



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2023-1831

Al Waleed Abdelrahman Abdrabou

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

Order No. 561 (2024)

1. On 29 May 2023, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2023/037 (impugned Judgment) in the case of *Abdrabou v. Secretary-General of the United Nations*, in which it dismissed Mr. Al Waleed Abdelrahman Abdrabou's application contesting a disciplinary measure of separation from service, with compensation in lieu of notice and without termination indemnities, for having engaged in entitlement fraud by submitting forged documents for reimbursement for medical services that were not received.
2. On 25 July 2023, Mr. Abdrabou filed an appeal of the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal), to which the Secretary-General filed an answer on 27 September 2023.
3. On 27 April 2024, Mr. Abdrabou submitted a Motion for Additional Evidence (Motion). He requests leave to submit a "snapshot (in PDF format) of [his] appeal to the initial court of Al Baida Governorate, Republic of Yemen[,] to bring [his] son (...) to [his] custody from [the] mother's family".
4. Mr. Abdrabou submits that this evidence supports the fact, cited in his appeal, that he had sought to retrieve his son from the custody of the mother's family. He argues that the evidence is not new in nature. He states that it was lost at the time of submission of his application to the UNDT and the appeal to the UNAT and it was incidentally found only on 27 April 2024 in the archive of personal files of his brother who then sent the document to

him. He submits that the evidence is a snapshot (in PDF format on three pages) of the legal request he had submitted to the Yemeni civil court in 2018, when he had sought an urgent order from the court as his son should have been in his custody as per the Yemeni and Islamic Sharia laws.

5. On 13 May 2024, the Secretary-General filed his response, opposing the Motion.

6. The Secretary-General argues that admitting the letter into evidence would not be in the interest of justice and the efficient and expeditious resolution of the proceedings as it does not establish the facts in the present case. The Secretary-General submits that the letter which allegedly shows that he had requested custody of his son before a court in Yemen in 2018 is not material to having submitted a fraudulent claim for his son's expenses in 2019 and, furthermore, it does not even show that he had custody of his son in 2019.

7. The Secretary-General contends, furthermore, that the letter was known to Mr. Abdrabou at the time of the UNDT's proceedings. The Secretary-General submits that the document shows that the facts were known to him as he had allegedly written the letter himself and his argument that he had lost it and, after having filed the appeal, found it is insufficient to show that he could only submit it at this stage.

8. As to the legal framework governing the receipt of additional evidence, 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. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

9. Further, Article 10(1) of the UNAT Rules of Procedure (Rules) specifies:

A party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal

determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a party. (...)

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

11. I find that, in the present case, the criteria for admitting additional evidence are not met.

12. Mr. Abdrabou has not shown that a finding that he had sought to retrieve his son from the custody of the mother's family in 2018 could assist in establishing the relevant facts in the case. He has not demonstrated that any relevant fact is likely to be established with that evidence and that it would be in the interest of justice and the efficient and expeditious resolution of the proceedings to receive the additional evidence.

13. Moreover, I find that the evidence was known to Mr. Abdrabou at the time of the UNDT's proceedings and should have been presented at the Dispute Tribunal level. Whether the evidence sought to be admitted by the UNAT is the snapshot of paper documents, as construed by Mr. Abdrabou, or the submission itself that was allegedly filed with the Yemeni court, the substance of the information sought to be presented is materially the same and the same standard is to be applied in respect of both its forms. As such, the evidence did not become known to him when his brother allegedly sent him the snapshot in April 2024 but, instead, when he filed the submission with the court. There is nothing in the Motion to suggest that he could not have obtained a copy of his submission from the court or judicial archives or that any other reason existed why a copy justifiably could not have been presented at the Dispute Tribunal level.

14. For these reasons, the Motion is denied.

¹ *Surendra Bista v. Secretary-General of the United Nations*, UNAT Order No. 552 (2024), para. 10.

IT IS HEREBY ORDERED that Mr. Abdrabou's 27 April 2024 Motion for Additional Evidence is **DENIED**.

Original and Authoritative Version: English

Decision dated this 21st day of May 2024
in Buea, Cameroon.

(Signed)
Judge Leslie F. Forbang,
Presiding

Order published and entered in the Register on this
21st day of May 2024 in New York, United States.

(Signed)
Juliet E. Johnson,
Registrar