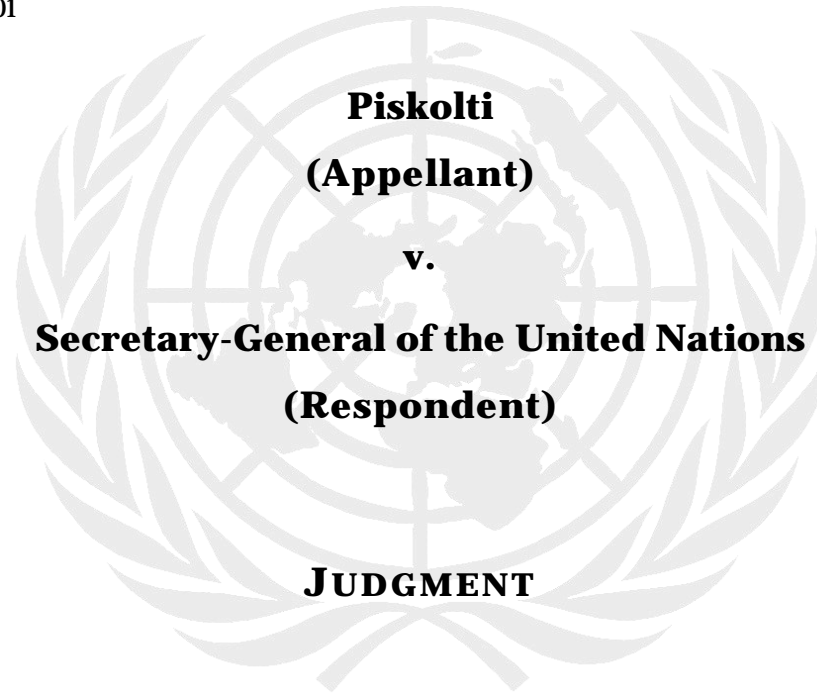




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Case No. 2010-101



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**Before:** Judge Kamaljit Singh Garewal, Presiding  
Judge Jean Courtial  
Judge Sophia Adinyira

**Judgment No.:** 2011-UNAT-106

**Date:** 11 March 2011

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** David Grindall

**Counsel for Respondent:** Amy Wood

**JUDGE KAMALJIT SINGH GAREWAL, Presiding.**

### **Synopsis**

1. Szabolcs Piskolti (Piskolti) had unsuccessfully challenged the denial of his appointment as Programme Coordinator, Asia Trust Fund Programme (L-5), managed by the International Trade Centre (ITC), before the former Administrative Tribunal. His application was dismissed on 30 September 2009.<sup>1</sup>
2. Piskolti now seeks a revision of the above Judgment before the Appeals Tribunal.
3. We hold that Article 11 of the Statute of the Appeals Tribunal (Statute) and Article 24 of the Rules of Procedure of the Appeals Tribunal (Rules) have not conferred jurisdiction on the Appeals Tribunal to review a judgment of the former Administrative Tribunal.
4. The application for revision of judgment is dismissed on the grounds of non-receivability.

### **Facts and Procedure**

5. Shorn of unnecessary details regarding Piskolti's employment history, we may begin the narrative from 2004. Piskolti was working as Chief, Office for Arab States, Europe and the CIS (OASEC)/Division of Technical Cooperation Coordination (DTCC) of the ITC. This post was at the P-5 level, due to fall vacant on Piskolti's retirement on 31 August 2004.
6. In February 2004, six months before Piskolti's due date of retirement, his post was advertised as Programme Coordinator, Asia Trust Fund Programme. Since no suitable candidate was identified, it was re-advertised in July 2004, with a closing date of 15 August 2004. Piskolti applied for this post but was not short-listed. In September 2004, Piskolti was notified that his candidature had not been successful.
7. An administrative review at Piskolti's request followed. This led him to be informed by the Administration that the selection process had been correctly followed. Piskolti took the matter to the Joint Appeals Board (JAB), again unsuccessfully, with the JAB finding that

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<sup>1</sup> UNAT Judgment No. 1459, *Piskolti* (2009).

there was no evidence that his candidature was not fully and fairly considered. The Secretary-General accepted the JAB's recommendation rejecting Piskolti's case.

8. Piskolti took the matter up to the former Administrative Tribunal. In its detailed Judgment, the Tribunal examined two central issues: (1) whether the applicable placement and promotion procedures were followed; and (2) whether the contested decision was vitiated by prejudice and other extraneous motivations.

9. The former Administrative Tribunal had on the basis of the record before it concluded that the post was to be effective 1 October 2004. According to Section 5 of ST/AI/2003/8, if correctly applied, Piskolti would be ineligible for the post because as of 1 October 2004, he would officially be a "retiree". Section 5 provides that retired staff members may be re-employed "only after a period of at least three months has elapsed since the date of retirement". This again made Piskolti ineligible. Lastly, the former Administrative Tribunal held that Section 5 also provides that former staff members could be considered for re-employment only if there were no qualified persons available from among the existing staff members and the career development or redeployment opportunities of other staff members would not be adversely affected.

10. On 26 May 2011, Piskolti filed an application for revision of the Judgment of the former Administrative Tribunal. The Secretary-General filed his answer on 6 July 2011.

### **Submissions**

#### **Piskolti's Application**

11. Piskolti is seeking a revision of the former Administrative Tribunal's Judgment No. 1459 on the ground that he was wrongly treated as a "retiree". This was contrary to the definition of a "retiree", which term applies to a former staff member 55 years of age or older who, consequent upon service exceeding five years, is in receipt of a pension benefit from the United Nations Joint Staff Pension Fund (UNJSPF or Pension Fund). The definition of a "retiree" excluded former staff members who continued to work under an extension of appointment or upon reappointment and continued to contribute to the Pension Fund.

12. Piskolti's submission is that this was a decisive fact which, at the time the Judgment under review was rendered, was unknown to him and to the Tribunal.

**Secretary-General's Answer**

13. The Secretary-General submits that the Appeals Tribunal does not have jurisdiction *ratione materiae* to revise judgments of the former Administrative Tribunal. Neither the Statute nor the jurisprudence of the Appeals Tribunal could be interpreted to confer upon it or the Dispute Tribunal the power to review a final decision of the former Administrative Tribunal. Even if the Appeals Tribunal were to find that it has jurisdiction under Article 11 of its Statute to revise a judgment of the former Administrative Tribunal, the Secretary-General submits that Piskolti has failed to establish the existence of a decisive fact that was unknown to the Appeals Tribunal and himself at the time the Judgment was rendered. The Secretary-General further submits that the Application is non-receivable on the grounds that Piskolti did not comply with the requirement to file an application for revision in a timely manner.

**Considerations**

14. The Appeals Tribunal has conclusively held in *Fagundes*<sup>2</sup> that the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) has not been conferred powers to review a decision of the former Administrative Tribunal. The present case is not an appeal from a judgment of the UNDT. Whereas Fagundes had indeed filed for a revision of judgment before the UNDT, which was declined, and the Appeals Tribunal had decided the appeal, Piskolti has sought a revision of judgment directly from the Appeals Tribunal. But this will not make any difference on the question of receivability of the application for revision.

15. It is clear from the provisions of Article 11 of the Statute and Article 24 of the Rules that the Appeals Tribunal has not been conferred any jurisdiction to hear an application for revision of a judgment of the former Administrative Tribunal.

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<sup>2</sup> *Fagundes v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-057.

**Judgment**

16. The application for revision is dismissed on the ground of non-receivability.

Original and Authoritative Version: English

Dated this 11<sup>th</sup> day of March 2011 in New York, United States.

*(Signed)*

Judge Garewal, Presiding

*(Signed)*

Judge Courtial

*(Signed)*

Judge Adinyira

Entered in the Register on this 19<sup>th</sup> day of April 2011 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar