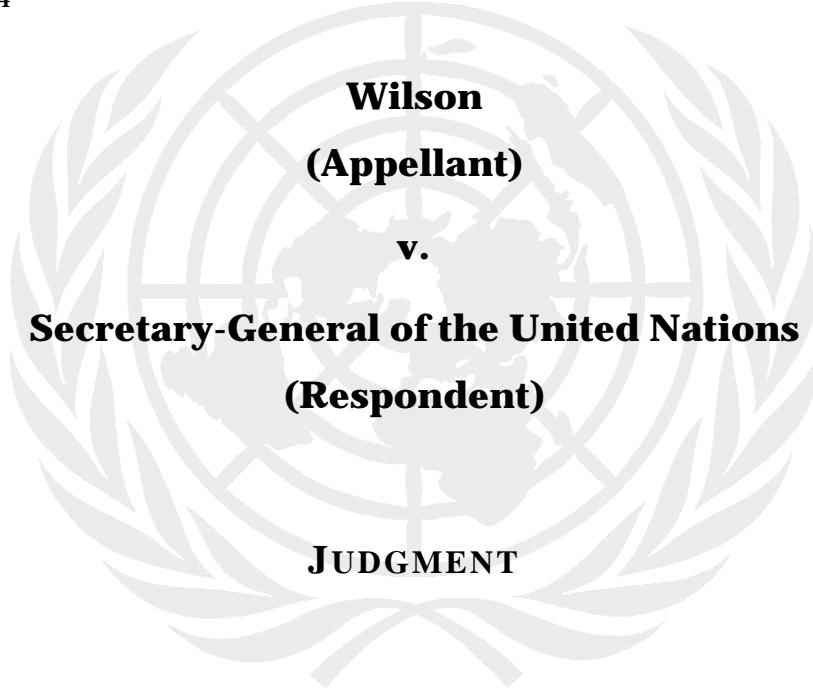




UNITED NATIONS APPEALS TRIBUNAL

TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2011-254



Before: Judge Mary Faherty, Presiding
 Judge Sophia Adinyira
 Judge Luis María Simón

Judgment No.: 2012-UNAT-235

Date: 29 June 2012

Registrar: Weicheng Lin

Counsel for Appellant: Self-Represented

Counsel for Respondent: Amy Wood

JUDGE MARY FAHERTY, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Dan Wilson against Order No. 127 (GVA/2011) rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 23 August 2011 in the case of *Wilson v. Secretary-General of the United Nations*. Mr. Wilson appealed on 19 September 2011, and the Secretary-General answered on 2 November 2011.

Synopsis

2. To the extent that the Order of the UNDT of 23 August 2011 acknowledged that the Appellant withdrew his application on 22 August 2011 and granted the request for withdrawal, the Appeals Tribunal upholds that Order.

3. In every other regard we uphold the arguments made by the Appellant as to the manner in which the Dispute Tribunal went about the task of granting the withdrawal request. The UNDT erred in law and went beyond its jurisdiction in effectively embarking on a consideration of the merits of the case and in speculating about the Appellant's motivation in bringing his application, in circumstances where it is clear from the Dispute Tribunal Judge's "Considerations" that the UNDT was not *in fact* adjudicating on the matter in the context of Article 10(6) of the UNDT Statute. The Appeals Tribunal rejects the Respondent's submission that the manner in which the UNDT granted the withdrawal request was in accordance with Article 19 of the UNDT Rules of Procedure and we find that, save for recording that the application had been withdrawn, the Order did not accord with either the letter or spirit of Article 19.

4. The recital of "Facts" in paragraphs 4 to 7 and "Considerations" in paragraphs 8 to 11 shall be redacted from Order No. 127 (GVA/2011).

Facts and Procedure

5. On 20 January 2011, Mr. Wilson filed an application with the UNDT to contest a recent decision by the former Director-General of the United Nations Office at Vienna (UNOV) concerning the waiving of immunities with regard to traffic violations that occurred in a staff member's private capacity. Mr. Wilson also contested the application of this new decision to him following his receipt of a notice from the UNOV Legal Office that the vehicle he owned had been

fined for speeding. At the time of the original application before the UNDT, Mr. Wilson served at the P-5 level as Chief of Operations, Investigations Division, Office of Internal Oversight Services at UNOV.

6. On 22 August 2011, shortly after the UNDT informed Mr. Wilson that his case would be decided on the papers without an oral hearing, Mr. Wilson stated to the UNDT that, as a result of his transfer to New York, he had decided to withdraw his application.

7. In Order No. 127(GVA/2011) dated 23 August 2011, the UNDT declared the closure of Mr. Wilson's case without adjudication of its merits. However, in the course of its "Considerations" the UNDT observed that the arguments that Mr. Wilson had put forward in his various filings "raise concerns about the true motivation and good faith of the Applicant in filing his application and seem to point towards an abuse of proceedings".

Submissions

Mr. Wilson's Appeal

8. Mr. Wilson submits that the UNDT erred in fact in stating that he was seeking financial compensation. He had never made such a request. Mr. Wilson submits that the UNDT also erred in fact in stating that he "admitted to committing the traffic offense in his private capacity" when his submission and even the official response provided by UNOV to the Austrian Government did not reflect that.

9. Mr. Wilson submits that the UNDT erred in law in rendering a Judgment when his initial submission stated that he was initially "seeking a determination that [his] case [was] receivable by the UNDT". Similarly, Mr. Wilson submits that the impugned Order reads as if he was contesting a traffic violation when the purpose of his submission was simply to raise the issue of due process as it related to a staff member's immunity privileges. Mr. Wilson further submits that the UNDT also erred in law in questioning his motivations and insinuating that he may have abused the judicial process.

Secretary-General's Answer

10. The Secretary-General submits that Mr. Wilson does not offer any basis that would justify interfering with the UNDT's discretion in the management of a case, and that the UNDT properly

applied Article 19 of its Rules of Procedure in granting Mr. Wilson's request for the withdrawal of his application.

11. The Secretary-General submits that, under Article 10(6) of the UNDT Statute, the UNDT does not have to address the underlying merits of a case when making a determination as to whether a party may have abused UNDT's proceedings. Consequently, the Secretary-General submits that the UNDT did not err in raising concerns as to the true motivation of Mr. Wilson's application.

Considerations

12. To the extent that the Order of the UNDT of 23 August 2011 acknowledged that the Appellant withdrew his application on 22 August 2011 and granted the request for withdrawal, the Appeals Tribunal upholds that Order.

13. In every other regard we uphold the arguments made by the Appellant as to the manner in which the Dispute Tribunal went about the task of granting the withdrawal request. The UNDT erred in law and went beyond its jurisdiction in effectively embarking on a consideration of the merits of the case and in speculating about the Appellant's motivation in bringing his application, in circumstances where it is clear from the Dispute Tribunal Judge's "Considerations" that the UNDT was not *in fact* adjudicating on the matter in the context of Article 10(6) of the UNDT Statute, something that the Dispute Tribunal Judge would be entitled to do if he had embarked on a consideration of the merits with the intention of arriving at a finding thereon. The Appeals Tribunal rejects the Respondent's submission that the manner in which the UNDT granted the withdrawal request was in accordance with Article 19 of the UNDT Rules of Procedure and we find that, save for recording that the application had been withdrawn, the Order did not accord with either the letter or spirit of Article 19.

Judgment

14. The recital of "Facts" in paragraphs 4 to 7 and "Considerations" in paragraphs 8 to 11 shall be redacted from Order No. 127 (GVA/2011).

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2012-UNAT-235

Original and Authoritative Version: English

Dated this 29th day of June 2012 in Geneva, Switzerland.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

Entered in the Register on this 12th day of September 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar