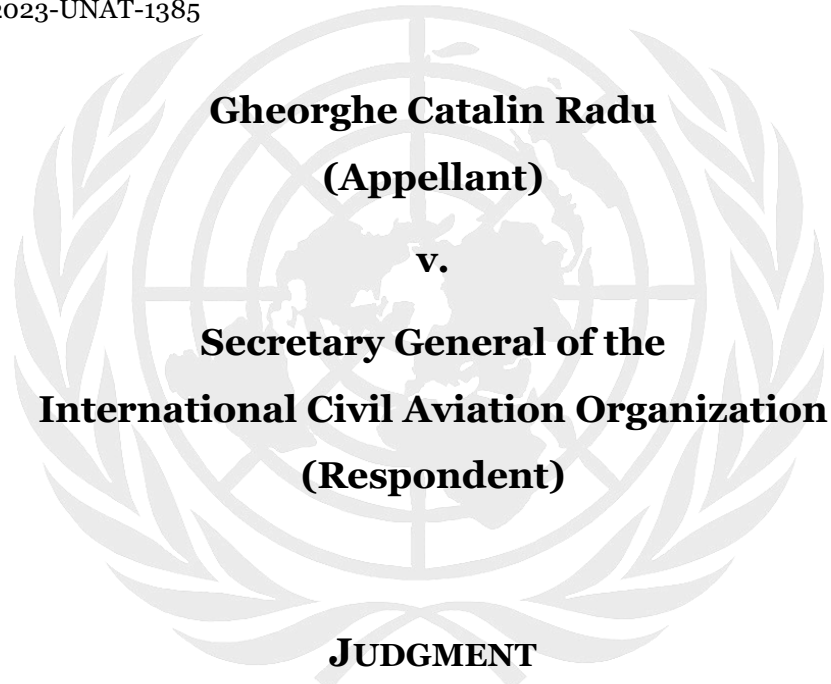




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1385



Before:	Judge Gao Xiaoli, Presiding Judge Graeme Colgan Judge Katharine Mary Savage
Case No.:	2022-1768
Date of Decision:	27 October 2023
Date of Publication:	21 November 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Christopher M. Petras

JUDGE GAO XIAOLI, PRESIDING.

1. Mr. Gheorghe Catalin Radu (Mr. Radu), a former D-1 staff member with the International Civil Aviation Organization (ICAO), contested before the ICAO Appeals Board (Appeals Board) the administrative decision to separate him from service while on certified sick leave. By Decision No. ICAO/2022/006 dated 20 September 2022 (Appeals Board Decision), the Appeals Board dismissed his appeal in its entirety.

2. Mr. Radu appealed to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

3. For the reasons that follow, we dismiss the appeal, without prejudice.

Facts and Procedure

4. In January 2020, the United Nations Office of Internal Oversight Services (OIOS) sent an investigation report to the ICAO Secretary General (Secretary General), which concluded that Mr. Radu had failed to observe the standards of conduct expected of a civil servant.

5. On 6 February 2020, Mr. Radu received a copy of the OIOS report and the supporting evidence and was given 30 calendar days to provide a written response and produce countervailing evidence, if any.

6. On 4 March 2020, Mr. Radu requested that the deadline for his response be extended, if possible until the end of March. On 6 March 2020, the Secretary General approved a 15 calendar-day extension of the deadline for Mr. Radu to submit his response until 21 March 2020; however, as the extended deadline date fell on a Saturday, he was given until Monday, 23 March 2020 to respond. On 23 March 2020, Mr. Radu submitted his response.

7. On 27 April 2020, Mr. Radu requested an additional four to five weeks to review his submission with his legal counsel and to be “given the opportunity to revisit” areas he had overlooked and to provide additional evidence and clarification. This request was refused.

8. On 9 September 2021, the Secretary General concluded third-party consultations that were initiated with the consent of Mr. Radu in July 2020 in respect of his allegations of factual and procedural irregularities and included correspondence with OIOS about materials provided by Mr. Radu in July 2021.

9. On 16 September 2021, the Secretary General wrote to the President of the ICAO Council pursuant to Staff Regulation 9.9, to request approval to terminate Mr. Radu's appointment.
10. On 17 September 2021, Mr. Radu, who had previously submitted a medical certificate for the period of 13 to 17 September 2021, which was subsequently certified by the ICAO medical consultants, requested further sick leave for the period of 20 to 22 September 2021.
11. On 21 September 2021, the President approved the termination of Mr. Radu's appointment. That same day, the Secretary General, in turn, notified Mr. Radu of his provisional decision to impose the disciplinary measure of discharge against him for misconduct. Mr. Radu was given an opportunity to submit, within 14 calendar days from the date of receipt of the Secretary General's provisional decision, a statement in writing on the action proposed to be taken.
12. The following day, Mr. Radu sent an e-mail to the Secretary General requesting further information and inquiring about his right to appeal.
13. From 29 September to 8 October 2021, Mr. Radu was on certified sick leave based on a 1 October 2021 medical certificate.
14. On 5 October 2021, Mr. Radu submitted a written statement in response to the email from the Secretary General of 21 September 2021.
15. During the period of 12 to 22 October 2021, Mr. Radu returned to work.
16. On 22 October 2021, Mr. Radu submitted a medical certificate from his treating physician in support of a request for sick leave to cover the period of 8 October to 8 November 2021.
17. On 26 October 2021, Mr. Radu submitted a medical certificate from his treating physician in support of a revised request for sick leave for the period of 22 October to 8 November 2021.
18. On 5 November 2021, Mr. Radu submitted a medical certificate from his treating physician in support of a request to extend this certified sick leave period from 9 November to 1 December 2021.
19. On 8 November 2021, the Secretary General notified Mr. Radu that he had decided to confirm the decision to impose the disciplinary measure of discharge against him and that he was released of his employment with immediate effect (impugned administrative decision).

20. On 9 November 2021, Mr. Radu emailed the ICAO Medical Clinic to confirm that the extension of his certified sick leave from 9 November to 1 December 2021 had been approved and requested guidance concerning how Staff Rule 110.1(11) relating to “consultation” with the Medical Clinic applied in disciplinary proceedings involving a staff member on certified sick leave.

21. On 10 November 2021, Mr. Radu requested that the Secretary General suspend the application of his discharge pending a hearing on the matter by the Appeals Board.

22. On 12 November 2021, the Secretary General notified Mr. Radu of his denial of the request for suspension of the decision.

23. On 12 November 2021, Mr. Radu submitted a review by the Secretary General on grounds that the Secretary General had failed to comply with Staff Rule 110.1(11).

24. On 26 December 2021, the Secretary General advised Mr. Radu that Staff Rule 110.1(11) does not mandate the suspension of disciplinary proceedings against a staff member who is on sick leave, and that the facts demonstrated that his medical condition had not affected his participation in the disciplinary process and that the decision would stand.

25. On 28 December 2021, Mr. Radu submitted an appeal to the Appeals Board contesting his separation from service during certified sick leave, primarily on the ground that Staff Rule 110.1(11) provides for consultation with the Medical Clinic as a mandatory step to be taken by the Secretary General before undertaking the disciplinary process when a staff member is on sick leave and that as the mandatory step was not taken, the decision to discharge Mr. Radu was void *ab initio*.

26. On 20 September 2022, the Appeals Board issued its decision on Mr. Radu’s appeal. The Appeals Board reached the following conclusions:¹

... The Staff Rule applies only to give a staff member subject to the disciplinary process a right to exercise due process rights, that is to *respond and to produce countervailing evidence*. The Staff Rule does not provide for additional purposes as asserted by the Applicant.

... That the Staff Rule provided no obligation on the Respondent to consult with the Medical Clinic on 8 November 2021, as the disciplinary process had entered a phase that

¹ Appeals Board Decision, paras. 117-120.

did not call for the participation of the Applicant, giving no rights to *respond and to produce countervailing evidence*.

... That there was no requirement for the Respondent to take the medical condition of the Applicant into account when making or communicating the decision to discharge the Applicant from his employment with ICAO.

... That the rights of the Applicant to have applied for a disability pension or other like matters were not considerations valid to the decision to discharge the Applicant from employment following a finding of misconduct.

27. On 22 December 2022, Mr. Radu filed an appeal (the case at hand), and on 31 January 2023, the Secretary General filed his answer.

28. On 7 February 2022, Mr. Radu submitted another appeal to the Appeals Board contesting the same administrative decision of 8 November 2021, which imposed the disciplinary measure of discharge from his employment with ICAO with immediate effect on the ground of misconduct. On 21 February 2023, the Appeals Board delivered Decision No. ICAO/2023/001 by which it dismissed his appeal.

29. On 22 May 2023, Mr. Radu filed an appeal to the UNAT challenging this Decision (UNAT Case No. 2023-1804), and on 31 July 2023, the Secretary General filed an answer.

Submissions

Mr. Radu's Appeal

30. Mr. Radu claims that the Appeals Board erred in fact and law in concluding that Staff Rule 110.1(11) applies only to give a staff member subject to the disciplinary process a right to exercise due process rights, that is to respond and to produce countervailing evidence, and does not provide for additional purposes. The Appeals Board erred on a question of fact because, on the one hand, it found that Mr. Radu was on sick leave for the period from 13 September 2021 through 1 December 2021 which was certified by the ICAO medical consultants, while, on the other hand, the Appeals Board also noted that the parties did not appear to agree on when his sick leave commenced and entered findings with respect to the date that his sick leave was certified. Mr. Radu contends that the Appeals Board's findings in this regard "are confusing and cast suspicion on which exact dates were used in its considerations by the Appeals Board". Mr. Radu further contends that the Appeals Board erred in law in its interpretation of the words "disciplinary process" in the context of Staff Rule 110.1.

31. Mr. Radu further contends that the Appeals Board erred in concluding that Staff Rule 110.1(11) did not require the Secretary General to consult with the Medical Clinic on 8 November 2021.

32. Finally, Mr. Radu maintains that the Appeals Board erred in concluding there was no requirement for the Secretary General to take the medical condition of the Appellant into account when making or communicating the decision to discharge the Appellant from his employment with ICAO.

33. Mr. Radu asks that the UNAT set aside the impugned administrative decision of 8 November 2021; order the rescission of the Secretary General's decision directing his immediate discharge, until his sick leave is exhausted, and the Medical Clinic could confirm his fitness; and order that any new procedure should comply with Staff Rule 110.1(11) including consultation with the Medical Clinic. Mr. Radu further asks that the UNAT award compensation for material prejudice due to the violation of Staff Rule 110.1(11) for the effect on him of being dismissed in the circumstances in which he was, estimated at USD 30,000; and compensation for moral prejudice due to the impact on his health and the withdrawal of the Organization's health insurance, estimated at USD 60,000; and reimbursement of legal fees, if any.

The Secretary General's Answer

34. The Secretary General submits that Mr. Radu merely disagrees with the Appeals Board and repeats the same arguments he unsuccessfully made to the Appeals Board without demonstrating any error in law in the Appeals Board's decision. In addition, in support of his claims, Mr. Radu fails to offer any credible explanation as to why he submitted a timely ten-page reply to the Secretary General's 21 September 2021 provisional decision to discharge him. Nor does he address his subsequent failure to exercise his right under Staff Rule 111.1 to request that the Appeals Board waive the time limit for him to request administrative review of the Secretary General's 8 November 2021 discharge decision and/or the time limit for him to submit an appeal following his receipt of the Secretary General's 26 December 2021 response. The Secretary General seems to suggest that Mr. Radu's alleged physical and mental incapacity was not severe enough to affect his ability to participate in the proceedings.

35. The Secretary General submits that the Appeals Board properly reviewed Mr. Radu's appeal, and it correctly and reasonably concluded that Staff Rule 110.1(11) did not oblige the Secretary General to consult with the Medical Clinic on 8 November 2021, or otherwise provide for additional purposes as asserted by Mr. Radu. Mr. Radu merely repeats arguments he previously submitted before the Appeals Board, while failing to show how the Appeals Board's decision was not supported by the evidence or was otherwise unreasonable. Mr. Radu has thus not complied with his statutory obligation as an appellant, in that nothing that he has pleaded is capable of demonstrating that the Appeals Board has committed an error of fact or law warranting the intervention of the Appeals Tribunal. The Secretary General therefore requests that the Appeals Tribunal dismiss the appeal in its entirety.

Considerations

36. In the present case, by appeal dated 28 December 2021, Mr. Radu clarified that his appeal contested the administrative decision of 8 November 2021 in respect of his separation from service *during certified sick leave*. He disputed the decision on the ground "that Staff Rule 110.1(11) provides for a mandatory step to be taken by Secretary General before undertaking the disciplinary process when a staff member was on sick leave and that as the mandatory step was not taken", the decision was *void ad initio*.² He recorded that his "appeal does not deal with the merits of the Secretary General's decision to discharge the Applicant for misconduct, which is subject of a separate appeal to the Board".³ Indeed, in another appeal dated 7 February 2022, Mr. Radu contested the same administrative decision of 8 November 2021 on its merits, challenging the disciplinary measure of separation from service for the alleged misconduct.⁴

37. We believe that the Appeals Board Decision is not a final judgment, in that it merely addresses one element of the administrative decision, which is to dismiss Mr. Radu for misconduct *while on sick leave*. Indeed, his separation from service during certified sick leave could be one of his grounds to contest the disciplinary decision of separation from service for the alleged misconduct. However, except for clearly defined exceptions established by our jurisprudence, it is only the final judgment which is appealable to the Appeals Tribunal.

² *Ibid.*, para. 1.

³ *Ibid.*

⁴ Decision No. ICAO/2023/001, para. 1, now pending appeal before UNAT (UNAT Case No. 2023-1804).

38. It is not in the interest of justice for the Appeals Tribunal to issue separate judgments on different claims which relate to the same administrative decision. Such an approach would encourage a multiplicity of appeals on different aspects of one decision. Rather than address Mr. Radu's claims concerning the 8 November 2021 decision in a piecemeal fashion, the Appeals Tribunal will consider all of his claims in the same judgment in the Appeals Tribunal's Spring Session in 2024.

39. In these circumstances, we dismiss Mr. Radu's appeal of the Appeals Board Decision, without prejudice on the basis that in accordance with Order No. 538 (2023) dated 27 November 2023, both parties will have the opportunity to amend their respective briefs in UNAT Case No. 2023-1804, to include the grounds of appeal raised in this matter, within the time limits set out in said Order.

Judgment

40. Mr. Radu's appeal in Case No. 2022-1768 is dismissed, without prejudice.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Gao, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Savage

Judgment published and entered into the Register on this 21st day of November 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar