



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2013-478

McCloskey

(Applicant)

v.

Secretary-General of the United Nations

(Respondent)

Mr. McCloskey that he would receive the refund. Mr. McCloskey confirms that he has received the refund.

3. On 18 February 2014, the Secretary-General filed his observations. He opposes the motion on the ground that it does not satisfy the threshold of “exceptional circumstances”. He maintains that the motion is a request to repeat arguments that Mr. McCloskey has already made in his answer of 12 July 2013. He argues that the postponement of the recovery pending the decision by this Tribunal on his appeal renders moot Mr. McCloskey’s claim that there has been a new administrative decision.

Finally, the Secretary-General submits that the communications from the Income Tax Unit and the MEU and Mr. McCloskey's arguments are not relevant to the issues before this Tribunal.

4. The Rules of Procedure of the Appeals Tribunal (Rules) provide for the parties to file appeals, answers, cross-appeals and answers to cross-appeals. There is no provision for any additional pleadings to be submitted by the parties. Nevertheless, the Appeals Tribunal has ruled that under Article 31(1) of the Rules additional pleadings may be allowed in "exceptional circumstances".¹

5. Article 2(5) of the Statute of the Appeals Tribunal (Statute) provides for the admission of additional documentary evidence "[i]n exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony" and if it is "in the interest of justice and the efficient and expeditious resolution of the proceedings".

6. The argument Mr. McCloskey now seeks to introduce is merely supplementary to that already submitted in his answer. I find that he has not demonstrated any "exceptional circumstances" which would allow the admission of the additional argument. As regards the accompanying documentation, I am not persuaded either that "exceptional circumstances" exist or that "the facts are likely to be established" as required by Article 2(5) of the Statute.

ACCORDINGLY, IT IS HEREBY ORDERED THAT Mr. McCloskey's motion seeking leave to submit fresh evidence and argument is denied.

Original and Authoritative Version: English

Dated this 25th day of February 2014 in
London, United Kingdom.

(Signed)
Judge Richard Lussick,
Duty Judge

Entered in the Register on this 25th day of
February 2014 in New York, United States.

(Signed)
Weicheng Lin, Registrar

¹ Williams v. Secretary General of the International Civil Aviation Organization, Order No. 161 (2013); Brisson v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East Order No. 150 (2013).