



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

Case No. 2011-281



**Larkin
(Appellant)**

v.

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

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Luis María Simón
Judge Rosalyn M. Chapman

Judgment No.: 2012-UNAT-263

Date: 1 November 2012

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Amy Wood

JUDGE INÉS WEINBERG DE ROCA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal filed by Mr. Brian Larkin against Judgment No. UNDT/2011/179 rendered in Geneva by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal), in the case of *Larkin v. Secretary-General of the United Nations* on 18 October 2011. Mr. Larkin appealed on 5 December 2011, and the Secretary-General filed his answer on 12 March 2012.

Synopsis

2. The Dispute Tribunal has broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure. The UNDT exercised its discretion in deciding not to admit evidence because it lacked probative value. This Tribunal is mindful that the Judge hearing the case has an appreciation of all of the issues for determination as well as the evidence before him.

3. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a party to reargue his or her case.

4. We affirm the UNDT Judgment that mobility of staff members to different positions is envisaged within the Organization and that there were no meaningful indicia of a conflict of interest involving the Chief of the Office of Staff Legal Assistance (OLSA) regarding Mr. Larkin's case.

Facts and Procedure

5. Mr. Larkin joined the Branch Office of the United Nations High Commissioner for Refugees (UNHCR) in London as a Finance Assistant at the G-6 level on a fixed-term appointment in September 2006. Mr. Larkin's appointment was extended twice, in December 2006 and March 2007. In April 2007, Mr. Larkin was granted a six-month probationary appointment as an Administrative and Finance Assistant. This appointment was extended once until 30 November 2007, after which date Mr. Larkin was separated from service.

6. On 22 July 2009, Mr. Larkin sought OSLA's assistance in contesting the decision not to renew his appointment and other related decisions. On 30 July 2009, OSLA assigned Mr. Larkin counsel to assist with the preparation of his application to the UNDT. Mr. Larkin objected to the draft prepared by this counsel and requested alternative counsel. The Chief of OSLA contacted Mr. Larkin on the same day to discuss the situation, and subsequently sent Mr. Larkin a consent form, which Mr. Larkin signed and returned on 17 September 2009.

7. On 5 October 2009, OSLA informed Mr. Larkin that the Chief of OSLA, a former UNHCR staff member, would be willing to approach UNHCR, on Mr. Larkin's behalf, to broach an amicable agreement. The extended time limit for filing an application with the UNDT was 6 October 2009. OSLA repeatedly attempted to contact Mr. Larkin in the following days and finally, on 19 November 2009, wrote to advise Mr. Larkin that, in the event he failed to contact OSLA, it would be assumed that he no longer required their assistance.

8. On 4 December 2009, Mr. Larkin contacted OSLA to complain about the representation he had received and asserted that the Chief of OSLA concealed his former relationship with UNHCR when he telephoned him.

9. On 28 March 2010, Mr. Larkin filed an application with the Dispute Tribunal contesting the decision taken by the Chief of OSLA not to disclose a conflict of interest. On 2 February 2011, the UNDT rendered Judgment No. UNDT/2011/028, dismissing Mr. Larkin's application. The Judgment ruled that the alleged omission forming the basis of Mr. Larkin's application was not an administrative decision subject to review by the UNDT.

10. On 21 March 2011, Mr. Larkin filed an appeal before the Appeals Tribunal. On 8 July 2011, the Appeals Tribunal rendered Judgment No. 2011-UNAT-135, in which it found that the contested decision not to disclose a potential conflict of interest could have an impact on Mr. Larkin's terms of employment and, therefore, constituted an administrative decision subject to review by the UNDT. It reversed the UNDT Judgment and remanded the case to the UNDT for a trial on the merits.

11. On 18 October 2011, the Dispute Tribunal issued Judgment No. UNDT/2011/179, in which it found that the Chief of OSLA had not been in any manner involved, while working with UNHCR, in the managerial decisions that Mr. Larkin sought to challenge. It found,

accordingly, that there was no conflict of interest involving the Chief of OSLA and dismissed the application.

12. Mr. Larkin appeals the UNDT Judgment. The Appeals Tribunal held an oral hearing on 25 October 2011.

Submissions

Mr. Larkin's Appeal

13. Mr. Larkin requests that the Appeals Tribunal overturn Judgment No. UNDT/2011/179. He submits that the Dispute Tribunal mischaracterized the conflict of interest. The conflict of interest arose not only from the previous employment of the Chief of OSLA by UNHCR, but above all by the "begging relationship" with UNHCR.

14. Mr. Larkin requests that the Appeals Tribunal order OSLA to communicate all the information related to his case that it kept confidential. He further contends that the Dispute Tribunal erred in allowing OSLA to avoid answering the questions during the hearing and invoking a right to silence.

15. Mr. Larkin contends that OSLA did not respect the specifications set out in the consent form he signed and, in particular, the obligation to disclose all actions undertaken by counsel on behalf of the staff member.

16. Mr. Larkin requests that, in addition to compensation for stress, distress and intimidation caused by OSLA, he be compensated for the damage caused to his cases against UNHCR.

Secretary-General's Answer

17. The Secretary-General submits that the Dispute Tribunal correctly concluded that OSLA had no conflict of interest in representing Mr. Larkin. Mr. Larkin offers no proof of the alleged conflict of interest.

18. The Secretary-General submits that, pursuant to General Assembly resolution 65/251, OSLA's role includes assisting staff members and their volunteer representatives in processing claims through the formal system of administration of justice. If OSLA's requests

for voluntary legal assistance from staff members created a conflict of interest, then OSLA would be unable to represent staff members of the Secretariat or of UNHCR.

Considerations

19. The Appeals Tribunal recalls that, under Article 2(1) of its Statute, the Appeals Tribunal shall be competent to hear and pass judgment on an appeal filed against a judgment rendered by the UNDT in which it is asserted that the UNDT has “(a) Exceeded its jurisdiction or competence; (b) Failed to exercise jurisdiction vested in it; (c) Erred on a question of law; (d) Committed an error in procedure, such as to affect the decision of the case; or (e) Erred on a question of fact, resulting in a manifestly unreasonable decision”.

20. The Appeals Tribunal emphasizes that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a party to reargue his or her case. A party cannot merely repeat on appeal arguments that did not succeed before the UNDT. Rather, he or she must demonstrate that the UNDT has committed an error of fact or law, warranting intervention by the Appeals Tribunal.¹

21. Mr. Larkin does not demonstrate that the UNDT erred in finding that there was no evidence of a conflict of interest or prejudice to his case. Instead, he merely voices his disagreement with the UNDT’s conclusions and resubmits the submissions he made before the UNDT.

22. Mr. Larkin reiterates his request that the Secretary-General produce all “information, items, documents, or records which are in the control of the Administration pertaining to his case”. He also requests that “OSLA files, paper and electronic, including their internal communications, should be made available”, including all communications with UNHCR.

23. The Dispute Tribunal has broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules of Procedure. The UNDT exercised its discretion in deciding not to admit the evidence because it lacked probative value. This Tribunal is mindful that the Judge hearing the case has an appreciation of all the issues for determination and the evidence before the UNDT. In order to establish that the Judge erred,

¹ *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035.

it is necessary to establish that the evidence, if admitted, would have led to different findings of fact and changed the outcome of the case.²

24. The UNDT Judgment concludes that it is undisputed that the OSLA counsel then assigned to Mr. Larkin did not have any particular relationship with UNHCR, since the alleged conflict of interest concerns exclusively her supervisor.

25. At the oral hearing, Mr. Larkin tried to change the nature of his appeal to include legal malpractice. The record of the cases proves, however, that he was not prejudiced in any way by OSLA leaving his case the day before the deadline since he then complied with the deadline and filed his own document.

26. We affirm the UNDT Judgment that mobility of staff members to different positions is envisaged within the Organization and that there were no meaningful indicia of a conflict of interest involving the Chief of OSLA regarding Mr. Larkin's case.

² *Abbassi v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-110.

Judgment

27. For the foregoing reasons, Mr. Larkin's appeal is dismissed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Chapman

Entered in the Register on this 18th day of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar