



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2023-1799

Ibrahim Bah

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

Order No. 534 (2023)

1. On 27 February 2023, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2023/011 (impugned Judgment) by which it dismissed Mr. Ibrahim Bah's application contesting the decision to recover the entire education grant advance for three of his dependent children for the 2020-2021 academic year (impugned decision). The UNDT determined that the applicable legal framework could not be construed as allowing for a staff member to receive the education grant while remaining in his or her home country for the whole duration of the school year; that although the Administration had provided incorrect information to Mr. Bah, he had not demonstrated that he reasonably and detrimentally relied on it; and that his decision to remain in the United States on a FWA was not the result of *force majeure*.

2. On 28 April 2023, Mr. Bah filed an appeal before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) against the impugned Judgment and on 14 July 2023, the Secretary-General filed his answer.

3. The UNAT is now seized of a motion filed by Mr. Bah on 18 September 2023, by which he seeks leave to file additional pleadings (Motion).

4. In the Motion, Mr. Bah submits that it was only after the completion of the academic year 2020-2021 that a policy was issued based on which his education grant recovery was retroactively imposed, and that his official residence for the purpose of his duty station remained Naqoura in South Lebanon. Mr. Bah further contends that the UNDT erred on a

matter of fact regarding the consequential damages he suffered. Mr. Bah further challenges the UNDT's interpretation of the legal framework on education grant when on FWA given its incoherence. Finally, Mr. Bah submits that the UNDT erred in finding that no *force majeure* applied to his case. Attached to Mr. Bah's Motion is an annex with copies of receipts for a car rental, dated 12 October 2020, 19 October 2020, 18 November 2020, and 18 December 2020.

5. On 26 September 2023, the Secretary-General filed his comments opposing the Motion. The Secretary-General submits that Mr. Bah has failed to demonstrate exceptional circumstances justifying the admission of additional pleadings. As to the annex attached to Mr. Bah's Motion, the Secretary-General submits that Mr. Bah has again failed to assert, let alone to demonstrate, any exceptional circumstances capable of justifying the UNAT's receipt of this evidence. He has also failed to explain the relevance of this evidence and why its admission would be in the interest of justice and the efficient and expeditious resolution of the proceedings. Moreover, Mr. Bah has not provided any explanation as to why he neglected to include this evidence in the proceedings before the UNDT. Accordingly, he submits Mr. Bah's Motion should be denied.

6. Pursuant to 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, a motion to file an additional pleading may be granted if there are "exceptional circumstances justifying the motion".

7. Article 2(5) of the Appeals Tribunal's 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."

8. 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".¹

¹ *Kazazi v. Secretary-General of the United Nations*, UNAT Order No. 533 (2023), para. 9; *McCloskey v. Secretary-General of the United Nations*, UNAT Order No. 173 (2014), para. 6.

9. I find there are no exceptional circumstances present in this case to justify receipt of the additional pleadings or submissions. The additional pleadings are in the nature of submissions in reply to the Secretary-General's answer or submissions that supplement Mr. Bah's existing arguments. He does not explain what are the exceptional circumstances or interests of justice that would justify the admission of the additional pleadings. It is unclear why Mr. Bah could not have provided these submissions and/or evidence in his appeal, particularly, as he is represented by counsel. Further, he provides evidence of rental car receipts and fails to explain their relevance.

10. Therefore, I find it is not in the interest of justice and of the efficient and expeditious resolution of the proceeding to grant the Motion.

11. For these reasons, the Motion is denied

IT IS HEREBY ORDERED that Mr. Bah's Motion is **DENIED**.

Original and Authoritative Version: English

Decision dated this 2nd day of October 2023
in Vancouver, Canada.

(Signed)
Judge Kanwaldeep Sandhu,
President

Order published and entered in the Register on this
2nd day of October 2023 in New York, United States.

(Signed)
Juliet Johnson,
Registrar