



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2023-1878

AAZ¹

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

Order No. 583 (2024)

1. On 9 October 2023, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/2023/112 (impugned Judgment) in the case of *Applicant v. Secretary-General of the United Nations*, in which it dismissed AAZ's claims challenging the administrative decision not to select him for the fixed-term position of Senior Human Rights Officer and Coordinator of the International Fact-Finding Mission (FFM) on Venezuela (P-5) based in Panama City, Panama, Secretariat of the Office of the High Commissioner for Human Rights (OHCHR) (the Post).²
2. On 6 December 2023, AAZ filed an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT), to which the Secretary-General filed an answer on 5 February 2024.
3. On 25 September 2024, AAZ filed a "Motion (...) requesting the submission of a confidential witness statement". AAZ requests leave to submit a confidential witness statement not more than one page in length.
4. AAZ submits that such statement is key in attesting that senior decision makers at OHCHR denied him the position the interview panel had recommended him for due to false

¹ This unique three-letter substitute for the party's name is used to respect the anonymity of the Appellant in this Order and bears no resemblance to the party's real name or other identifying characteristics.

² Anonymity was granted in the impugned Judgment, para. 30.

allegations of misconduct. He argues that he did not present this witness to the UNDT because the witness was unavailable at the time, and that the witness is now available. He contends that the witness, being a current OHCHR staff member, remains extremely afraid of reprisals should his or her name be revealed during these proceedings. AAZ submits that the witness can only provide evidence before the UNAT through a written statement filed *ex parte* and that he is prepared to make available to the Secretary-General a redacted version of the statement in which details that make the witness identifiable are appropriately omitted.

5. On 2 October 2024, the Secretary-General filed a response to the Motion.

6. The Secretary-General submits that the Appeals Tribunal has already rejected a request to hear the testimony of this witness *in camera* and that a request by the same witness to submit a witness statement *ex parte* should also be rejected.³ The Secretary-General contends that the Appeals Tribunal may receive new evidence only in exceptional circumstances, which is not the case when the evidence could have been submitted before the UNDT.

7. The Secretary-General further submits that AAZ has neither shown that the witness was not available during the UNDT proceedings nor demonstrated the relevance of the witness statement on appeal. The Secretary-General also objects to the submission of the statement *ex parte* or in such a way that the witness's identity cannot be confirmed.

8. I agree with the Secretary-General that the written witness statement AAZ seeks to tender constitutes new and additional evidence on appeal. The legal framework for the admissibility of additional evidence (including written testimony) on appeal is set out in Article 2(5) of the UNAT Statute, which provides:

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.

³ In Order No. 582 (2024), the Appeals Tribunal denied AAZ's motion of 19 September 2024 requesting the hearing of a key witness *in camera*.

9. Therefore, Article 2(5) of the UNAT Statute sets out three prerequisites a party must establish for the admission of additional evidence on appeal, namely: (1) exceptional circumstances; (2) that it will be in the interest of justice and the efficient and expeditious resolution of the proceedings to receive the additional evidence; and (3) that the evidence was unknown to either party and could not have been presented at the level of the Dispute Tribunal.⁴ The Appeals Tribunal has consistently held that “we will not admit evidence which was known to the party and could have, with due diligence, been presented to the UNDT. The UNDT is not a dress rehearsal.”⁵

10. In the instant Motion, AAZ argues that a previously unavailable witness before the UNDT is now available at the appeal stage and that in order to examine the case fully, the Appeals Tribunal should examine the witness statement.

11. It is clear from the record that AAZ did not present the witness before the UNDT “for two overlapping reasons”, namely: (1) he was able to argue that based on the Selection Memorandum, OHCHR had misrepresented his performance to the High Commissioner and had shortlisted and selected an ineligible candidate, and (2) the witness was (and remains) afraid of suffering reprisals within OHCHR.⁶ AAZ further submits that either one of these considerations would have been sufficient to set aside the non-selection decision, had the UNDT given proper consideration to any one of them, and that his case before the UNDT was strong enough without risking exposing this witness.⁷

12. It is apparent from the above that AAZ knew of the evidence of the witness at the level of the Dispute Tribunal but, as he notes in his Motion and appeal brief, he relied on other grounds which he believed were sufficient to substantiate his claims without risking exposing the witness. AAZ’s knowledge of the witness’s evidence at first instance and his failure to submit the witness’s written statement before the Dispute Tribunal renders his request to submit additional evidence on appeal inadmissible. AAZ’s request has not met the conditions for the admissibility of additional evidence on appeal under Article 2(5) of the UNAT Statute. Therefore, his request must be denied.

⁴ *Al Waleed Abdelrahman Abdrabou v. Secretary-General of the United Nations*, Order No. 561 (2024), para. 10 (internal citation omitted).

⁵ *Kalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-580, para. 51 (internal citations omitted).

⁶ Appeal brief, para. 66.

⁷ *Ibid.*

13. For the forgoing reasons, the Motion is denied.

IT IS HEREBY ORDERED that AAZ's Motion dated 25 September 2024 requesting leave to submit a confidential witness statement is **DENIED**.

Original and Authoritative Version: English

Decision dated this 17th day of October 2024
in Buea, Cameroon.

(Signed)
Judge Leslie F. Forbang,
Presiding

Order published and entered in the Register on this
17th day of October 2024 in New York, United States.

(Signed)
Juliet E. Johnson,
Registrar