



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

WILSON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Pallavi Sekhri, ALS/OHRM, UN Secretariat

Introduction

1. On 20 December 2016, the Applicant filed a “Motion for Correction of Judgment” in Case No. UNDT/NY/2016/073 requesting that the Dispute Tribunal modify para. 13 of the Dispute Tribunal’s Order on Suspension of Action, Order No. 276 (NY/2016), of 16 December 2016 (“the Order”). As the aforesaid Order disposed of Case No. UNDT/NY/2016/073, a closed file, the Applicant’s motion was registered as Case No. UNDT/NY/2017/003.

Background

2. Prior to the instant motion, the Applicant filed two requests for suspension of action: the first on 15 June 2016, and the second on 9 December 2016. Both requests sought suspension, pending management evaluation, of the selection for the post of Chief, Information Management Systems Service (D-1 level) in the United Nations Joint Staff Pension Fund (“UNJSPF”) (“the Post”).

3. On 20 June 2016, by way of Order No. 147 (NY/2016), the Dispute Tribunal granted the Applicant’s first request and suspended the selection decision pending management evaluation.

4. On 1 July 2016, the Secretary-General appealed Order No. 147 (NY/2016) to the United Nations Appeals Tribunal.

5. On 30 August 2016, the Under-Secretary-General of the Department of Management rescinded the suspended selection decision and directed, *inter alia*, that the selection process for the Post be, in part, recommenced.

6. By way of Order No. 276 (NY/2016), issued on 16 December 2016, the Dispute Tribunal granted the Applicant’s second request of 9 December 2016, and suspended the selection decision, pending management evaluation.

7. Four days later, on 20 December 2016, the Registry of the Appeals Tribunal published *Wilson* 2016-UNAT-709, the judgment in the Secretary-General's appeal of Order No. 147 (NY/2016), issued on 1 July 2016.

8. On the same day, the Applicant filed the instant motion for correction of Order No. 276 (NY/2016).

9. Due to the peculiarity of the circumstances surrounding the Applicant's motion and the legal issues raised therein, the Dispute Tribunal requested the parties to attend a hearing on 24 February 2017.

Applicant's submission

10. The Applicant specifically requests a correction to para. 13 of Order No. 276 (NY/2016) of 16 December 2016, which reads:

“[t]he Applicant submits that the Secretary-General subsequently appealed Order No. 147 (NY/2016). According to the Applicant, the appeal was dismissed”.

11. The Applicant requests that para. 13 be modified to read:

On 1 July 2016, the Secretary-General appealed Order No. 147 (NY/2016). On 28 October, 2016, the UNAT [United Nations Appeals Tribunal] dismissed the appeal by the Secretary-General.

12. In his motion, the Applicant's reason for the requested modification is stated as follows:

On 20 December, 2016, the UNAT registry published *Wilson*, 2016-UNAT-709, which is the official documented judgement on Case No.: 2016-944. This verdict was publically announced on 28 October 2016 during the fall session of the UNAT.

Given that the official judgement has now been published, I would respectfully request that the paragraph be appropriately modified to match this.

Consideration

Applicable law

13. Article 12 of the Dispute Tribunal's Statute provides:

Article 12

1. Either party may apply to the Dispute Tribunal for a revision of an executable judgement on the basis of the discovery of a decisive fact which was, at the time the judgment was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

2. Clerical or arithmetical mistakes, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own motion or on the application of any of the parties.

3. Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgement, provided that it is not under consideration by the Appeals Tribunal.

14. Articles 29, 30, and 31 of the Dispute Tribunal's Rules of Procedure provide:

Article 29 Revision of judgements

1. Either party may apply to the Dispute Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Dispute Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.

2. An application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

3. The application for revision will be sent to the other party, who has 30 days after receipt to submit comments to the Registrar.

Article 30 Interpretation of judgements

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or scope of a judgement, provided that it is not under consideration by the Appeals Tribunal. The application

for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application. The Dispute Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.

