



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. 553 (2024)

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 the Appeals Tribunal.

3. On 17 August 2023, Mr. Salon filed a Motion for Additional Pleadings, requesting that the documents in question be admitted due to exceptional circumstances. By Order No. 532 (2023) dated 8 September 2023, the Appeals Tribunal granted the motion.

4. On 31 January 2024, Mr. Salon filed a second Motion for Additional Evidence (Second Motion). Mr. Salon requests that the UNAT admit three documents, i.e. the response by the Department of Management Strategy, Policy, and Compliance (DMSPC) to Mr. Salon's complaint, a letter to DMSPC by Mr. Salon in response, and a list, compiled by Mr. Salon, of documents presented before the UNDT. Mr. Salon requests that the Appeals Tribunal grant the Second Motion, accept his case as receivable and consider the three annexes submitted "for having the full picture of the merits and substance" of his

case. He further asks that the Appeals Tribunal judge the case on its merits, grant his request for relief set out in his application before the UNDT, and, in light of the response received from DMSPC on 23 January 2024, not consider his request for the UNAT to order a response from DMSPC.

5. On 7 February 2024, the Secretary-General filed his response to the Second Motion. He notes that Annex 3, which lists documents presented before the UNDT, was available at the time of the Judgment. Annexes 1 and 2, however, are dated January 2024 and were as such unknown to the Appellant at the time of the proceedings before the UNDT. However, the evidence in these two documents is irrelevant to the determination of his appeal as it is not related to the grounds for receivability of his application before the UNDT, namely the absence of a management evaluation request. The additional evidence fails to demonstrate any error of law or of fact, resulting in a manifestly unreasonable decision on the part of the UNDT, and it is not in the interest of justice and the efficient and expeditious resolution of the proceedings to admit the additional evidence. Should the UNAT admit the additional evidence, the Secretary-General requests an opportunity to comment on its contents.

6. The Appeals Tribunal may admit additional evidence, in terms of Article 2(5) of the UNAT Statute and Article 10(1) of the Appeals Tribunal Rules of Procedure where an applicant shows: i) exceptional circumstances; ii) it will be in the interest of justice and the efficient and expeditious resolution of the proceedings to receive the additional evidence; and, iii) the evidence was not known to either party and should have been presented at the UNDT level.

7. This motion has, necessarily, had to be dealt with less than two weeks before the session of the Appeals Tribunal at which Mr. Salon's substantive appeal is to be decided. The reasons given for the outcome will necessarily be economical but may be elaborated on in this Tribunal's substantive judgment.

8. The Tribunal will admit as evidence **the fact and date** of the Respondent's decision declining to address his allegations as requested by the Appellant on the grounds that this is relevant to his appeal; as having arisen in exceptional circumstances since the UNDT's Judgment; as having been unknown until now; and it being in the interests of justice and the efficient and expeditious resolution of the proceedings to receive this

additional evidence. But except as expressly admitted herein, the Appeals Tribunal declines to admit as evidence any further detail relating thereto as sought in the Appellant's motion.

9. While not determining or expressing any opinion on the justiciability of these issues, the Appeals Tribunal draws to the Appellant's attention as an unrepresented litigant that time-limited rights may now accrue to him to seek management evaluation (and potentially and subsequently to challenge an adverse management evaluation decision before the UNDT) of the Respondent's recent decision.

10. If the Appellant has any doubt about the nature and effect of these orders, he should promptly seek professional legal advice.

IT IS HEREBY ORDERED that Mr. Salon's 31 January 2024 Motion for Additional Evidence is allowed to the extent set out in paragraph 8 hereof but is otherwise dismissed.

Original and Authoritative Version: English

Decision dated this 1st day of March 2024
in Auckland, New Zealand.

(Signed)
Judge Graeme Colgan,
Presiding

Order published and entered in the Register on this
1st day of March 2024 in New York, United States.

(Signed)
Juliet E. Johnson,
Registrar