
ATIONS



APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Case No.2011-282

Seddik Ben Omar
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before: Judge Richard Lussick, Presiding

JUDGE RICHARD LUSSICK , Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Mohammed Seddik Ben Omar against Judgment No. UNDT/2011/182, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 26 October 2011. Mr. Seddik Ben Omar appealed on 12 December 2011, and the Secretary-General filed his answer on 30 January 2012.

Synopsis

2. Mr. Seddik Ben Omar appeals the UNDT Judgment that there was not sufficient evidence to warrant compensation for emotiona

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OSF. He further requests that he be awarded 20,000 US dollars in costs against the Respondent for his protracted and frivolous proceedings.

Secretary-General's Answer

17. The Secretary-General submits that the Appellant has not established that the Dispute Tribunal made any errors of procedure warranting a remand of the case. He contends that the Dispute Tribunal has broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure.

18. The Secretary-General contends that Mr. Seddik Ben Omar, contrary to his allegation, gave no oral testimony related to his distress and employment loss during the hearing on 28 September 2010.³ He also notes, on the one hand, that UNDT Order No. 90 never guaranteed that the Appellant would be invited to make further submissions on remedies and, on the other hand, that UNDT Order No. 111 (NY/2011)⁴ issued in this case, informed the Appellant that it was his responsibility to seek leave to submit any additional evidence.

19. The Secretary-General contends that the additional evidence relied upon by the Appellant is not admissible under Article 2(5) of the Statute of the Appeals Tribunal as it was known to him at the time of the hearing before the Dispute Tribunal and should have been disclosed before the Dispute Tribunal.

20. The Secretary-General submits that there is no evidence that the case is appropriate for referral to enforce accountability under Article 9(5) of the Statute. He further submits that the Appellant has not established a case for the award of costs under Article 9(2) of the Statute.

Considerations

21. As a preliminary matter, the Appeals Tribunal rejects the Appellant's request for an oral hearing. The factual and legal issues have already been clearly defined by the parties and no further submissions are necessary.

³ *Ben Omar v. Secretary-General of United Nations*, Order No. 257 (NY/2010), 28 September 2010.

⁴ *Ben Omar v. Secretary-General of United Nations*, Order No. 111 (NY/2011), 14 April 2011.

22. Judge Shaw found that the Applicant had not produced sufficient evidence of distress linked specifically to the placement of the Note to warrant compensation for emotional distress, despite having been granted sufficient time, including being granted extensions to comply with orders, to have provided statements and/or evidence of such distress.

23. The Appellant claims that the UNDT erred in this finding. He submits that his “deposition on his distress and employment losses described before Hon. Kaman at the 28 September 2010 hearing appear[s] nowhere in the judgment”. Judge Kaman’s Order No. 257 recites that a case management discussion was held in which both counsel and Mr. Seddik Ben Omar participated. However, Judge Kaman makes no mention of any claim for compensation relating to distress, nor was such a claim mentioned as one of the agreed issues to be determined. In fact, the word “distress” does not appear anywhere in that Order.

24. The Appellant, referring to Judge Shaw’s finding that there was no evidence that he attempted to gain employment in any outside field, alleges that, at the 28 September 2010 hearing before Judge Kaman, he had “already made some reference to his efforts to gain employment outside the UN, after 2006”, but that no mention of this appears in Judge Shaw’s reasoning. Again, the Appeals Tribunal observes that Judge Kaman’s Order makes no mention of any efforts by Mr. Seddik Ben Omar to obtain employment.

25. The Appellant claims that evidence of his employment efforts was scheduled to be submitted as a second step under Order No. 90 “after the trial judge would have ruled on the merit of the Appellant’s legal claims”. The Appeals Tribunal finds that there is no merit in

Judgment

31. The appeal is dismissed and the Judgment of the Dispute Tribunal is affirmed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Simón

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 18th day of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar