
APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No

Fedorchenko
(Appellant)

v.

Secretary General
of the International Civil Aviation Organization
(Respondent)

JUDGMENT

Registrar:

Weicheng Lin

JUDGE LUIS MARÍA SIMÓN , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Alexander Fedorchenko against a decision taken by the Secretary General of the International Civil Aviation Organization (I CAO) on 27 November 2013 adopting the recommendation of ICAO's Advisory Joint Appeals Board (AJAB) to reject Mr. Fedorchenko's appeal to the AJAB as not receivable.

informed Mr. Fedorchenko that the actual investigation would be undertaken by an external party.

6. In a memorandum dated 29 October 2012, the Ethics Officer advised the Secretary General of ICAO that the investigation had been completed. He reported:

The investigator has concluded that in all three cases the underlying facts as presented by the complainants were not sufficient to substantiate an accusation of harassment, as defined by the ICAO regulations (and as guided by the agreed investigation criteria). That is to say, sufficient evidence was not presented to conclude that Mr. Fedorchenko had exhibited behaviour that was humiliating, intimidating or abusive. The investigator, did, however, also find that all three claimants genuinely felt harassed and that none of the complaints was “vexatious”.¹

He explained that the investigation had taken longer than expected to complete, partly due to “accreditation difficulties” for the external investigator and partly because it “involved three separate but linked cases and a need to constantly allow review time for all concerned at several stages in the investigation.” In light of the investigative findings, the Ethics Officer recommended:

- i. That none of the three cases against Mr. Fedorchenko be pursued any further.
- ii. That the Ethics Officer inform Mr. Fedorchenko and each of the three reporting staff members of the decision not to proceed with the case.
- iii. That the Ethics Officer and [the Director of the Administration and Services Bureau] look into the possibility of making conflict resolution courses available to all staff, perhaps through the iLearn platform, so that future PACE recommendations for such training can be actioned.

7. On 29 October 2012, the Secretary General of ICAO endorsed all three recommendations from the Ethics Officer.

8. In a memorandum dated 30 October 2012, the Ethics Officer informed Mr. Fedorchenko of the completion of the investigation, its findings and the decision of the Secretary General of ICAO not to pursue the three complaints of harassment against him any further. He also informed Mr. Fedorchenko that “[i]n accordance with ICAO procedures no record of the investigation or the allegations

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14. In an interim report dated 22 November 2013, the AJAB concluded that it was not competent to deal with the appeal filed by Mr. Fedorchenko. It noted, *inter alia*, the Appeals Tribunal Judgment in *Nwuke*,² in which this Tribunal held that the Administration's decision not to investigate a complaint of discrimination filed by a staff member may be examined by the Dispute Tribunal as it was covered by the Secretary-General's Bulletin ST/SGB/2008/5 entitled "Prohibition of Discrimination, Harassment, Including Sexual Harassment, and Abuse of Authority". However, the AJAB was of the view that "[t]he ICAO Rules and Regulations do not contain a provision analogous to ST/SGB/2008/5, [...] that would permit an 'alleged offender' who has 'grounds to believe that the procedure followed in respect of the allegations of prohibited conduct was improper', to appeal".³ In the view of the AJAB, the complaints of harassment had been investigated, a final decision had been taken and "the matter closed".

15. On 27 November 2013, the Secretary General of ICAO approved the AJAB's conclusions. By letter dated 3 December 2013, Mr. Fedorchenko was notified of that decision.

16. On 22 January 2014, Mr. Fedorchenko appealed to the Appeals Tribunal the decision taken by the Secretary General of ICAO to approve the AJAB conclusions.

17. Also on 22 January 2014, Mr. Fedorchenko filed a motion for confidentiality. He requested that he be permitted to submit his medical information "only [...] for the eyes of UNAT, and not to ICAO or third parties". He also requested that his identity be kept "confidential and anonymous in any eventual decisions by the Appeals Tribunal". On 31 January 2014, ICAO filed comments on Mr. Fedorchenko's motion for confidentiality. The parties were subsequently informed that Mr. Fedorchenko's motion for confidentiality and the Respondent's comments thereon would be added to the case file and decided by the Panel deliberating on the merits of the case.

18. On 17 March 2014, ICAO filed with the Appeals Tribunal an answer to Mr. Fedorchenko's appeal.

² *Nwuke v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-099.

³ Emphasis in original.

19. On 24 April 2014, Mr. Fedorchenko filed another motion requesting that the

ICAO's Answer

24. Mr. Fedorchenko has failed to demonstrate that the Secretary General of ICAO erred in law in endorsing the AJAB's co

[...] one of the purposes or goals of the new system for the administration of justice is to assure that the judgments of the Appeals Tribunal are published and made available to the Organization's staff and the general public. Public dissemination of the appellate judgments helps to assure there is transparency in the operations of the Appeals Tribunal. It also means, sometimes fortunately and other times unfortunately, that the conduct of individuals who are identified in the published decisions, whether they are parties or not, becomes part of the public purview.

... this Tribunal has determined that “[t]he names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and, indeed, accountability”. And [the Applicant] has not shown any “greater need than any other litigant for confidentiality”. Staff members challenge

32. Once informed of the outcome of this investigation, Mr. Fedorchenko, who had been subject to it, could of course concur with th

39. Furthermore, Mr. Fedorchenko's submission was timely submitted to the AJAB. It is noted that the AJAB did not address any time

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