



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2024-1915

Ivan Aguilar Valle

(Respondent)

v.

Secretary-General of the United Nations

(Appellant)

ORDER No. 568 (2024)

1. On 26 February 2024, the United Nations Dispute Tribunal in New York (UNDT/NY) rendered a “Judgment on Liability”, Judgment No. UNDT/2024/007, in Case No. UNDT/NY/2022/033, *Aguilar Valle v. Secretary-General of the United Nations*.
2. On 26 April 2024, the Secretary-General filed an appeal of the Judgment on Liability. The appeal was registered as Case No. 2024-1915 with the United Nations Appeals Tribunal (UNAT).
3. On 10 May 2024, the UNDT/NY issued its “Judgment on Relief”, Judgment No. UNDT/2024/032, in Case No. UNDT/NY/2022/033, *Aguilar Valle v. Secretary-General of the United Nations*.
4. On 17 May 2024, Mr. Aguilar Valle filed his answer to the appeal in Case No. 2024-1915.
5. On 28 June 2024, the Secretary-General filed a “Motion for withdrawal of Appeal of UNDT Judgment on Liability and Submit Revised Appeal” (Motion). The basis for the Secretary-General’s withdrawal of the appeal in Case No. 2024-1915 was a “Comment” from the Appeals Tribunal in Judgment No. 2024-UNAT-1430, *Mauricio Eliecer Heurtematte v. Secretary-General of the United Nations*, rendered on 2 May 2024.

6. In that comment, the UNAT observed:¹

The Secretary-General filed an appeal against the UNDT’s preliminary Judgment on Liability and then a second appeal against its Judgment on Remedies. This was not only unnecessarily repetitive but also wasteful of the Appeals Tribunal’s resources. As established case law confirms, appeals should be filed when the UNDT has issued its final substantive judgment which, in this case, was its Judgment on Remedies. The Secretary-General’s right to contest the preliminary Judgment on Liability was preserved without the need to file a separate challenge to that Judgment. While we do not dismiss the Secretary-General’s appeal against that earlier Judgment on this ground, we encourage parties in this situation to follow the process we have outlined above.

7. Based on the foregoing comment, the Secretary-General submitted that “when there is a UNDT judgment on liability and a separate UNDT judgment on remedies, a moving party may only file one appeal and that such appeal must be filed against the final substantive judgment which the UNAT has now clarified is the judgment on the remedies”.²

8. Given that the UNDT/NY issued the Judgment on Remedies after the Secretary-General had appealed the Judgment on Liability, and in light of the comment in *Heurtematte*, the Secretary-General proposes to withdraw his appeal of the Judgment on Liability (Case No. 2024-1915) and to submit a “Revised Appeal” that would address both the Judgment on Liability and Judgment on Remedies “as well as to include two additional legal arguments”.³

9. On 9 July 2024, Mr. Aguilar Valle submitted his comments opposing the Motion (Comments). He argues that the UNAT’s comment in *Heurtematte* was based on “longstanding jurisprudence” and as such was known to the Secretary-General.

10. Mr. Aguilar Valle also points out that the *Heurtematte* Judgment was issued on 2 May 2024, yet the Secretary-General waited until 28 June 2024 to file the Motion, which was after Mr. Aguilar filed his answer in Case No. 2024-1915. He argues that if the UNAT grants the Motion that he will be prejudiced because when the Secretary-General files his

¹ *Mauricio Eliecer Heurtematte*, Judgment No. 2024-UNAT-1430, para. 69.

² Secretary-General’s Motion, para. 8 (emphasis in original).

³ *Ibid.*, para. 11.

proposed “Revised Appeal” the Secretary-General could “re-cast his appeal in light of [Mr. Aguilar Valle’s] submission” under Case No. 2024-1915.⁴

11. Mr. Aguilar Valle further argues that if the Secretary-General separately appeals the Judgment on Relief that the UNAT should award costs in the amount of USD 10,000 for having abused the appeals process and causing additional legal services and submissions, as well as wasted the resources of the Appeals Tribunal.

12. Simultaneously on 9 July 2024, the Secretary-General filed an appeal of the Judgment on Relief, in order to meet the 60-day deadline under Article 7(1)(c) of the Appeals Tribunal Statute (UNAT Statute). Nonetheless, the Secretary-General maintains that if the Appeals Tribunal grants the Motion, the Secretary-General is prepared to file a “Revised Appeal” immediately upon notification of the UNAT decision.

13. Pursuant to Article 18bis of the Appeals Tribunal Rules of Procedure, the President may remove an appeal from the register of the Appeals Tribunal upon notification by the appellant that he or she wishes to “discontinue the proceedings”.

14. The Appeals Tribunal has routinely granted motions to withdraw appeals when the non-moving party expresses no objection, on the grounds that there is “no reason to require a party to pursue an appeal that he or she no longer deems necessary in the context of his or her case”.⁵

15. The present Motion is distinguishable from the typical motion for withdrawal of an appeal in two key respects. First, the non-moving party, Mr. Aguilar Valle, *does object* to the withdrawal, and has identified potential prejudice to him, namely that the Secretary-General’s proposal to file a “Revised Appeal” would enable the Secretary-General to address arguments that Mr. Aguilar Valle has included in his already-filed answer in Case No. 2024-1915. This is not an unreasonable concern by Respondent, given that the Secretary-General proposes to include “additional legal arguments” in his “Revised Appeal”.

⁴ Respondent’s Comments on Motion, para. 5.

⁵ *Wilson v. Secretary-General of the United Nations*, UNAT Order No. 354 (2019), para. 8 (internal brackets omitted).

16. Second, this is not a situation where the Secretary-General no longer deems it necessary to pursue an appeal of the Judgment on Liability. Rather, the Secretary-General's Motion is *conditional* on the Appeals Tribunal granting the Secretary-General's concomitant request to file a "Revised Appeal" on both the Judgment on Liability and the Judgment on Remedies.

17. The Appeals Tribunal agrees with the Respondent that the remarks in *Heurtematte* were not new and are an insufficient basis on which to request the filing of a "Revised Appeal". The Appeals Tribunal has often expressed its view that as a best practice and for judicial efficiency, appeals on the merits and relief should be considered together.⁶ Of course, this would be best achieved if the UNDT or the first instance tribunal issued a single judgment addressing both merits and remedies.

18. However, when the UNDT has issued separate judgments on liability and relief, we appreciate a party's concern for preserving rights to appeal a judgment and adherence to the time-limits set forth in Article 7(1)(c) in the UNAT Statute, when neither the UNDT Statute nor the UNAT Statute expressly distinguishes between different types of judgments. Accordingly, we reject the Respondent's request for an award of costs against the Secretary-General for filing an appeal of the Judgment on Remedies, although he may raise this argument in his answer to that appeal if he wishes.

19. The Appeals Tribunal denies the request of the Secretary-General to file the proposed "Revised Appeal". Given that the Secretary-General's request to withdraw the appeal in Case No. 2024-1915 was conditional on the UNAT's acceptance of the Revised Appeal, the Appeals Tribunal considers the motion to withdraw the appeal in Case No. 2024-1915 to be moot.

20. The Secretary-General's appeal of the Judgment on Remedies will be processed as a separate appeal, although it may be consolidated with Case No. 2024-1915 in the future.

21. **IT IS HEREBY ORDERED** that the Motion for filing a Revised Appeal is **DENIED** and accordingly, the Motion to withdraw the appeal in Case No. 2024-1915 is **MOOT**.

⁶ See, e.g., *Kasyanov v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-076, para. 24 (holding that when a party appeals a judgment on compensation, he can also appeal the earlier judgment on the merits).

Original and Authoritative Version: English

Decision dated this 15th day of July 2024
in Beijing, China

(Signed)
Judge Gao Xiaoli,
President

Entered in the Register on this 15th day
of July 2024 in New York, United States.

(Signed)
Juliet E. Johnson,
Registrar