with the Judgment and tries to supplement his appeal.

7. 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".

8. 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."

9. 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

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.

10. I find that Mr. Kazazi's submission regarding *AAH* constitutes an exceptional circumstance because the judgment in *AAN* was issued after the filing of his appeal and may be relevant to the present case.

11. However, with regard to Mr. Kazazi's reference to the Compendium of Disciplinary Measures, I find that it repeats the arguments previously submitted and, therefore, does not constitute an exceptional circumstance.

12. For the reasons set out above, Mr. Kazazi's Motion is granted but only to the extent that it concerns the admission of the additional pleadings in respect of *AAN*. Paragraphs 12-19 of Mr. Kazazi's Motion are not admissible.

13. I also grant the Secretary-General an opportunity to respond to the additional pleadings and arguments in respect of *AAN* and its application, if any, to the present appeal, which response must be filed within 14 days of the date of this Order.

IT IS HEREBY ORDERED that Mr. Kazazi's Motion for Additional Pleadings is **GRANTED IN PART**.

Original and Authoritative Version: English

Decision dated this 15th day of September 2023
in Vancouver, Canada.

(Signed)
Judge Kanwaldeep Sandhu,
President

Order published and entered in the Register on this
15th day of September 2023 in New York, United States.

(Signed)
Juliet Johnson,
Registrar