



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/
037/JAB/2009/078
Judgment No.: UNDT/2010/015/Add.1
Date: 26 February 2010
Original: English

Before: Judge Adams
Registry: New York
Registrar: Hafida Lahiouel

WARREN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ADDENDUM TO JUDGMENT

Counsel for applicant:
Self-represented

Counsel for respondent:
Kong Leong Toh, UNOPS

Introduction

1. On 22 February 2010 the respondent filed an application pursuant to art 12 of the Statute concerning my judgment of 27 January 2010. The respondent does not state whether he requests a revision, a correction or an interpretation of the judgment, for which reason this order covers all.

2. The respondent submits that the Tribunal's judgment was not complete since it did not refer to a submission contained in par 51 and 52 of his Reply of 3 December to the Joint Appeals Board (JAB) in which he had referred to an "S" fare that was lower in price than the "W" fare the respondent earlier used to calculate the amount paid to the applicant and, hence, had to be preferred over the "W" fare. The respondent contends that he had "also briefly referred to this argument in paragraph 9 of the Respondent's submission to the UNDT dated 5 November 2010" in which the respondent stated –

...As the Respondent had submitted in more detail in Respondent's reply dated 3 December 2008, a full and consistent application of said resolution would require that the application be dismissed (see especially paragraphs 51ff thereof)...

Consideration

3. As stated to the parties at the outset of the proceedings, I would only consider facts and submissions that the parties presented before me. Merely that some matter has been raised before the JAB does not mean that it forms part of the case record of this Tribunal. A mere reference to a paragraph in a submission filed with the JAB, such as that made in the respondent's submission of 5 November 2009, does not import this submission into the case before the Tribunal. This is particularly so when I gave a specific direction requiring the parties to provide written submissions directly dealing with the documents tendered by the applicant (at that time marked exhibit A). These are the documents which are discussed in the judgment and deal with the range of economy class fares.

4. The submission of the respondent to the JAB did not deal with this evidence in a factually useful way at all events. The submission of the respondent to the Tribunal comprised of 15 pages, including 46 paragraphs, in which the respondent's case was discussed in detail. The references in par 9 (which is set out above) was included in a section with the heading –

“GROUNDS FOR DISMISSING THE APPLICATION BASED ON THE ADDITIONAL DOCUMENTS FILED BY THE APPLICANT”

under a subsection named –

“FULL ECONOMY ACTUALLY MEANS ‘UNRESTRICTED ECONOMY’, AND ONCE THIS IS UNDERSTOOD, IT CAN BE SEEN THAT THERE IS ACTUALLY AN AIRFARE THAT MEETS THIS DESCRIPTION (HJESW, WITH A PRICE THAT IS LOWER THAN THAT FOR THE AIRFARE ACTUALLY USED BY THE RESPONDENT (CHF2,970, COMPARED TO WFFEUR’s CHF3,836))

Neither par 9 nor any of the discussions under these headings included a contention that an ‘S’ fare should be lower in price than the ‘W’ fare applied by the respondent. As it happened, I noted the reference to the S fare in my judgment but since the evidence relied on by the respondent, such as it was, plainly related to a restricted and not a *full* fare it was unnecessary to deal explicitly with what was at all events an inadequate submission.

1. There is another relevant feature of this case to be noted. The submission of the respondent to the JAB was replete with offensive and belligerent language in addition to being long, unstructured and confusing. At the outset I informed counsel for the respondent that such a submission should never have been made and, had it been produced in the Tribunal, I would have directed its withdrawal. As it was not before the Tribunal, there was no basis for such a direction but I directed counsel who had jointly signed the submission to apologize in writing to the applicant. In light of this it was not appropriate for counsel to refer to part of this submission, though not, of itself, offensive. Nevertheless, it should be pointed out that the passage referred to did not, at all events, provide an evidentiary basis for the respondent's contention.

On the contrary, the respondent made reference to an air fare code “SJSSSW2” with the price CHF2,026 without further substantiating why this code should be regarded as a relevant *full* economy class fare or providing any credible documentation for the price. The “S” reference in the International Air Transport Resolution (IATA) resolution 728 simply indicates that this is an economy/coach class that potentially could be a *full* economy class fare. But the respondent failed to produce any evidence as to what the remaining “...JSSSW2” meant. Reference to IATA Resolution 728 does not assist. Most likely it indicates limitations to the fare – for which reason it would no longer be *full* – but it was not for me to speculate about this. Nor should the respondent have invited me to do so.

(Signed)

Judge Michael Adams

Dated this 26th day of February 2010

Entered in the Register on this 26th day of February 2010

(Signed)

Hafida Lahiouel, Registrar, New York