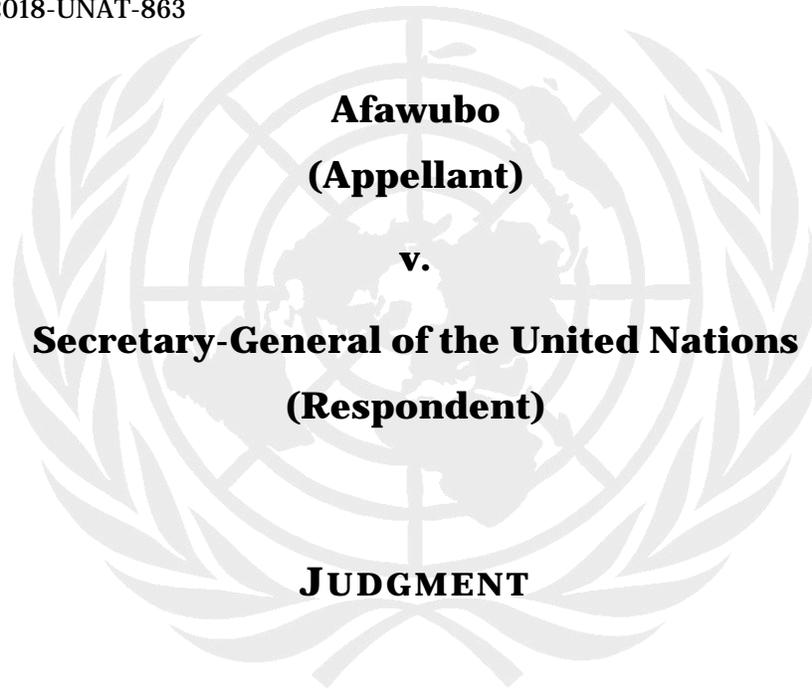




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2018-UNAT-863



**Afawubo
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Richard Lussick Judge Deborah Thomas-Felix
Case No.:	2018-1167
Date:	29 June 2018
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Secretary-General:	Wambui Mwangi

JUDGE MARTHA HALFELD, PRESIDING

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed in relation to Judgment No. 884, *Afawubo* (1998) rendered by the former United Nations Administrative Tribunal (former Administrative Tribunal) on 4 August 1998. Mr. Mensah Novito Afawubo filed the appeal on 23 March 2018, and the Secretary-General filed his answer on 12 June 2018.

Facts and Procedure

2. Mr. Afawubo entered the service of the Office of the United Nations High Commissioner for Refugees (UNHCR) on 1 June 1984 as a Senior Administrative Assistant at the G-8 level in Lomé, Togo, where he was employed on a series of short-term appointments.

3. Starting 31 December 1992, Mr. Afawubo was employed as a Programme Officer at the UNHCR Branch Office in Conakry, Guinea. On 1 January 1993, his project personnel appointment at the L-2 level was extended. However, following the post review meeting of the Regional Bureau for Africa, Mr. Afawubo's post was "discontinued", effective 31 December 1993, as a result of the High Commissioner's decision. From 1 January 1994 forward, Mr. Afawubo obtained several short-term contract extensions. Effective 1 August 1994, Mr. Afawubo was reassigned to Bangui, Central African Republic as a Senior Programme Adviser.

4. On 11 July 1994, Mr. Afawubo filed an appeal with the former Joint Appeals Board (JAB) (JAB Case No. 285). On 18 July 1996, Mr. Afawubo was informed that in its report dated 9 July 1996, the JAB concluded that he had not clearly identified the nature and the content of the administrative decision he was contesting and that the Secretary-General therefore decided to take no further action in respect of his appeal.

5. On 1 April 1997, Mr. Afawubo filed an application before the former Administrative Tribunal challenging the Secretary-General's 18 July 1996 decision not to take further action in respect of his appeal.

6. On 4 August 1998, the former Administrative Tribunal rendered its Judgment No. 884, *Afawubo* (1998). The former Administrative Tribunal found that Mr. Afawubo was "clearly contesting, on the one hand, the decision dated 31 March 1994 reassigning him to Bangui and, on the other hand, the High Commissioner's circular dated 15 December 1993 concerning

promotions and the granting of longer term appointments, since Mr. Afawubo's name [was] not listed among those promoted or granted such appointments". It further noted that the circumstances in which Mr. Afawubo had been reassigned away from Conakry did not appear to be sufficiently clarified and that it was the responsibility of the JAB to investigate the circumstances in question. It therefore remanded the case to the JAB for review of all the issues raised by Mr. Afawubo.

7. On 30 December 1998, Mr. Afawubo filed an application with the former Administrative Tribunal in which he requested interpretation and revision of Judgment No. 884, rendered by the former Administrative Tribunal on 4 August 1998.

8. On 26 January 2000, the JAB issued its report on the remanded case (JAB Case No. 381), rejecting the appeal. It found that the decisions to discontinue Mr. Afawubo's post and to reassign him were not tainted by prejudice or improper motivation and that there was no violation of his rights when he was not selected for a longer fixed-term appointment and for promotion at the 1993 session of the Appointments, Promotions and Postings Board (APPB). The JAB was, however, concerned about the fact that Mr. Afawubo had been declared *persona non grata* in his home country and recommended that the Secretary-General use his good offices to rectify the situation. On 20 March 2000, the Secretary-General informed Mr. Afawubo that he would uphold the JAB's recommendations.

9. According to Mr. Afawubo, on 30 March 2000, he sent a memorandum to the former Administrative Tribunal, by which he requested that it review his application on the merits with a view to rendering a definitive judgment.

10. On 28 July 2000, the former Administrative Tribunal rejected Mr. Afawubo's application for interpretation and revision of Judgment No. 884.

11. On 23 March 2018, Mr. Afawubo filed the present appeal, and the Secretary-General filed his answer on 12 June 2018.

12. On 25 June 2018, Mr. Afawubo filed a Motion for Leave to File Additional Pleadings and on 26 June 2018, the Appeals Tribunal served the motion on the Secretary-General.

Submissions

Mr. Afawubo's Appeal

13. Mr. Afawubo claims that on 30 March 2000, he sent a memorandum to the former Administrative Tribunal, in which he provided comments on the report adopted by the JAB following the remand of the case as communicated to him on 20 March 2000. In his memorandum, he summarized his main observations and comments on the JAB report as submitted to the former Administrative Tribunal and requested that the former Administrative Tribunal “now proceed with the resumed examination of the appeal as filed on 1 April 1997, with a view to rendering a definitive judgment”. However, despite his written observations and comments on the report and his “subsequent repeated calls to that end”, a definitive judgment was never rendered.

14. Mr. Afawubo now requests that the Appeals Tribunal “ensure that justice, however belated, is done to [him] through its directly taking up this unfinished case”. He requests that the Appeals Tribunal find that (i) the former Administrative Tribunal violated “its normal *modus operandi* by not duly rendering a definitive judgment” in his case; (ii) uphold his complaint about the Administration’s failure to properly investigate the circumstances in which he had been “embarrassingly” reassigned away from his duty station; and (iii) retroactively grant a longer fixed-term appointment or promotion to the P3/L3 level to which he had become entitled in December 1993.

The Secretary-General's Answer

15. Mr. Afawubo’s case is not receivable. In resolution 63/253, the General Assembly adopted the statutes of the United Nations Dispute Tribunal (Dispute Tribunal) and the Appeals Tribunal. In that Resolution, the General Assembly also abolished the JABs and the Former Administrative Tribunal. Accordingly, all such cases would be transferred to the Dispute Tribunal effective 1 July and 1 December 2009, respectively.

16. In accordance with resolution 63/253, Article 7 of the Dispute Tribunal Statute provides that as a transitional measure, the Dispute Tribunal has jurisdiction to hear and dispose of cases transferred to it from the former JABs and the former Administrative Tribunal. Under Article 2(1) of the Appeals Tribunal Statute, the Appeals Tribunal has jurisdiction to hear and pass judgment on an appeal filed against a Dispute Tribunal judgment.

17. If Mr. Afawubo's case was pending before the former Administrative Tribunal, as Mr. Afawubo claims, in accordance with resolution 63/253 and the Dispute Tribunal Statute, the case would have to be determined by the Dispute Tribunal before the Appeals Tribunal would have jurisdiction to hear and pass judgment on his appeal. The Secretary-General therefore requests that the Appeals Tribunal dismiss Mr. Afawubo's appeal in its entirety as not receivable.

Considerations

18. As a preliminary matter, Mr. Afawubo's Motion for Leave to File Additional Pleadings is refused. Neither the Appeals Tribunal Statute nor the Appeals Tribunal Rules of Procedure (Rules) provide for an appellant to file an additional pleading after the respondent has filed his answer. Article 31(1) of the Rules and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal allow the Appeals Tribunal to grant a party's motion to file additional pleadings only if there are exceptional circumstances justifying the motion.¹ Mr. Afawubo has not demonstrated any exceptional circumstances which would justify the Appeals Tribunal exercising its discretion to allow him to file additional pleadings.

19. As previously stated, Mr. Afawubo filed an application before the former JAB (JAB Case No. 285) which found, in 1996, that the application had not correctly identified the contested administration decision. The JAB therefore made no recommendation and the Secretary-General decided to take no further action in respect of his appeal. This first decision was overruled in 1998 by the former Administrative Tribunal in Judgment No. 884, *Afawubo* (1998), which remanded the case to the JAB for further consideration.

20. In a new report issued on 26 January 2000 (JAB Case No. 381), the JAB rejected Mr. Afawubo's contentions; however, it issued a recommendation to the Secretary-General to rectify a situation where Ms. Afawubo was declared *persona non grata* in his own country. Soon thereafter, the Secretary-General agreed to do so.

21. Following a filing for interpretation and revision of the former Administrative Tribunal Judgment No. 884, a second Judgment by the former Administrative Tribunal was issued in July 2000, rejecting Mr. Afawubo's request to rescind the decision to remand the case to the JAB.

¹ *Fayek v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-739, para. 7.

22. Mr. Afawubo now claims that he filed a memorandum on 30 March 2000, requesting the former Administrative Tribunal to resume its examination of his application filed in April 1997 and that the case “remains unfinished, as it has never been followed by a definitive ruling after the remand, and which is therefore being referred to the [...] Appeals Tribunal”. Mr. Afawubo claims that he never received a final judgment in his case.

23. In his contentions, Mr. Afawubo alleges possible failures in the JAB’s report and requests the Appeals Tribunal to grant him relief against the alleged discrimination he endured and the supposed failure by the former Administrative Tribunal to issue a final judgment. Neither party has provided the application that Mr. Afawubo allegedly filed before the former Administrative Tribunal on 30 March 2000.

24. According to the transitional measures provided by General Assembly resolution 63/253² and Article 2(7) of the Dispute Tribunal Statute, cases pending before both the former JABs and the former Administrative Tribunal were transferred to the Dispute Tribunal. And the competence of the Appeals Tribunal to hear and pass judgment on an appeal is set forth in Article 2(1) of the Appeals Tribunal Statute, which reads as follows:³

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgment *rendered by the United Nations Dispute Tribunal* in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

25. In light of the transitional measures cited above, the Appeals Tribunal has no jurisdiction to consider applications filed before the former Administrative Tribunal.

26. For the foregoing reasons, the appeal fails.

² Paragraphs 42-45.

³ Emphasis added.

Judgment

27. The appeal is dismissed.

Original and Authoritative Version: English

Dated this 29th day of June 2018 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Thomas-Felix

Entered in the Register on this 10th day of August 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar