



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/15

Order No.: 42 (GVA/2010)

Date: 9 April 2010

Original: English

Before: Judge Thomas Laker

Registry: Geneva

Registrar: Víctor Rodríguez

ALLEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON A REQUEST FOR
INTERPETATION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Ivan Koulov, UNOG

Introduction

1. On 22 February 2010, the Tribunal rendered judgment UNDT/2010/009 on case No. UNDT/GVA/2009/15, filed against the decision to reassign the Applicant from the post of Officer-in-Charge (O-i-C), Human Resources Management Section (HRMS), UNCTAD, to that of Chief, General Services and Travel Unit (GSU), UNCTAD.

2. The said judgment ordered, *inter alia*, in its paragraph 52, sub-paragraph 1, that:

“The decision to redeploy the Applicant as per the memorandum of the Acting Deputy Secretary-General of UNCTAD dated 19 September 2008 be rescinded.”

3. On 11 March 2010, the Respondent submitted to the Tribunal a request for interpretation of the above-mentioned judgment, pursuant to article 30 of the UNDT rules of procedure. More specifically, the Tribunal was requested to “clarify the scope and meaning of paragraph 52 (1) of the judgment”.

4. The Respondent stated in his request that the order stipulated in paragraph 52, sub-paragraph 1, of the judgment was *ultra petita*, considering that the Applicant had modified the remedy sought from the Tribunal in his final pleas at the oral hearing, renouncing to be placed against the position he used to occupy prior to the contested decision. He further pointed out that the position of Chief, HRMS, UNCTAD, had been advertised, but the Applicant was not eligible in accordance with existing procedural requirements. The Respondent asked whether it would be sufficient to comply with the order in paragraph 52, sub-paragraph 1, of the judgment that the Applicant be placed as P-3 Human Resources Officer in HRMS, UNCTAD, rather than reinstated in the O-i-C functions.

5. The Applicant provided comments on 23 March 2010. He confirmed that, despite certain observations he made during the oral hearing on the feasibility of his reinstatement, he did request the rescission of the reassignment decision. The Applicant underlined that he did not seek to be appointed Chief, HRMS, UNCTAD, but placed back as O-i-C of this section, a position he could legally hold.

6. A hearing was held on this issue on 7 April 2010.

Considerations

7. The Tribunal decides by order, and not by judgment. Neither the Tribunal’s statute nor its rules of procedure prescribe a certain form of decision for interpretation. The provisions concerning revision, correction, execution and, also, interpretation follow those dealing with judgment (see articles 11 and 12 of the UNDT statute, articles 29 to 32 of the UNDT rules of procedure). Therefore, from a systematic perspective those decisions do not seem to be considered as judgments. This is consistent with the definition of “judgment” agreed upon by the Tribunal’s judges at their Plenary of December 2009. According to this definition only a final determination on an application within the meaning of article 2, paragraph 1, of its statute is to be released as judgment, whereas all other

decisions have to be issued by order. The final determination of this case was judgment UNDT/2010/009, dated 22 January 2010.

8. Article 12, paragraph 3, of the Tribunal's statute provides that:

“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.”

9. The competence of the Tribunal to issue an interpretation of one of its judgments is undisputed, in light of the above-cited provision. Additionally, in the instant case, the judgment has not been appealed by either party, and could not be so at this juncture, inasmuch as the 45-day time limit prescribed to this effect has already expired; consequently, the judgment in question is not under consideration by the Appeals Tribunal.

10. However, a request for interpretation of a judgment is receivable only if the operative part of it gives rise to uncertainty or ambiguity about its meaning or import. This has been consistently held by other international administrative tribunals which were vested, before UNDT, with the power to interpret their own judgments (see e.g. ILOAT, Judgment 802, *In re Van Der Peet* (No. 10); Judgment No. 2483; IMFAT, Order No. 2005-2).

11. This finding is in line with the very *raison d'être* of article 12, paragraph 3, of the UNDT statute. Indeed, the purpose of an application for interpretation is not to seek further justification of the grounds for a given decision, but to obtain clarification of the decision itself (see ILOAT, Judgment No. 2483).

12. It results that the instant request for interpretation must be deemed irreceivable, for paragraph 52, sub-paragraph 1, of judgment UNDT/2010/009 is not obscure or misleading, nor suffers of any ambiguity as to its sense and practical implications. The order to rescind the decision to redeploy the Applicant “as per the memorandum of the Acting Deputy Secretary-General of UNCTAD dated 19 September 2008”, i.e. from the post of O-i-C, HRMS, UNCTAD, to that of Chief, General Services and Travel Unit (GSU), UNCTAD, clearly means that the *status quo ante* existing on the date the decision was made needs to be restored. In other words, the Applicant has to be placed on the position he fulfilled on 19 September 2008, i.e., that of O-i-C, HRMS, UNCTAD.

13. The foregoing is obviously without prejudice of the Administration's prerogative to subsequently modify the position to which the Applicant is assigned by means of a new decision, provided the latter is reached in observance of the applicable rules and principles.

14. In addition, it should be noted that it would be contrary to the letter and the spirit of article 12, paragraph 3, of the statute to attempt a reversal or change of a final ruling under cover of interpretation. The legality and/or rightfulness of the judgment is not a matter to be dealt with in this framework, as interpreting, by definition, entails shedding light on the original meaning, as opposed to altering its substance. Instead, the proper venue to challenge the content of a judgment issued by UNDT is appeal before the United Nations Appeals Tribunal, a possibility that the parties chose not to make use of in this case. At this point, the concerned judgment is final. Accordingly, the Tribunal must not reopen the

consideration of the merits of the case, and will not enter either into the question, raised by the Respondent, of whether the remedy granted was or was not *ultra petita*.

Decision

15. For the reasons stated above,

The present request for interpretation of judgment UNDT/2010/009 is rejected as irreceivable.

(Signed)

Judge Thomas Laker

Dated this 9th day of April 2010

Entered in the Register on this 9th day of April 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva