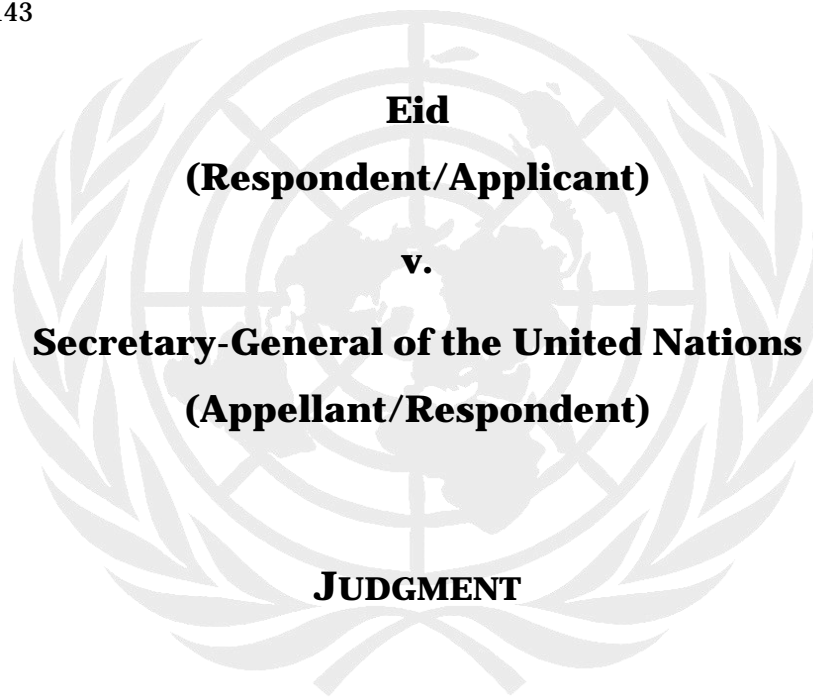




UNITED NATIONS APPEALS TRIBUNAL

TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2010-143



Eid
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before:	Judge Mark P. Painter, Presiding Judge Inés Weinberg de Roca Judge Jean Courtial
Judgment No.:	2011-UNAT-145
Date:	8 July 2011
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant: Self-represented

Counsel for Appellant/Respondent: Cristián Gimenez Corte

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. A change in law is not a “fact” contemplated by the provision for revision of judgments in the Statute of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal).¹ That this Court issued jurisprudence after the Judgment by the UNDT is an issue of law, not of fact. No facts changed, only the law. Thus, there were no grounds for revision, and the UNDT order denying revision is affirmed.

2. And an application for revision is not a substitute for appeal. The appeal from UNDT Judgment No. 2010/UNDT/106 is not receivable by this Court as it is time-barred.

Facts and Procedure

3. Kheralla Eid (Eid) joined the United Nations Interim Force in Lebanon (UNIFIL) as a Welder at the GS-3 level on 1 January 1980 under a temporary indefinite appointment. Nearly 22 years later, on 25 November 2002, he was informed that his post would be abolished effective 31 December 2002. He was also informed of the availability of an enhanced termination indemnity equal to 150 per cent of the termination indemnity under Annex III to the Staff Regulations (compensation package) conditional upon his giving a written undertaking not to enter into any proceedings against the Organization in connection with his termination.

4. But Eid was not separated from service until 14 February 2003, after he was placed on sick leave on 9 December 2002. His requests for additional sick leave days were not approved. After Eid formally contested the decision not to extend his sick leave and requested the referral of his case to a doctor or a medical board, the Chief Administrative Officer (CAO), UNIFIL, responded on 19 November 2004. He informed Eid that no medical board would be convened and recommended that Eid accept the offer of the compensation package. In April 2005, the new CAO/UNIFIL reiterated the recommendation for Eid to accept the offer of the compensation package. And in

¹ UNDT Statute, Article 12(1).

February 2006, the Force Commander of UNIFIL also urged Eid to accept the offered compensation package.

5. In March 2006, Eid initiated an appeal under the internal justice system then in place, requesting inter alia that he be paid the compensation package without delay and without having to renounce attempts to obtain the extension of his sick leave. The case went through the administrative review and the Joint Appeals Board, and Eid's appeal was declared time-barred. Eid continued his appeal to the former Administrative Tribunal, which did not have an opportunity to review the case before its abolition on 31 December 2009. The case was subsequently transferred to the Dispute Tribunal.

6. In Judgment No. UNDT/2010/106 dated 9 June 2010, Judge Cousin rejected the part of Eid's application contesting UNIFIL's refusal to grant him an extension of his contract on the ground of ill-health. But he considered the part of Eid's application to review the delay or refusal to pay him the compensation package receivable. Judge Cousin ordered the Secretary-General to pay the normal termination indemnity and other sums owed to him in connection with his separation from service in the amount of 29,991.23 US dollars and 9,552,660 Lebanese pounds, with eight per cent interest from 14 February 2003, when they fell due, until the payment was made. But Judge Cousin ruled that Eid should not receive the 50 per cent enhanced termination indemnity because he had refused to undertake not to contest his termination.

7. On 1 July 2010, this Court issued a synopsis of its Judgment rendered in *Warren*, which fixed the interest rate applicable to pre-judgment compensation at the US prime rate applicable at the time the entitlement fell due.² (The *Warren* Judgment was issued on 20 August 2010.)

8. On 11 August 2010, the Secretary-General submitted an application with the Dispute Tribunal for revision of the UNDT Judgment related to Eid's case, under Article 29 of the UNDT Rules of Procedure. The Secretary-General considered the decision of this Court to fix the interest rate applicable to pre-judgment compensation at the US prime rate to be a "decisive fact" which was "unknown to the Dispute Tribunal and to the party applying for revision". The Secretary-General maintained that the

² *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.

UNDT's award of eight per cent interest rate on the pre-judgment compensation was contrary to the *Warren* findings and should therefore be revised.

9. By Order No. 70 (GVA/2010) dated 18 August 2010, Judge Cousin rejected the Secretary-General's application for revision. Judge Cousin considered that the rendering by the Appeals Tribunal of a decision in *Warren* did not constitute a "fact" pertaining to Eid's case. Moreover, the new jurisprudence created by the Appeals Tribunal may not lead the UNDT to revise a judgment that had already been rendered.

10. On 4 October 2010, the Secretary-General filed an appeal from both UNDT Judgment No. 2010/UNDT/106 and UNDT Order No. 70 (GVA/2010). On 15 November 2010, Eid filed an answer.

Submissions

Secretary-General's Appeal

11. The present appeal from the UNDT Order is receivable as the Order was not interlocutory in nature and was issued after the Judgment was rendered. Furthermore, it was submitted on a timely basis. The Secretary-General cites the Appeals Tribunal's Judgment in *Mezoui* in support of his position.³

12. On the merits, the Secretary-General submits that the UNDT erred in setting the interest rate at eight per cent per year, as it is excessively high, particularly in light of the significantly lower rates of return on more secure investments in US dollars, and is inconsistent with the *Warren* Judgment rendered by this Court. The eight per cent interest rate represents a windfall for Eid, in violation of Article 10(7) of the UNDT Statute, which prohibits punitive damages.

13. The UNDT erred in rejecting the Secretary-General's application for revision. The determination by this Court in *Warren* regarding the appropriate methodology of calculating interest constituted a fact of decisive nature within the meaning of Article 12 of the UNDT Statute. The refusal by the UNDT to revise the interest rate to conform to the *Warren* decision means that the Secretary-General would have to appeal every UNDT

³ *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043.

judgment ordering such an award. This would not be in line with judicial efficiency and economy.

Eid's Answer

14. The Secretary-General's application for revision of UNDT Judgment is not receivable, as an application for revision is only possible after this Court has rendered a final judgment on the UNDT judgment, or if the judgment becomes executable.

15. The appeal against the UNDT Judgment 2010/UNDT/106 is time-barred.

16. The comparison of his case with *Warren* is irrelevant as the two cases are different.

17. Eid incurred costs in claiming his rights during the past ten years. His costs are more important than those incurred by the Administration in trying to exhaust Eid economically. In this connection, Eid requests that this Court award additional compensation to him for the duress to which the Administration had subjected him during the past ten years.

Considerations

18. The appeal from UNDT Order No. 70 (GVA/2010) is timely. But the Order is correct that there was no new fact unknown at the time of the UNDT Judgment. That this Court issued jurisprudence after the Judgment by the UNDT is an issue of law, not of fact. No facts changed, only the law. Thus, there were no grounds for revision, and the UNDT Order is affirmed.

19. The appeal from UNDT Judgment No. 2010/UNDT/106 is not receivable by this Court as it is time-barred. The UNDT decision was final on 9 June 2010. This appeal was filed on 4 October 2010, about 120 days later. Under Article 7(1)(c) of the Statute of the Appeals Tribunal, the time limit for filing an appeal is 45 days.

20. The Administration makes the point that it filed for a revision rather than an appeal to save time and resources. We understand, but we believe it necessary to restrict

applications for revision to their proper function.⁴ And this is an isolated case—cases after *Warren* have applied the (presently) lower interest rate.

Judgment

21. We affirm both UNDT Judgment No. 2010/UNDT/106 and UNDT Order No. 70 (GVA/2010).

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Painter, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Courtial

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar

⁴ UNDT Statute, Article 12(1).