Article 31 Correction of judgements

Clerical or arithmetical mistakes, or errors arising from any accidental slip or omission, may at any time be corrected by the Dispute Tribunal, either on its own initiative or on the application by any of the parties on a prescribed form.

Receivability

15. The Applicant has submitted the instant motion by way of the form for a “Motion for Correction of Judgment” (UNDT/F.8E rev. 1 July 2011). It is noted that the prescribed form refers to “judgments” and not “orders”. This raises the issue as to whether this motion is properly before the Dispute Tribunal.

16. The Dispute Tribunal’s Statute is superior to the Dispute Tribunal’s Rules of Procedure (see *Awad* UNDT/2013/071 at para. 19). Whilst arts. 12.1 and 12.3 of the Dispute Tribunal’s Statute specifically refer to the revision of an executable judgment and the interpretation of a final judgment, respectively; art. 12.2 of its Statute on corrections is silent as to its applicability to judgments or orders.

17. Whilst arts. 29 and 30 of the Dispute Tribunal’s Rules of Procedure deal with revision of judgments and the interpretation of judgments in both the heading and the text, art. 31 of the Dispute Tribunal’s Rules of Procedure cited above is clearly headed “Correction of judgments”, although like art. 12.2 of its Statute, it is silent as to its applicability to judgments or orders.

18. Article 11.3 of the Dispute Tribunal’s Statute, as amended by the General Assembly resolution 69/203 (Administration of justice at the United Nations), states that:

... the judgments and orders of the Dispute Tribunal shall be binding upon the parties, but are subject to appeal in accordance with

the Statute of the United Nations Appeals Tribunal. In the absence of such appeal they shall be executable following the expiry of the time provided for appeal in the statute of the Appeals Tribunal. Case management orders or directives shall be executable immediately.

19. The Appeals Tribunal has also ruled that appeals of Dispute Tribunal orders are receivable as long as these are judicial decisions which dispose of the case before the lower Tribunal. In the matter of *Charles* 2014-UNAT-437 at paras. 19 and 20, the Appeals Tribunal noted that whether the Tribunal calls a ruling

... judgments or orders becomes irrelevant to the task of deciding if they are appealable or not and within which time limits. Both situations (an order disposing of the case following withdrawal and a final judgment) produce the closure of the case and this analogy leads this Tribunal to conclude in favor of the receivability of the identical mechanism to impugn the decision: an appeal.

20. Article 2.2 of the Dispute Tribunal's Statute provides that its decisions on applications requesting suspension of action pending management evaluation "shall not be subject to appeal". It is trite law that the Appeals Tribunal has considered appeals of such matters where the Dispute Tribunal has exceeded its jurisdiction and competence.

21. The Applicant's motion was submitted by way of the form for "Motion for Correction of Judgment" (UNDT/F.8E rev. 1 of July 2011), which notes and informs that "Motions for correction of judgments are governed by art. 12.2 of the Statute and art. 31 of the Rules of Procedure [...]". At section I of the form, the party moving for correction is requested to identify "any clerical or arithmetical mistakes or errors arising from any accidental slip or omission that requires correction in accordance with art. 12.2 of the Tribunal's Statute", and to specify "the paragraphs of the judgment in which the mistakes or errors were made". Whilst the prescribed form refers to "judgments" and not "orders", the Tribunal finds that this is a matter of form and not substance. The Tribunal finds that the suspension of action Order No. 276 (NY/2016) was dispositive of the case at the time, and finds that the instant motion submitted by way of a motion for correction of a judgment on Form UNDT/F.8E rev. 1 of July 2011 is receivable.

Correction of Order No. 276 (NY/2016)

22. The Dispute Tribunal's Statute and Rules of Procedure require the party moving for correction to establish a clerical or arithmetical mistake or error, arising from any accidental slip or omission, which warrants correction. The Appeals Tribunal on considering similar provisions in its statute has rejected a motion for correction of an Appeal's judgment on grounds that the appellant mover failed to fulfil the strict criteria established under the relevant article (see *Chaaban* 2015-UNAT-497; *Al-Mulla* 2013 UNAT 394; and *Beaudry* 2011-UNAT-129).

23. In the instant case, the Applicant set forth the link to the outcomes of cases for the winter session published on the Appeals Tribunal's website and noted that "[a]ccording to the UNAT registrar [...] the full cases are due to [be] published in full some time before the end of December. However, the rulings were publically announced on UN WebTv". At the hearing, the Applicant explained that he was present during the Appeals Tribunal session where the outcome of judgments was rendered, when the appeal was clearly stated as dismissed. Accordingly, he was not simply making an unsubstantiated submission, but relying on the publicly announced ruling.

24. The Applicant annexed to his 9 December 2016 suspension of action request a document titled, "Outcome of Judgments rendered by [the Appeals Tribunal] during its [21st] Session in New York from 17 to 28 October 2016". This document, to which the Applicant also refers to in his motion for correction, is only a synopsis indicating that, on 28 October 2016, the Appeals Tribunal publically announced that it dismissed the appeal and affirmed Order No. 147 (NY/2016). The Appeals Tribunal did not publish its reasoned judgment until 20 December 2016, in which, it dismissed the appeal and "rendered the Order under appeal moot" (*Wilson* 2016-UNAT-709 para. 26).

25. The Applicant, in his motion, has not contended that para. 13 of Order No. 276 (NY/2016) contains a mistake or error arising from any accidental slip or

omission. Instead, the Applicant requests para. 13 be “modified to match” a *post facto* or subsequent occurrence—namely the publication of the reasoned judgment of the Appeals Tribunal, which was officially issued four days *after* the Order. It is clear from the reasoned judgment that the appeal was decided on the simple ground that the issue was moot, and not on any substantive ground of fact or law.

26. Whilst a tribunal may be bound by precedent or reasoning in previous appellate judgments, it cannot take cognizance of decisions which follow subsequently. Although, in this instance, the synopsis of the outcome of the Appeals Tribunal’s judgments was published on 28 October 2016, this Tribunal notes that the published synopsis stated that it is “[n]ot an official document. For public information purposes only”. As this synopsis is not an official document, the Tribunal could not and did not rely upon it as authoritative and binding. As authority, the Dispute Tribunal may only rely on the reasoned judgment of the Appeals Tribunal, which was published on 20 December 2016, notably four days *after* this Tribunal’s Order was issued. There was therefore no error arising from any accidental slip or omission. Furthermore, the Dispute Tribunal cannot now correct its order issued four days prior to *Wilson* 2016-UNAT-709, retroactively to the latter’s publication.

Revision of Order No. 276 (NY/2016)

27. At the hearing, the Applicant rightly conceded that nothing much turns on para. 13, and the parties agreed that para. 13 had no bearing on the reasoning or outcome of Order No. 276 (NY/2016). In other words, there is no decisive fact which may justify even a revision of the Order.

28. As discussed above, the provisions relating to revision pertain to an executable judgment. Applying the legal reasoning and rationale in *Charles* 2014-UNAT-437 as quoted above, the suspension of action order in this instance, which was not appealable *per se*, would have become immediately executable.

29. In any event, it is clear from *Wilson* 2016-UNAT-709 that the appeal was dismissed on entirely different grounds and that Order No. 147 (NY/2016) ceased to

have any legal effect when the management evaluation was issued, the issuance of the management evaluation rendering Order No. 147 and the appeal moot. Para. 13 of Order No. 276 (NY/2016), whether as issued or corrected as proposed, does not impact the outcome of Order No. 276 (NY/2016) or the Dispute Tribunal's reasoning therein. The Tribunal accordingly does not find that para. 13 relates to a "decisive fact" and therefore does not find that a revision of the Order issued four days prior to the Appeals Tribunal's judgment is warranted.

Conclusion

30. In all the above circumstances, the motion for correction is rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 16th day of March 2017

Entered in the Register on this 16th day of March 2017

(Signed)

Hafida Lahiouel, Registrar, New York