



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

Case Nos. 2010-050 & 2010-085

**Attandi
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Kamaljit Singh Garewal, Presiding Judge Jean Courtial Judge Rose Boyko
Judgment No.:	2010-UNAT-047
Date:	1 July 2010
Registrar:	Weicheng Lin

Counsel for Appellant: David Andati-Amwayi

Counsel for Respondent: Amy Wood

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. Patrick John Attandi (Attandi) was informed on 8 December 2008 that his fixed-term appointment (FTA) would not be renewed beyond 31 December 2008. Attandi sought a review of this decision and also asked for suspension of action (SOA). When these requests were declined he took the matter to the Joint Appeals Board (JAB) but he filed an incomplete appeal. When the matter came up before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) on 5 January 2010, after being transferred from the JAB, Attandi was invited to complete his statement of appeal, but he failed to do so.

2. On 22 January 2010, the UNDT issued an order (Order NO. 02 (NBI/2010)) granting Attandi time to complete his appeal by 15 February 2010, with the rider that failure would entail his case getting struck out. Instead of complying with this order Attandi appealed to the Appeals Tribunal on 12 February 2010.

3. Nevertheless, the UNDT took up the case on 3 March 2010 and struck out Attandi's case. In Judgment No. UNDT/2010/038, the UNDT noted "that the Applicant had not provided any reasonable explanation as to why he did not comply with the Order of the Tribunal." Attandi appealed against this UNDT Judgment. We hold that Attandi's first appeal is not receivable as it is not an appeal against a judgment but against an order giving him more time to complete his appeal. His second appeal altogether lacks merit. In spite of being granted adequate time he failed to complete the papers of his appeal. Both appeals are dismissed; the decisions of the UNDT are affirmed.

Facts and Procedure

4. Attandi has filed two appeals, one against an order issued by Boolell, J. (Order NO. 02 (NBI/2010)) and the other against Judgment No. UNDT/2010/038 also issued by Boolell, J.

5. Attandi was a Programme Assistant with the Information and Communication Technology Service (ICTS), United Nations Office at Nairobi, under an FTA. On 8 December 2008, he was informed that his FTA would not be renewed beyond the end of 2008. On 23 December 2008, Attandi filed a request for administrative review and a

request for SOA. Attandi's FTA was extended for one month through 31 January 2009 so as to allow the JAB to consider his SOA request. But the JAB did not make any recommendation in support of Attandi's SOA request, and the Secretary-General took no action in that regard.

6. On 10 April 2009, Attandi filed an incomplete statement of appeal with the JAB challenging the non-renewal of his FTA. The complete statement of appeal had to be filed by 9 May 2009, but Attandi failed to do so.

7. On 1 May 2009, Attandi filed an appeal before the former Administrative Tribunal contesting the decision in respect of his SOA request.

8. On 18 May 2009, Attandi requested an extension of time to file his complete statement of appeal before the JAB. He was granted an extension to 20 June 2009. The new deadline came and went without Attandi filing any complete statement of appeal.

9. On 10 June 2009, Attandi requested a stay of the proceedings before the JAB pending the outcome of the "application for judicial review" before the former Administrative Tribunal. The Acting Secretary of the JAB advised him that, under the rules, the decision of the Secretary-General in respect of the SOA was not subject to appeal before the former Administrative Tribunal and, consequently, the filing of an appeal could not operate as a stay of proceedings.

10. After his case was transferred from the JAB to the UNDT in Nairobi, Attandi was invited to file his complete statement of appeal, but failed to submit any.

11. On 22 January 2010, Boolell, J. issued Order NO. 02 (NBI/2010), in which he ordered Attandi to file his matter with the UNDT no later than 15 February 2010. Boolell, J. warned that "[f]ailure to comply with this order will result in the matter of Attandi vs. the Secretary-General of the United Nations ... being struck out".

12. 15 February 2010 came and went, but Attandi did not submit a complete application to the UNDT. Instead, on 12 February 2010, he filed an appeal with this Tribunal from the Order of 22 January. The Secretary-General did not file any answer to that appeal.

13. On 3 March 2010, Boolell, J. issued Judgment No. UNDT/2010/038 in respect of Attandi's case. Boolell, J. noted that Attandi had failed to either file a complete application or provide an explanation as to why he did not comply with the Order. In the view of Boolell, J. Attandi had "displayed a singular blatant ignorance of a court order. His conduct is one of contempt of the Tribunal. This attitude does not befit persons who like [Attandi] come to seek justice and a vindication of their rights before the Tribunal." Boolell, J. ordered the striking out of Attandi's case.

14. On 23 April 2010, Attandi filed an appeal against UNDT Judgment No. UNDT/2010/038. The Secretary-General's answer was received on 10 June 2010.

Submissions

Attandi's Appeal

15. In respect of UNDT Order NO. 02 (NBI/2010), Attandi maintains that the UNDT erred in fact, in that the chronology of events in paragraphs 2 to 12 was wrong and incomplete.

16. He also maintains that the UNDT erred in law when it failed to appreciate the distinction between a judicial review and an appeal.

17. Attandi claims that the UNDT erred in its attempt to force him to discuss his case in a prejudicial manner. As his case was with the former Administrative Tribunal *sub judice*, there was no need for Attandi to respond to the UNDT's request to comment on a matter already before the former Administrative Tribunal.

18. According to Attandi, notwithstanding paragraph 45 of the General Assembly resolution 63/253, the Executive Secretary of the former Administrative Tribunal had no legal capacity to transfer his case from a superior tribunal to a subordinate tribunal. Attandi was of the view that the Human Resources Management Service (HRMS) lacked the legal capacity to be counsel for the Secretary-General in the matter.

19. In Attandi's view, it was clear from the formulation of the UNDT's inquiry that the UNDT/Nairobi "act[ed] or purport[ed] to act as counsel for the Secretary-General".

20. Attandi requests the quashing of UNDT Order NO. 02 (NBI/2010), judicial review of his case UNAT/1687 filed with the former Administrative Tribunal, a stay of proceedings before the UNDT/Nairobi, and costs.

21. Regarding UNDT Judgment No. UNDT/2010/038, Attandi states that the UNDT erred in law, in that Boolell, J. failed to detect that Attandi's appeal to the former Administrative Tribunal was transferred to the UNDT/Nairobi on 4 February 2010, and that the matter was still pending before the UNDT/Nairobi. Boolell, J. should have waited for the development in that case, before issuing a judgment.

22. Attandi claims that Boolell, J. erred when he failed to stop the mischief of the UNDT Registry, which was involved in the distortion of facts and deliberate fixing of cases in favour of the Secretary-General. The UNDT Registry requested Attandi to provide evidence that he was granted a stay of proceedings before the JAB while his case was under review by the former Administrative Tribunal, even after Attandi clearly stated that the matter was *sub judice*.

23. Boolell, J. had a conflict of interest when he expressed personal problems that the Director of Programme Support Division had with Attandi's counsel.

24. Attandi requests professional, independent, and impartial perusal of the complete evidence that he submitted to the JAB, reversal of UNDT Judgment UNDT/2010/038, judicial review of his application (case no. 1687) submitted to the former Administrative Tribunal, striking out of all evidence submitted on behalf of the Secretary-General, and costs.

Secretary-General's Answer

25. In respect of Order No. 2 (NBI/2010), as noted above, the Secretary-General did not file any answer.

26. Regarding Judgment No. UNDT/2010/038, the Secretary-General requests that this Tribunal affirm the judgment and dismiss the appeal in its entirety. He maintains that the UNDT correctly struck Attandi's case on the basis that Attandi had failed to comply with the UNDT order to file a complete application by 15 February 2010. The Secretary-General also submits that the UNDT did not commit any errors of law that would give rise to a reversal of

the Judgment. He further submits that Attandi's additional claims related to the practice of the UNDT Registry and his allegations of conflict of interest on the part of Boolell, J. are either unsubstantiated or irrelevant.

Considerations

27. Attandi has presented his case in a rather strange way. He has not given us even an inkling of what his real grievance was, what his grounds were to challenge the administrative decision of 8 December 2008 and what type of evidence he wished to present in support of his case. His constant refrain has been that his application for review of the decision taken in light of the JAB recommendation on suspension of action was pending.

28. It may be recalled that Attandi's contract got automatically extended by a month on 1 January 2009 to enable the JAB to consider suspension of action. On 29 January 2009, the JAB recommended to the Secretary-General that Attandi's request for suspension of action be rejected. The JAB's recommendation was upheld by the Secretary-General on the following day. On 9 March 2009, the Secretary-General confirmed the decision not to renew Attandi's appointment.

29. Attandi began to pursue two seemingly parallel remedies - judicial review of the decision of 29/30 January not to suspend action and an appeal challenging the non-renewal of his appointment. The former remedy was sought from the former Administrative Tribunal through an application filed on 1 May 2009. The latter remedy was sought from the JAB through an (incomplete) appeal filed on 10 April 2009. We have little to go by as far as the so-called review is concerned. Attandi has not enlightened us with the grounds for review of the 29/30 January order. But as regards his appeal before the JAB, it stood transferred to the UNDT on 1 July 2009 after the JABs were abolished. It is this matter that is the subject of the present two appeals.

30. After his incomplete appeal was filed before the JAB on 10 April 2009, Attandi was granted a month to complete his appeal as per the JAB rules of procedure. On 18 May, he sought more time, and an extension was granted till 20 June. After that the matter stood transferred to UNDT on 1 July 2009 and the proceedings were to naturally commence before the UNDT from the stage they were at on the date of the transfer of the case. Before the UNDT as well, Attandi was given adequate time to complete his appeal.

31. It seems to us that Attandi never had any intention to abide by the earlier directions of the JAB in this regard or even the directions of the UNDT inviting him to complete the appeal by 15 February 2010. His response was to seek a stay of proceedings pending the decision of the former Administrative Tribunal on judicial review, but as was his wont, he did not comply with the UNDT's directions. It was under these circumstances that the 22 January 2010 Order was passed.

32. The Order of 22 January 2010 is a directive to Attandi. It is not a judgment against which an appeal can be filed. Reference may be usefully made to the provisions of Article 2(1) to be read in conjunction with Article 7(1) of the Statute of the Appeals Tribunal and our decision in *Bertucci*.¹ We hold that an appeal against the abovementioned Order is not receivable because it was not a final judgment rendered by the UNDT on this case.

33. With regard to the Judgment of 3 March 2010, we hold that although the appeal is certainly receivable as Attandi's case was struck out, there is no merit in his contentions. Attandi must satisfy the Appeals Tribunal that the UNDT Judgment has one or more of the five defects mentioned in Article 2(1)(a) to (e) of the Appeals Tribunal's Statute. These are the well known parameters to successfully challenge judgments of the UNDT. Attandi was time and again asked to complete his appeal. He was also asked to provide evidence that he had been granted a stay of the proceedings before the JAB, but he failed to do so. He was warned that if he failed to complete his appeal, his case would be struck out. As Attandi failed to complete the appeal, the UNDT had no option but to strike out his case. The UNDT Judgment does not suffer from any jurisdictional or legal defects on the basis of any of the grounds urged by Attandi.

¹ *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062, paras. 24-26.

Judgment

34. The appeals are dismissed. The UNDT Order of 22 January 2010 and its Judgment of 3 March 2010 are both affirmed.

Dated this 1st day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Boyko

Entered in the Register on this 16th day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals
Tribunal