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

Judgment No. 2022-UNAT-1224



**Howard Andrew Giles
(Applicant)**

v.

**Secretary-General of the United Nations
(Respondent)**

**JUDGMENT
ON APPLICATION FOR REVISION**

Before: Judge Kanwaldeep Sandhu, Presiding
Judge Graeme Colgan
Judge

Counsel for Appellant: Michael P. Giles

Counsel for Respondent: André Luiz Pereira de Oliveira

6. On 19 February 2013, the Secretary-General approved the ABCC Benefit. However, questions were subsequently raised regarding the Appellant's continuing disability status.

The UNJSPF Benefit

7. On 18 February 2015, the UNJSPF's Chief, Legal and Compliance Unit, requested the Appellant to submit copies of his 2011 to 2014 tax returns along with other proof of his earnings from the time he began receiving the UNJSPF Benefit (November 2011) as well as a sworn statement detailing the exact periods and the nature of the work he had undertaken since his separation from the United Nations.
8. On 13 March 2015, the Appellant provided the requested sworn statement but not copies of his tax returns claiming that the returns contained personal information, which was not his alone and as such were subject to federal and state privacy laws. In addition, the CEO of Hostile Control Tactics LLC (for which the Appellant allegedly did some work) issued a letter on 9 October 2014 attesting that the Appellant had never been his employee and that he was only featured on his company website as a freelance or independent contractor.
9. On 5 May 2015, UNJSPF's Chief, Legal and Compliance Unit, wrote to the Secretary of the ABCC with a summary of the Appellant's case, including information on his subsequent work: (i) as an Instructor for the United States Federal Air Marshalls from September 2011 to October 2012 teaching two 45-minute classes per week, and (ii) as a Watcher at the Federal Law Enforcement Training Center from January 2013 to May 2014, which he performed "sporadically". UNJSPF noted the Appellant did not provide information on the amount he earned in either capacity and also that he declined to provide tax returns as they contained information pertaining to his spouse. UNJSPF also informed ABCC that its Standing Committee decided to suspend the UNJSPF Benefit to the Appellant as of 1 August 2015, pending further review in November 2015.
10. On 12 May 2015, the ABCC recommended that the Appellant's ABCC Benefit be discontinued based on evidence regarding the Appellant's earning capacity and internet search results showing that he actively promoted his work capabilities in the security field. The Controller, on behalf of the Secretary-General, approved this recommendation on 5 June 2015, effectively discontinuing the ABCC Benefit.
11. On 22 November 2016, the Appellant was seen for an independent medical evaluation (IME) at the United Nations Medical Officer's request. On 22 December 2016, taking into account the IME's findings, UNJSPF reinstated the Appellant's UNJSPF Benefit as of 1 November 2016 and, later, also retroactively reinstated his benefit between August 2015 and October 2016. To proceed with the reinstatement, the Appellant was required to provide a sworn statement that he had not undertaken any paid employment besides the one he undertook in 2012.

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that refusal.⁷ In sum, the Appeals Tribunal held that the UNDT correctly concluded that the contested decision was legal, rational and procedurally correct, affirmed the UNDT Judgment and dismissed the appeal.⁸

Submissions

Mr. Giles' Application

9. The Applicant identifies as a decisiveis þ2.8 (e)-aJ2.02ctq84.6 ()TjEMC /LBod0.084 Tw 2.475 0 Td56ecb

12. Therefore, the Appeals Tribunal's failure to consider this changes the legal framework in determining whether the Applicant qualified for said benefit. He submits that the Appeals Tribunal did not consider the references the Respondent made to "the periodic disability review of UNJSPF", but rather considered the legal framework of the ABCC, not the UNJSPF, in exercising its authority to recommend that the benefit in question be discontinued. The Applicant submits that the statement relating to the period disability review of UNJSPF cannot be ignored, as it was ignored by the Appeals Tribunal, and that "its impact on the legal framework in determining the benefit in question must be considered".

13. The Applicant requests the Appeals Tribunal to revise the Judgment, and to reverse the UNDT Judgment and reinstate the benefit in question, retroactive to 5 June 2015.

The Secretary-General's Answer

14. The Secretary-General requests the Appeals Tribunal to reject the Application for Revision in its entirety.

15. The Secretary-General submits that the Applicant's assertions are meritless; the application does not reflect the discovery of any decisive new fact unknown to the Applicant or to the Appeals Tribunal when it rendered its Judgment. The Secretary-General submits that the Applicant's tax returns are not new facts which were unknown to Mr. Giles at the time of filing submissions before the Appeals Tribunal. Rather, blank copies of the United States Individual Income Tax Return forms (Form 1040) were always available on the IRS website. The Secretary-General submits that Mr. Giles should have known this, especially as he conceded that he had filed similar forms in previous years. Relying on 9 X N D V 9 R 1 S 6, the Secretary-General submits that ignorance of the law is no excuse.

Considerations

18. An application for revision of judgment is governed by Article 11(1) of the Appeals Tribunal Statute and Article 24 of the Appeals Tribunal Rules of Procedure. By these provisions, an applicant must show or identify the decisive facts that, at the time of the Appeals Tribunal's judgment,ByAibu3.1 (r) t17sibu3.1 (r)n 0 Tdw(r)-22 (icb)-3.8tor 0 Td03 Tc -0.u3.1 (r)

reiterates the same arguments that he made in his appeal regarding the relevancy of his completed tax returns. However, there is no evidence provided by Mr. Giles that these blank tax returns were publicly not available including on the IRS website; rather, it seems that he was simply not aware that they were available on the website. It is reasonable to assume that the IRS has made publicly available blank, uncompleted tax returns to allow people to complete them for filing. Even if blank returns were not available on the webs

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27. Mr. Giles' application for revision is hereby dismissed.

Original and Authoritative Version: English

Dated this 18th day of March 2022.

(Signed)

Judge Sandhu, Presiding
Vancouver, Canada

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 10th day of May 2022 in New York, United States.

(Signed)

Weicheng Lin, Registrar