



**UNITED NATIONS APPEALS TRIBUNAL
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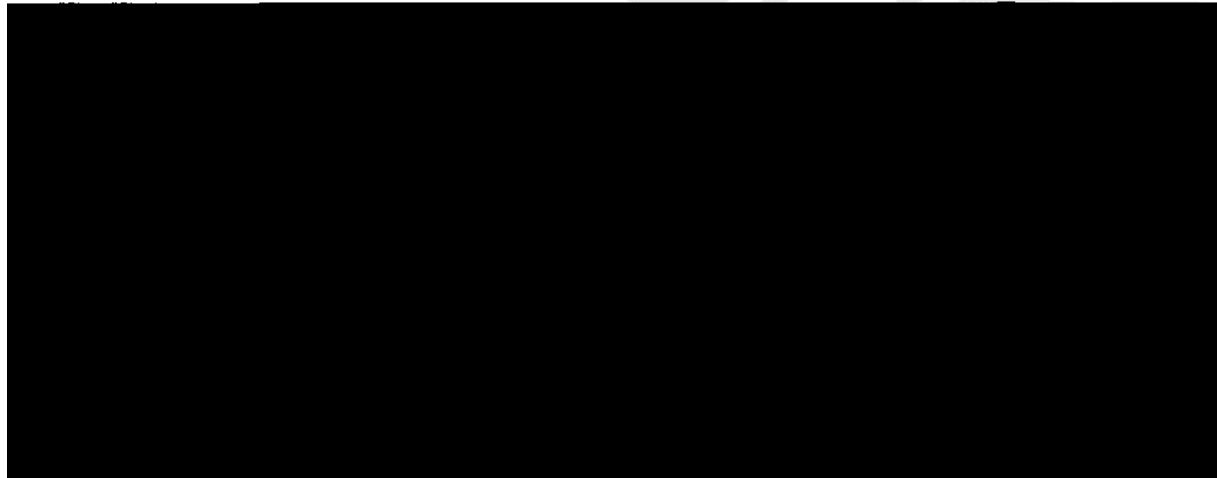
Judgment No. 2014-UNAT-423

**Bastet
(Appellant)**

v.

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

JUDGMENT



Counsel for Appellant:

François Loriot

Counsel for Respondent:

Stéphanie Cartier/Paul Oertly/Amy Wood

JUDGE MARY FAHERTY, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it three appeals filed by Mr. Bruno Bastet on 10 May 2013,¹ 6 June 2013 and 24 October 2013, respectively, against the following Orders:

- a) Order No. 96 (NY/2013) (Order on Change of Venue), issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 12 April 2013;
- b) Order No. 58 (GVA/2013) (Order on Case Management), issued by the UNDT in Geneva on 16 May 2013; and
- c) Order No. 160 (GVA/2013), issued by the UNDT in Geneva on 22 October 2013.

2. The Secretary-General filed his respective answers on 2 July 2013, 3 July 2013, and 21 November 2013.

Procedural History

3. On 3 September 2012, Mr. Bastet filed an application with the Dispute Tribunal in New York, contesting the Secretary-General's decision to dismiss him from service for claiming and receiving a rental subsidy from the Organization, to which he was allegedly not entitled.

4. On 11 December 2012, the UNDT issued its Judgment on Receivability, Judgment No. UNDT/2012/196, by which it found that Mr. Bastet's application was not time-barred and that it was thus receivable.

5. On 16 December 2013, the UNDT in Geneva issued Judgment No. UNDT/2013/172. The UNDT found that the decision to dismiss Mr. Bastet was unlawful because it was tainted by procedural defects. The UNDT, however, found that Mr. Bastet had committed serious misconduct and that had the procedural irregularities not occurred, that misconduct would have merited dismissal. The UNDT concluded that "the loss of the Applicant's job was attributable not to the purely technical illegality committed by the Administration but solely to the Applicant's

¹ Refiled on 31 May 2013.

misconduct”.² The material damage he sustained was thus exclusively the result of his own actions...”. The UNDT therefore decided as follows:

- a. The decision to dismiss the Applicant is rescinded on the grounds of procedural defect; should the Respondent elect to rescind the decision, all evidence relating to the disciplinary proceedings shall be removed from the Applicant’s file;

language and technical factors which the UNDT considered relevant for the making of Order No. 96 (NY/2013).⁵

10. Mr. Bastet grounds his appeal on the basis that “the UNDT erred on questions of fact, resulting in an unreasonable decision when, after 32 months of proceedings in [New York City], it suddenly ruled and unilaterally changed the venue of [the] case to Geneva”. Mr. Bastet argues that this change will result “in a Geneva trial in absentia, without counsel, on a US deed, on US rentals, without US witnesses, and contrary to the judicial principles of *lex loci* and economy of justice”. Mr. Bastet also seeks to appeal against the Dispute Tribunal clarification, in

Mr. Bastet claimed an excess of competence or lack

Mr. Bastet's Appeal of Order No. 58 (GVA/2013)

19. Following the transfer of Mr. Bastet's case to Geneva, the UNDT in Geneva issued Order No. 58 (GVA/2013) (Order on Case Management). That Order, inter alia, rejected Mr. Bastet's motion for disclosure whereby he asked the Dispute Tribunal to request the Secretary-General to provide additional documents and that the proceedings be stayed; and Mr. Bastet's motion that travel costs be granted to him and his counsel.

20. Of its own volition the Dispute Tribunal also concluded that contrary to what had been ordered by the Judge previously in charge of the case, there was no need to call any witnesses to the oral hearing. It went on to state that "should the Tribunal decide, having conducted the hearing on the merits, that another hearing is necessary, particularly to hear any witnesses, the parties will be informed accordingly".¹¹

21. The UNDT went on to direct "(f) or a fair disposal of the case, and in application of art. 18, para. 2 of its Rules of Procedure" that Mr. Bastet provide the Dispute Tribunal with certain documentation, as outlined at paragraph 12 of the Order.¹²

22.

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24. The Appeals Tribunal considers the exercise carried out by the Dispute Tribunal by virtue of Order No. 58 (GVA/2013) as no more than a case management exercise well within its competence and jurisdiction. We have already, in the course of this Judgment, outlined the exceptional circumstances which permit a party to appeal an interlocutory order of the Dispute Tribunal. On any reading of Mr. Bastet's grounds of appeal, he has not established any excess of competence or jurisdiction on the part of the Dispute Tribunal such as would bring Order No. 58 (GVA/2013) within the remit of the Appeals Tribunal. Insofar as Mr. Bastet alleges errors of law, fact or procedure on the part of the UNDT, these are matters which can, if necessary, be addressed in any appeal against the final UNDT Judgment³

25. In all the circumstances, Mr. Bastet's appeal against Order No. 58 (GVA/2013) is not receivable.

Mr. Bastet's Appeal of Order No. 160 (GVA/2013)

26. On 22 October 2013, pursuant to Order No. 160 (GVA/2013), the UNDT directed the Secretary-General to provide it with certain documentation referable to the disciplinary measures, including dismissal, taken against Mr. Bastet in 2010, which the Dispute Tribunal considered necessary for its determination of Mr. Bastet's application before the UNDT challenging his dismissal.

27. While this Order is directed to the Secretary-General, Mr. Bastet appeals it on the grounds that the Dispute Tribunal committed a major error of law and procedure in its decision "to apply" Administrative Instruction ST/AI/371/A mend.1 to the actions and decisions taken by the Administration in relation to his case. Inter alia, Mr. Bastet maintains that this administrative instruction, having been promulgated on 11 May 2010, has no application to his case. He also seeks to revisit other claims previously raised by him, namely that the Dispute Tribunal has failed to direct that the Secretary-General disclose key evidence exculpatory of Mr. Bastet.

28. As with the previous two orders dealt with above, Mr. Bastet is appealing an interlocutory order of the Dispute Tribunal. We reiterate that for Mr. Bastet's appeal to be receivable by this Tribunal, the Dispute Tribunal must be shown to have exceeded its competence or jurisdiction in

¹³ See Bertucci v. Secretary-General of the United Nations, Judgment No. 2010-UNAT-062.

making the order it did. Mr. Bastet's appeal grounds do not instance that the UNDT has exceeded its competence or jurisdiction; they refer merely to alleged errors of law and procedure and/or bias on the part of the Dispute Tribunal. Errors of law, fact or procedure or indeed a claim of bias on the part of the Dispute Tribunal are all matters which may be raised by a party on appeal to the Appeals Tribunal. However, they may only be raised once the UNDT has rendered its judgment on the merits and not before. Mr. Bastet has not surmounted the necessary excess of competence and/or jurisdiction on the part of the Dispute Tribunal which is required to bring this appeal within the remit of the Appeals Tribunal at this stage of the proceedings. Hence, this appeal is not receivable.

29. Notwithstanding the foregoing, we note that the Dispute Tribunal issued its judgment in respect of Mr. Bastet's application on 16 December 2013, effectively rendering our ruling on the above receivability issues moot.

Judgment

30. Mr. Bastet's appeals of UNDT Order No. 96 (NY/2013), UNDT Order No. 58 (GVA/2013), and UNDT Order No. 160 (GVA/2013) are not receivable.

Original and Authoritative Version: English

Dated this 2nd day of April 2014 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Lussick

Entered in the Register on this 13th day of May 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar