



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-157



Before: Judge Inés Weinberg de Roca, Presiding
Judge Mark P. Painter
Judge Jean Courtial

Judgment No.: 2011-UNAT-154

Date: 8 July 2011

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Wambui Mwangi

JUDGE INÉS WEINBERG DE ROCA, Presiding.

Synopsis

1. The Secretary-General's decision to restrict Winston Sims' (Sims) access to the premises of the United Nations Office at Vienna (UNOV) did not infringe his terms of appointment as a former staff member or the rights recognized to retired staff members.

Facts and Procedure

2. Sims joined the Organization in 1973 and served at United Nations duty stations in both Vienna and New York until his early retirement in December 1995. At the time of his retirement, Sims was serving at Headquarters in New York. After his retirement, Sims volunteered as a retiree member of the Vienna Panel of Counsel (Vienna POC).

3. On 17 March 2004, the Director, Division of Management, UNOV, wrote to the Under-Secretary-General (USG) for Management informing her that Sims had violated the Guiding Principles of Conduct of Counsel in the United Nations (Guiding Principles of Conduct). This was followed by a complaint lodged on 29 April 2004 with the Coordinator of the Vienna POC by the Presiding Officer of the Joint Appeals Board (JAB) in Vienna, who raised concerns related to Sims' conduct and competence before the Vienna JAB.

4. On 1 November 2004, Sims' access to the UNOV premises was restricted to entry for pre-arranged appointments if accompanied by the staff member with whom he had the appointment. On 4 November 2004, Sims sought the reasons for this decision. On 20 December 2004, the Director, Division of Management, UNOV, confirmed the decision taken on 1 November 2004.

5. On 28 January 2005, Sims sought administrative review of the decision restricting his access to the UNOV premises, which he alleged interfered with his service on the Vienna POC. On 24 April 2005, Sims filed an appeal with the Vienna JAB. On 23 March 2006, Sims requested that his appeal be heard by the New York JAB, but was informed that, in accordance with the Rules of Procedure and Guidelines of the JAB at Headquarters and the United Nations Staff Regulations and Rules, his submission was not valid and the New York JAB was not competent to advise the Secretary-General on

his claim. On 27 June 2006, the Vienna JAB, in its report to the Secretary-General, concluded that it was not competent *ratione loci* to consider Sims' appeal.

6. On 22 November 2006, the Acting USG for Management informed Sims that the Secretary-General had rejected his appeal on the grounds that at the time of the impugned decision he was not a staff member, and that his appeal did not relate to the non-observance of his terms of appointment as a staff member, but to his relationship as a retiree with UNOV. On 18 January 2007, the USG for Management indicated to Sims that the latter was only entitled to enter the UNOV premises if he had an appointment with a staff member.

7. Sims' application with the former Administrative Tribunal was not considered before its abolition on 31 December 2009. It was subsequently transferred to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 1 January 2010.

8. In Judgment No. UNDT/2010/077 dated 30 April 2010, the Dispute Tribunal noted that the relevant Staff Regulations and Rules provide that staff members may challenge administrative decisions related to their contracts of employment or terms of appointment. The Dispute Tribunal found that the contested decision did not infringe Sims' rights either as a former staff member or a retired staff member since administrative instruction ST/AI/333 ("Personal Identification Cards – Headquarters") did not apply to the UNOV premises. Moreover, the Dispute Tribunal found that a retiree who volunteered as counsel to staff members did not have a contractual relationship with the United Nations. Accordingly, Sims had no entitlement by reason of his membership on the Vienna POC to challenge the decisions of the Secretary-General before the former Administrative Tribunal or the Dispute Tribunal.

9. On 1 November 2010, Sims filed an appeal of the UNDT Judgment. On 14 January 2011, the Secretary-General filed an answer.

Submissions

Sims' Appeal

10. Sims submits that the Dispute Tribunal failed to exercise its jurisdiction, exceeded its competence and made errors of fact and law. In particular, Sims requests the

United Nations Appeals Tribunal (Appeals Tribunal) to (a) order the Secretary-General to produce certain documents; (b) rescind the decisions of the Secretary-General; (c) refer the case to the Secretary-General for possible action to enforce accountability pursuant to Article 9(5) of the Statute of the Appeals Tribunal; and (d) find that the restriction of access to the UNOV premises breached United Nations policies, denied him due process and that the Administration's failure to provide reasons for the restriction breached several United Nations administrative instructions.

Secretary-General's Answer

11. The Secretary-General submits that the Dispute Tribunal correctly concluded that the contested decision did not infringe Sims' terms of appointment as a former staff member or the rights recognized to retired staff members, and that the appeal is therefore not receivable.

12. The Secretary-General also submits that Sims has not identified any errors made by the Dispute Tribunal that would require a reversal of its decision to reject Sims' application.

Considerations

13. Article 2 of the UNDT Statute reads:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

(b) To appeal an administrative decision imposing a disciplinary measure;

(c) To enforce the implementation of an agreement reached through mediation pursuant to article 8, paragraph 2, of the present statute.

2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management evaluation,

where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. The decision of the Dispute Tribunal on such an application shall not be subject to appeal.

3. The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association.

4. The Dispute Tribunal shall be competent to permit an individual who is entitled to appeal the same administrative decision under paragraph 1 (a) of the present article to intervene in a matter brought by another staff member under the same paragraph.

5. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Dispute Tribunal, consonant with the present statute. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Dispute Tribunal and be responsible for the payment of any compensation awarded by the Dispute Tribunal in respect of its own staff members and shall include, *inter alia*, provisions concerning its participation in the administrative arrangements for the functioning of the Dispute Tribunal and concerning its sharing of the expenses of the Dispute Tribunal. Such special agreement shall also contain other provisions required for the Dispute Tribunal to carry out its functions *vis-à-vis* the agency, organization or entity.

...

7. As a transitional measure, the Dispute Tribunal shall be competent to hear and pass judgement on:

(a) A case transferred to it from a joint appeals board or a joint disciplinary committee established by the United Nations, or from another similar body established by a separately administered fund or programme;

(b) A case transferred to it from the United Nations Administrative Tribunal; as decided by the General Assembly.

14. The UNDT did not err when it decided that the present appeal by a former staff member to have access to the UNOV premises was not among the listed grounds of jurisdiction of the Dispute Tribunal and was therefore not receivable.

Judgment

15. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Painter

(Signed)

Judge Courtial

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar