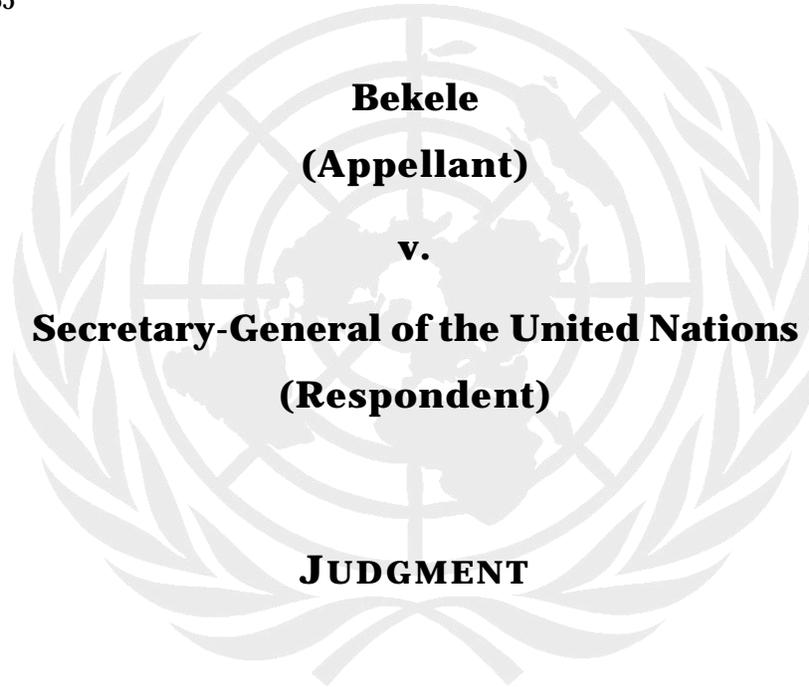




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-165



Before:	Judge Mary Faherty, Presiding Judge Inés Weinberg de Roca Judge Jean Courtial
Judgment No.:	2012-UNAT-190
Date:	16 March 2012
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Melanie Shannon

JUDGE MARY FAHERTY, Presiding.

Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Mr. Zekarias Bekele against Judgment No. UNDT/2010/175 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 8 October 2010 in the case of *Bekele v. Secretary-General of the United Nations*.

2. The function of the Appeals Tribunal is to determine whether the Dispute Tribunal erred in law or fact, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction as prescribed by the Statute of the Appeals Tribunal. The burden of satisfying the Appeals Tribunal that the Judgment of the Dispute Tribunal is defective rests with the Appellant. The claims made by Mr. Bekele before this Tribunal are largely those canvassed before the Dispute Tribunal. It is our considered view that the Dispute Tribunal, in the instant case, took due regard of the arguments that the Appellant is now canvassing before this Tribunal, and that the Dispute Tribunal, having regard to the parameters of what it could compensate the Appellant for, made adequate provision for Mr. Bekele's economic and social losses in its overall award to him. Thus, this Tribunal upholds the UNDT's order that Mr. Bekele be paid his back-salary and an additional six months' net base salary, save that the interest payable on such compensation is to be calculated on the basis of the Appeals Tribunal's decision in *Warren*.¹

Facts and Procedure

3. Mr. Bekele joined the United Nations Economic Commission for Africa (UNECA) as a Security Officer at the G-2 level with the Security and Safety Service (SSS) in December 2001. His contract was renewed several times before it expired on 31 December 2008, when he was separated from service.

4. On the afternoon of Saturday, 15 April 2006, Mr. Bekele was arrested by the Akaki Kality Sub-City Police following an accusation of rape lodged by his former house maid. According to the SSS phone log book, Mr. Bekele telephoned UNECA from the police station, at 5:00 pm, Sunday, 16 April 2006, to report that he was being detained and beaten by the

¹ *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.

local police. On the morning of Monday, 17 April 2006, Mr. Ourgie, Head of Investigation Team, SSS/UNECA, went to the police station to visit Mr. Bekele. According to Mr. Ourgie, he met Mr. Bekele in the office of the Chief Inspector at the police station. Mr. Bekele explained to Mr. Ourgie that he had quarreled with his former house maid at his home and then suddenly a group of police officers descended on his residence and arrested him. He also complained to Mr. Ourgie that he had been beaten. Mr. Ourgie was shocked at the bruises and injuries on Mr. Bekele's body and advised Mr. Bekele to show the bruises to the Court at his bail hearing that day. Mr. Ourgie later escorted Mr. Bekele's wife to the bail hearing. On the afternoon of 17 April 2006, Mr. Bekele telephoned UNECA to report that he had been released on bail.

5. On the afternoon of 17 April 2006, Mr. Ourgie dispatched two emails to Mr. Fairall, Chief, SSS/UNECA. The first email reported Mr. Bekele's arrest and detention and Mr. Ourgie's visit with Mr. Bekele at the police station. Mr. Ourgie's second email reported Mr. Bekele's release on bail.

6. It is not clear whether, when or how UNECA reported the incident of Mr. Bekele's arrest and detention to the headquarters in New York as required under paragraph 3 of administrative instruction ST/AI/299 dated 10 December 1982 entitled "Reporting of arrest or detention of staff members, other agents of the United Nations and members of their families". Paragraph 3 provides:

When there is evidence to suggest that any United Nations staff member – whether internationally or locally recruited – other agent of the United Nations or member of their immediate families has been arrested or detained by authorities of a Government, the designated official for security matters at the duty station concerned immediately shall report the incident by the fastest means of communication available (such as cable, radio or telephone) to the Assistant Secretary-General for General Services at United Nations Headquarters who is also the United Nations Security Co-ordinator for the Secretary-General.

7. Mr. Fairall stated to the UNDT that he must have reported the matter to New York, but could not recall the manner in which the report had been made. According to the UNDT, UNECA did not make any representation to the Ethiopian Government through appropriate channels on the matter of Mr. Bekele's arrest and detention as required under paragraph 4 of ST/AI/299, which reads:

The designated official at the duty station where the arrest or detention has taken place shall immediately contact the Foreign Ministry of the Government concerned and request:

- (a) All relevant information about the arrest or detention;
- (b) The Government's co-operation in arranging, as a matter of urgency, that representatives of the United Nations be given access to the individual arrested or detained

8. Following his return to duty Mr. Bekele was reassigned within SSS. On 25 May 2006 the rape charges against Mr. Bekele were dropped after the Prosecutor determined that there was insufficient testimonial or medical evidence for the case to proceed.

9. On 15 August 2007, sixteen months after his arrest and detention, Mr. Bekele wrote to the Secretary-General complaining about the cruel and unusual treatment to which the Government of Ethiopia had subjected him and requesting his relocation to another duty station outside Ethiopia in view of his "well-founded fears" for his safety. Mr. Bekele stopped reporting to duty on 29 August 2007.

10. In a memorandum dated 28 September 2007, the Chief of Administrative Law Unit (ALU), OHRM, advised Mr. Bekele of the outcome of the administrative review in respect to the issues that he had raised in his letter of 15 August 2007. The Chief of ALU was clearly mistaken when she wrote "[y]our arrest in April 2007 was not arbitrary..."² But she then stated that the UNECA Administration reported the incident of Mr. Bekele's arrest and detention to the headquarters in April 2007. The Chief of ALU advised Mr. Bekele that the Administration was not in a position to grant his request for relocation and urged him to report to duty or provide an explanation for his absence.

11. In a letter dated 14 November 2007, the Chief of Human Resources Services Section, UNECA, asked Mr. Bekele to report immediately to UNECA or to provide reasons for his continued absence from duty, no later than 30 November 2007, failure of which would trigger the procedure for separation from service on the basis of abandonment of post. Payments of all salaries and allowances due to Mr. Bekele were subsequently withheld until

² During the proceedings before the UNDT, the representative of the Secretary-General insisted that April 2007 was a typographic error; it should have been April 2006.

further notice. Mr. Bekele replied that he had fled Ethiopia and left his family behind due to “a well founded fear of security and safety” and had decided not to return home.

12. On 18 December 2007, Mr. Bekele appealed to the Joint Appeals Board (JAB) in New York. In a report dated 29 January 2009, the JAB concluded that Mr. Bekele had no right to be reassigned to another duty station, and that he had failed to provide evidence to substantiate his claim of harassment by government security agents. However, the JAB found that the Administration had violated Mr. Bekele’s terms of appointment by failing to inquire into whether his safety was in jeopardy in order to determine whether reassignment was indeed necessary. The JAB recommended that such an inquiry be undertaken and that the Administration make a good faith attempt to reassign Mr. Bekele if reason indeed existed for him to fear for his safety. Nevertheless, on 26 March 2009, the Secretary-General decided not to accept the JAB’s recommendation.

13. Mr. Bekele then appealed to the UNDT in Nairobi, seeking retroactive payment of his salary; compensation for injuries that he suffered during his UNECA service; an investigation into whether reasons existed for him to fear for his safety in Ethiopia; and an inquiry to determine the circumstances surrounding his arrest and detention, or two years’ salary as compensation in lieu of an investigation.

14. On 8 October 2010, the UNDT issued Judgment No. UNDT/2010/175. The UNDT found that UNECA had failed to comply with the requirements of ST/AI/229, in that it did not react to the report of Mr. Bekele’s arrest with any sense of urgency, nor did it report the incident of Mr. Bekele’s arrest and detention to the headquarters, or assist him in arranging legal counsel for his bail application or appear in the legal proceedings for Mr. Bekele’s bail to defend the Organization’s interest. The UNDT also found that UNECA had constructively treated Mr. Bekele as having abandoned his post even though it did not initiate procedures in accordance with administrative instruction ST/AI/400 entitled “Abandonment of post”. The UNDT ordered that Mr. Bekele be paid his withheld salary from 14 November 2007 to 26 March 2009, “with interest at 8% per month [sic] for the said period” and be provided with additionally six months’ net base salary for various due process failures.

15. By e-mail dated 15 November 2010, Mr. Bekele requested a “reasonable” extension of the time limit to file his appeal. He explained that he was “a refugee in a foreign country away from home, without the support and assistance of family and friends, and without

adequate financial resources”. On 16 November 2010, the Appeals Tribunal rejected Mr. Bekele’s request for an extension.

16. On 24 November 2010, Mr. Bekele filed an appeal against Judgment No. UNDT/2010/175. The Secretary-General filed an answer on 14 January 2011.

Submissions

Mr. Bekele’s Appeal

17. Mr. Bekele states that the UNDT’s award of payment of his back-salary in addition to six months’ net base salary for due process failures “does not compensate [him] for all the other reliefs sought by [him]”. He therefore requests that this Tribunal order an additional payment of USD 50,000 “for injuries suffered during the course of [his] service to UNECA, failure of UNECA authorities to afford protection while [he was] arrested and in police custody and their failure to conduct investigation to find the facts of [his] fears and afford relocation, breach of [his] rights by the UNECA Officials”. Mr. Bekele also requests that this Tribunal order his re-employment with the Organization outside Ethiopia either in the United States or a field mission.

18. In the appeal, Mr. Bekele reiterates his claims he made before the UNDT concerning his arrest and detention, his physical injury in the hands of the Ethiopian police, UNECA’s failure to report his arrest and detention to the headquarters or to assist him in defending his rights before the Ethiopian authorities, his relocation away from home, and his financial conditions in the United States.

Secretary-General’s Answer

19. The Secretary-General submits that Mr. Bekele has failed to establish that his arrest, detention and physical abuse in the hands of the Ethiopian authorities were the result of, or in any way related to, the performance of his duties as a Security Officer.

20. The Secretary-General maintains that Mr. Bekele has failed to establish a link between the alleged omissions by the Organization and the physical torture during his arrest.

21. The Secretary-General avers that the Organization cannot be held liable for damages arising from Mr. Bekele's failure to advise the Organization of the alleged subsequent incidents of harassment of himself and his family by national authorities.

22. The Secretary-General stresses that Mr. Bekele does not have a right to be reassigned or appointed to another duty station.

Considerations

23. Essentially, Mr. Bekele appeals the decision of the Dispute Tribunal on the basis that the reliefs ordered in his favour are inadequate compensation for the losses he sustained as a result of various acts and omissions on the part of the Administration, as found by the Dispute Tribunal.

24. Over and above the redress awarded by the Dispute Tribunal, Mr. Bekele seeks USD 50,000 for injuries (economic and social) sustained during the course of his service to UNECA and beyond. He maintains that these injuries arose from UNECA's failure to afford him protection while he was arrested and in police custody; from UNECA's failure to conduct an investigation into the basis for his ongoing fears for his safety as a Security Officer stationed in Ethiopia; and from UNECA's failure to accede to his request for relocation.

25. As a consequence of these failures, Mr. Bekele claims that he sustained "economic and social losses". Over and above his claim to this Tribunal for further monetary relief Mr. Bekele also seeks relocation to a United Nations posting outside of Ethiopia.

26. An analysis of the Judgment under appeal shows that the Dispute Tribunal considered that Mr. Bekele's claims fell within the following parameters:

- i) Whether UNECA, having regard to Mr. Bekele's arrest and detention from 15 to 17 April 2006, complied with its obligations pursuant to ST/AI/299;
- ii) Whether, following his request for relocation to another duty station or field mission, that request had been considered;
- iii) Whether following his decision to absent himself from work (on safety and security grounds) UNECA's actions in withholding his salary and other

benefits, and in ultimately separating him from service at the expiry of his fixed-term appointment on 31 December 2008; and

iv) Whether the circumstances where the JAB was still considering his appeal on foot of the Secretary-General's refusal to relocate him were in accordance with the relevant staff rules and administrative procedures.

27. This Tribunal is satisfied that the Dispute Tribunal properly defined the basis upon which it could consider Mr. Bekele's application.

28. As set out in its 25-page Judgment, the Dispute Tribunal found that both in its actions and omissions the Administration fell well short of its obligations to the Appellant pursuant to ST/AI/299, Staff Regulation 1.2(c) and ST/AI/400.

29. In analysing the Administration's shortcomings, the Dispute Tribunal, as evident from its consideration of the issues, had regard to Mr. Bekele's circumstances during the relevant periods and subsequent to his decision in August 2007 not to return to his duty station as a Security Officer with UNECA in Addis Ababa. Moreover, although sympathetic to the Appellant's plea for a posting outside of Ethiopia, the Dispute Tribunal quite rightly concluded that there were no staff regulations or rules in place which obliged the Administration to accede to such a request.

30. As is evident from the orders made, the Dispute Tribunal concluded that the appropriate redress for the Appellant, taking into consideration all the circumstances, was a direction that the Respondent pay his salary from 14 November 2007 (the date on which it was stopped) to 26 March 2009 (the date on which the Appellant was informed that no further action would be taken on foot of his complaint against the refusal to relocate him), and that he receive six months' net base salary with interest for "various due process failures".

31. Mr. Bekele takes issue with the failure of the Dispute Tribunal to award him two years' salary despite it having found that the Administration had neglected to safeguard his rights.

32. The function of the Appeals Tribunal is to determine whether the Dispute Tribunal erred in law or fact, exceeded its jurisdiction or competence, or failed to exercise the

jurisdiction vested in it. The burden of satisfying the Appeals Tribunal that the Judgment of the Dispute Tribunal is defective rests with the Appellant. The claims made by Mr. Bekele before this Tribunal are largely those canvassed before the Dispute Tribunal. It is our considered view that the Dispute Tribunal, in the instant case, took due regard of the arguments that the Appellant is now canvassing before this Tribunal, and that the Dispute Tribunal, having regard to the parameters of what it could compensate the Appellant for, made adequate provision for Mr. Bekele's economic and social losses in its overall award to him.

33. Thus, this Tribunal upholds the UNDT's order that Mr. Bekele be paid his back-salary and an additional six months' net base salary, save that the interest payable on such compensation is to be calculated on the basis of the Appeals Tribunal's decision in *Warren*.³

Judgment

34. The appeal is therefore rejected.

³ *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.

Original and Authoritative Version: English

Done this 16th day of March 2012 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Courtial

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar