

Introduction

1. This is an appeal against the decision of the Tribunal in its judgment of 10 October 2011 (UNDT/2011/10) in the case of *Mr. [Name] v. the United Nations*. The Tribunal found that the appellant had not provided sufficient evidence to establish that the respondent had not been the subject of a management evaluation and that the Tribunal's decision was not manifestly unreasonable.

2. The .

,n essen#e- 2ou #ontended that 2ou 1e\$e not !\$o% ded 1 th the
\$easons fo\$ the de# s on to #an#e" 2ou \$eass gnment to the A.u
Dha. ;u.07eg ona" : ff #e and that the de# s on 1as ta nted .2

Parties' submissions

1D. The A!!! " #ant su . m ts that=

a. The 4 5U d d not \$e% e1 the ent \$et2 of the ema " of 1h #h he \$e/uested e%a"uat on and)s3 !!ed* h s \$e/uest fo\$ management e%a"uat on of the de# s on not to)demote* h m f\$om P09 to P03 1h #h 1 as !a\$t of the #ontested de# s on>

.. The 7es!ondent fa"se"2 test f ed and den ed .efo\$e the T\$.una" that a \$e/uest had ne%e\$.een made to \$e% e1 the de# s on to)demote* h m>

#. 6e offe\$ed to \$ead the memo of 9 De#em.e\$ 2009 at the T\$.una"Bs hea\$ ng. 6e a""eges that o! !o\$tun t2 1as den ed .2 the T\$.una">

d. The fa#t that the de# s on #on#e\$ n ng the)demot on* 1as deemed not to ha%e .een \$e#e %a."e .e#ause the A!!! " #ant d d not \$e/uest management e%a"uat on- s a #ea\$ nd #at on that the T\$.una" 1as not a 1a\$e of the fa#t that he had made the \$e/uest>

e. ,n !"ead ngs made .2 the 7es!ondent n su.se/uent #ases .sought .2 h m- the 7es!ondent a##e!ted that he had sought management e%a"uat on fo\$ the \$e/u \$ement fo\$ h m to \$etu\$ n to h s o\$ g na" P03 !ost. 6e a""eged that n h s \$e!"2 of 29 ?e.\$ua\$2 2012- the 7es!ondent adm tted- fo\$ the f \$st t me- that the memo of 9 De#em.e\$ 2009 1 th \$es!e#t to 1h #h a \$e/uest fo\$ \$e% e1 had .een made- had a"so n#"uded the ssue of h s demot on> and

f. ,n h s 7e!"2 of 12 June 2013 the 7es!ondent #on#eded to the A!!! " #antBs #ontent on that the 4 5U had not !so!e\$"2 \$e% e1 ed a"" the de# s ons .efo\$e t n ts management e%a"uat on dated 3 ?e.\$ua\$2 2010.

19. The 7es!ondent su . m tted that the A!!! " #ant has not met the #ond t ons fo\$ \$e% s on of &udgment .e#ause=

a. The a""eged)ne 1 "2 d s#o%e\$ed fa#t* 1as 3no 1n to the A!!! " #ant and the T\$.una" at the t me the Judgment 1as \$ende\$ed. The A!!! " #ant shou"d

have mentioned to the Tribunal that the 45U had also raised an issue in his
 statement of management evaluation

.. The allegations that the respondent gave a false testimony on the fact
 that he had not exercised management evaluation as usual

#. The respondent's letter of 29 February 2012 and 12 June 2013 cannot
 be considered as new evidence of the contents of the summary of 29
 February 2012 have been known to the Tribunal. The 12
 June 2013 summary is a summary of the Tribunal's evaluation of
 management evaluation when he has no evidence of new facts

d. The Tribunal set out to his Post- to which he refers to as a
 demonstration in the 9 December 2009 email - 1 as a measure of the
 Tribunal's terms of reference of 21 April 2007 as such that as a
 confirmation of an evaluation and not a new decision

e. The Tribunal's action is frivolous and is an abuse of process
 that requires an appeal of costs.

Considerations

20. Article 12.1 of the statute which is echoed in article 29.1 and 29.2 of the
 Tribunal's Rules of Procedure - provides that:

5. The Tribunal may refer to the Dispute Tribunal for a decision on an
 appeal. The judgment on the basis of the evidence of a decision by the
 Tribunal is - at the time the judgment is rendered - known to the
 Dispute Tribunal and to the Tribunal acting for the purposes of article 12
 of the Rules. It is not due to negligence. The Tribunal must be made
 known within 30 days of the evidence of the judgment
 of the fact and within one month of the date of the judgment.

21. Pursuant to article 11.3 of the statute of the Tribunal - the judgments of the
 Dispute Tribunal shall be final. Following the appeal of the time provided
 for appeal in the statute of the Tribunal's Rules, the time for appeal

of the Judgment rendered on 21 August 2011 following the judgment of the Administrative Tribunal. The Administrative Tribunal was composed of three members, including the President, on 29 June 2012. The Judgment was issued in the name of the Administrative Tribunal as follows:

22. The Administrative Tribunal found that the Administrative Tribunal was not competent to hear the appeal against the decision of the Director of the Office of the Auditor General on the issue of the appointment of the Director of the Office of the Auditor General. The Administrative Tribunal found that the appointment of the Director of the Office of the Auditor General was a matter of internal management of the Office of the Auditor General.

23.

27. The A!!" #antBs "a#3 of a1a\$eness of the m!o\$tan#e of the need fo\$ the de# s %e fa#t to ha%e .een #"ea\$"2 addu#ed at the hea\$ ng #an on"2 .e att\$.uted to h s neg" gen#e o\$ that of h s #ounse" ad% s ng h m th\$oughout the !\$o#eed ngs. Ne the\$ the A!!" #ant no\$ h s #ounse" \$a sed the ssue 1 th the T\$.una" du\$ ng the hea\$ ng o\$ n su.se/uent su.m ss ons to the T\$.una" o\$ to UNAT.

2D. ,n 20130UNAT0320- the A!!ea"s T\$.una" d sm ssed an a!!" #at on fo\$ \$e% s on stat ng that)an a!!" #at on fo\$ \$e% s on of &udgment s on"2 \$e#e %a."e

31. Kh "e the A!!" #ant ma2 ha%e an a\$gment 1 th \$es!e#t to a de# s %e fa#t-
h s a!!" #at on does not meet the othe\$ \$e/u \$ements n a\$t. 12.1 of the
T\$.una"Bs statute.

Costs

32. A\$t #e 10.< of the T\$.una"Bs statute em!o1e\$s the T\$.una" to a1a\$d #osts
aga nst a !a\$t2 1he\$e t)dete\$m nes that a !a\$t2 has man fest"2 a.Used the
!\$o#eed ngs .efo\$e t*. ,n th s #ase- the A!!" #ant .Sought a .ase"ess a!!" #at on
fo\$ \$e% s on 1e"" outs de the t me " m ts fo\$ do ng so and afte\$ Ut(-0%)5 4 7 6-90(s)-"the