



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2012-327

Powell

(Respondent and Appellant on Cross-Appeal/Applicant)

v.

Secretary-General of the United Nations

(Appellant and Respondent on Cross-Appeal/Respondent)

ORDER No. 104 (2012)

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of a motion for revision of Order No. 96 (2012) rendered by the President of the Appeals Tribunal on 9 August 2012 in the case of *Powell v. Secretary-General of the United Nations* (Motion). Mr. Robert Powell filed the Motion on 11 September 2012. The following day, the Secretary-General notified the Registry of the Appeals Tribunal that he had no comments on the Motion. On 18 September 2012, Mr. Powell filed a letter addressed to the Appeals Tribunal in support of the Motion.

2. The procedural history of this case leading up to the filing of the Motion is as follows: On 28 March 2012, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi issued Judgment No. UNDT/2012/039 in the present case. The Secretary-General filed an appeal of the UNDT Judgment on 23 May 2012. On 26 July 2012, Mr. Powell filed his answer to the Secretary-General's appeal, including a cross-appeal. This submission was filed after it was due. That same day, Mr. Powell filed an application for a suspension, waiver or extension of time limit to file his answer to the appeal on the grounds that he had miscalculated the time limit. On 19 August 2012, the President of the Appeals Tribunal rendered Order No. 96 (2012). Finding that "[o]versight by counsel does not justify a waiver of statutory time limits", he rejected the application. This Order is the subject of the present Motion.

3. In support of the Motion, Mr. Powell submits that his counsel had just returned from a mission when he discovered his oversight and “[i]n his haste to file the [answer] and request for suspension, waiver or extension as soon as practicable”, he did not have the time to fully research relevant jurisprudence of the Appeals Tribunal or to consult his colleagues. He was therefore not aware of the fact that the Appeals Tribunal had previously extended and waived time limits where no prejudice was caused to the parties, including a case where the Secretary-General had not filed in time because of an oversight on behalf of the Secretary-General. Mr. Powell submits that granting a waiver will not prejudice the opposing party, is in the interest of justice, and would be consistent with earlier orders of the Appeals Tribunal. The late filing was caused by counsel and should not prejudice Mr. Powell.

4. The Statute of the Appeals Tribunal (Statute) and the Rules of Procedure (Rules) are mute on a revision of orders. Mr. Powell provides no legal basis for his request for revision. Article 11(1) of the Statute and Article 24 of the Rules which provide for the revision of *judgments* read as follows:

Article 11

1. Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

Article 24

Revision of Judgements

Either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

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5. The Appeals Tribunal has so far made no ruling on whether or not the above provisions apply *mutatis mutandis* to orders. However, in the present case, I need not further consider this matter since, even presuming that the above provisions applied, Mr. Powell provided no decisive new fact under the above provisions. In addition to the arguments presented in his application underlying the contested Order, he merely refers to jurisprudence of the Appeals Tribunal on requests for extension and/or waiver of time. The Appeals Tribunal previously held that “law” is not a “fact” under the above provisions and can therefore not constitute a ground for revision .¹

6. For the foregoing reasons, the request for revision is dismissed.

Original and Authoritative Version: English

Dated 20th day of September 2012 in Montevideo,
Uruguay.

(Signed)
Judge Luis María Simón, President

Entered in the Register on this 26th day of
September 2012 in New York, United States.

(Signed)
Weicheng Lin, Registrar

¹ Cf. *Eid v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-145.