

UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES N



JUDGE INÉS WEINBERG DE ROCA, PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Ventsislav Stoykov against Judgment No. UNDT/2013/070, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 23 April 2013, in the case of *Stoykov v. Secretary-General of the United Nations*. Mr. Stoykov submitted his appeal on 24 June 2013, and the Secretary-General filed his answer on 26 August 2013.

Facts and Procedure

2. The UNDT made the following findings of fact, which are not contested as to veracity by the parties, although the Appellant argues they are “wholly inadequate” to his case:¹

... The Applicant is a former staff member of the United Nations Economic Commission for Africa (ECA), who occupied the post of Chief of the Facilities Management Section in the Division of Administration. He filed a claim with the [Dispute] Tribunal contesting the decision of the Respondent to summarily dismiss him on the ground of misconduct and is praying that he be reinstated in his post.

Background facts

... The Applicant entered the service of the United Nations in February 1995 as Officer-in-Charge (OIC) of ECA's Building Management Unit at the P4 level. In June 2004 he was promoted to Chief of the Facilities Management Section at the P5 level.

... In August 2001 the Applicant's wife established a company called BG Trading. The company remained in her name until her death in July 2004 when the Applicant, along with his two children, inherited a 95% share in the company.

... The Applicant's brother, Mitko Stoykov, was the owner of a company called Rila Constructions. The Applicant sent a number of emails on behalf of both BG Trading and Rila Constructions from his United Nations email account ... mainly during 2002.

... In December 2004 the Applicant conducted a bidding exercise for his private residence. He obtained fccupion7oDa exfers.49u 4ln ededC0D .4-2(ed)5.nt employ6(d a)6.9(compan)

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investigators' questions; and was not advised that he could have the assistance of a current or former staff member or the representation of counsel.

5. Nonetheless, it determined that such flaws had been rectified by the proceedings before the Dispute Tribunal itself:

... No doubt that the Applicant was denied some of his due process rights at the investigation stage. The question that needs to be addressed is whether these basic flaws notwithstanding the decision of the Respondent, which is based on the findings of the investigators, can still be upheld.

... The Applicant appealed the decision of the Respondent. He was given a full opportunity and latitude of presenting his case before the [Dispute] Tribunal and of confronting the same witnesses who had given evidence before the investigators. He himself testified and was cross examined. The evidence that transpired during the trial did not materially depart from what the investigators found. In addition to the incriminating answers given by the Applicant there was independent evidence in the form of testimony of witnesses and documents that substantiated the charges against him. Had this not been the case and had the incriminating answers given by the Applicant at the investigation stood alone the [Dispute] Tribunal would not have accepted any decision based on incriminating answers and would have held that there was no evidence to substantiate the charges.

... Based on the circumstances of this case the [Dispute] Tribunal finds therefore that the breach of the Applicant's due process rights was cured by the subsequent court proceedings.²

6. The Dispute Tribunal was also concerned with the burden of proof utilized by the Respondent, which did not meet the standard established by the Appeals Tribunal in *Molari*,³ when the Administration based its dismissal decision on the standard of a balance of probabilities, and not that of clear and convincing evidence.

7. Ultimately, however, the Dispute Tribunal concluded:

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Rila Construction without obtaining the appropriate authorisation from the Secretary-General.⁴

Submissions

Mr. Stoykov's Appeal

8. Mr. Stoykov submits that he did not receive a fair trial before the UNDT: the Judgment was seriously delayed; it makes no mention of the majority of his witnesses and evidence; and it mis-states the evidence of one witness. Moreover, he was denied access to the full case record of the UNDT. As the Judgment states general conclusions without

12. He requests that the Appeals Tribunal reverse the Judgment of the UNDT and remand the case to be heard, on an expedited basis, by a different Judge of the Dispute Tribunal. In the alternative, he seeks the relief he considers the UNDT ought to have granted, namely rescission of the impugned decision and reinstatement (or compensation in lieu thereof in the amount of two years' net base salary), as well as three months' net base salary for moral damages.

The Secretary-General's Answer

13. The Secretary-General argues that Mr. Stoykov has shown no reversible error in his appeal.

14. With respect to the facts of the case, he submits that the UNDT was correct in finding that Mr. Stoykov engaged in unauthorised outside activities, in view of his admitted association with BG Trading and Rila Construction. The fact that he inherited and wound down BG Trading did not extinguish the fact that he had been actively associated with both companies, and had used United Nations resources on their behalf by sending e-mails. Moreover, although he subsequently disclosed his participation, he did not do so in a timely manner or obtain the necessary authorisation from the Secretary-General.

15. The Secretary-General further submits the UNDT correctly found Mr. Stoykov's actions with respect to the construction of his house amounted to misconduct and justified the termination of his employment. By contracting with, and receiving favourable terms from, United Nations vendors, he was in clear conflict of interest and acted "utterly unethical[ly]".

16. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety.

Considerations

17. Mr. Stoykov appeals the Judgment and requests a new trial by a different Judge because there are no transcripts available for the evidence of seven witnesses who testified by telephone on 24 March 2011.

18. He also submits that he was unable to confirm the remaining contents of the court file.

19. On 31 May 2013, Mr. Hastie of the Office of Staff Legal Assistance (OSLA), Counsel for Mr. Stoykov, requested from the UNDT the case file for the purpose of a possible appeal. He added that the full case file, including the parties' trial bundles, did not appear to be available from the eFiling Portal.⁵ He requested confirmation of the list of documents filed by the parties that were in the possession of the Dispute Tribunal during deliberations and asked whether the documents not available in the eFiling Portal could be uploaded.

20. The appellate review of facts, with which we are charged, requires a record. Article 2(1)(e) of our Statute requires that we decide, in some cases, whether the UNDT "[e]rr[ed] on a question of fact, resulting in a

quality was very poor and that the transcripts of 24 March 2011 could not be produced. The record was thus not complete because the transcripts of witn

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Dated this 27th day of June 2014 in Vienna, Austria.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Faherty

(Signed)

Judge Lussick

Entered in the Register on 29th day of August 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar