



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

Judgment No. 2020-UNAT-1031



**Abrate *et al.*
(Appellants)**
v.
**Secretary-General
of the World Meteorological Organization
(Respondent)**

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Martha Halfeld Judge Kanwaldeep Sandhu
Case No.:	2019-1319
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Abrate <i>et al.</i> :	Christopher Bollen, Mathis Kern
Counsel for WMO Secretary-General:	Brigitta Exterkate

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by 64 staff members of the World Meteorological Organization (WMO) in Geneva (Appellants), who appeal the decision of the Secretary-General of the WMO to accept the recommendation of the WMO's Joint Appeals Board (JAB/WMO) to implement the reduced post adjustment multiplier (PAM) for staff members of the WMO. The Appellants filed their appeal on 21 October 2019, and the Secretary-General of the WMO filed his answer on 10 February 2020. For the reasons set out below we remand the case to the United Nations Dispute Tribunal (UNDT).

Facts and Procedure

2. On 4 May 2018, the Appellants, along with other staff members of the WMO, submitted to the Secretary-General of the WMO a request for review of a March 2018 implementation of the PAM. On 25 June 2018, the Appellants again submitted a request to review the June 2018 implementation of the PAM.

3. The PAM was implemented as a result of recommendations of the International Civil Service Commission (ICSC) to the United Nations General Assembly on remuneration and post adjustment scales of international civil servants serving within the United Nations Common System.

4. General Assembly resolution 72/255 approved the recommendation of the ICSC, which recommended a revised unified base/floor scale for staff in the Professional and higher categories and requested the ICSC to continue its efforts to improve the post adjustment system. The resolution also "stressed" the importance and obligations of all organizations within the United Nations Common System to consult and cooperate fully with the ICSC on matters relating to remuneration and conditions of service. The ICSC is supported by the Advisory Committee on Post Adjustment Questions (ACPAQ) which advises the ICSC on the methodology underpinning the post adjustment system.

5. At headquarter duty stations such as Geneva, surveys on the cost of living are conducted at least once every five years with the survey relevant to the matters under appeal in September/October 2016. As a result, the ICSC recommended an implementation of a 6.7 per cent reduction to the PAM in August and November 2017. Following this, the majority of

United Nations organizations in Geneva sought clarification and explanations from the ICSC of this reduction and tasked experts to review the results of the survey which resulted in a report submitted to the ICSC in July 2017 outlining issues with the methodology and results of the survey. The ICSC subsequently decided to reintroduce gap closure measures to mitigate the negative impacts on salaries resulting from the cost of living surveys by augmenting the post adjustment index derived from the 2016 survey by 3 per cent. In addition, the ICSC approved a personal transitional allowance equivalent to the difference between the revised and prevailing PAM for a period of six months and thereafter reduced at four-month intervals by 3 per cent until phased out.

6. The impact of the post adjustment reduction was reflected in the Appellants' March and June 2018 salaries.

7. Appeals to the JAB/WMO were submitted on 25 June and 15 August 2018. The Appellants argued that the calculation of the updated PAM carried out by the ICSC was against established case law relating to the international civil service, was not reviewed for legality, was unjustified and unjustifiable, resulted from factual errors, was a consequence of other prior inadmissible decisions, violated fundamental principles for changes in conditions of service and acquired staff rights, caused unnecessary and/or undue injury, was procedurally flawed and, as a consequence, was illegal and void as a whole.

8. In its 20 June 2019 report, the JAB/WMO recommended the Secretary-General of the WMO maintain his decision to implement the March and June 2018 PAM and advised the Appellants to pursue their grievances using other avenues such as the United Nations' Internal Justice system.

9. On 3 July 2019, the International Labour Organization Administrative Tribunal (ILOAT) delivered a series of judgments regarding the lawfulness of the reductions in post adjustments implemented by other international specialized organizations, including the International Labour Organization, the International Organization for Migration, the World Health Organization, The Joint United Nations Programme on HIV/AIDS and the World Intellectual Property Organization, as a consequence of the ICSC's decisions. The ILOAT found that the reductions in question were unlawful and ordered them rescinded.¹

¹ ILOAT Judgment No. 4138 (2019).

10. The Secretary-General of the WMO, on 19 July 2019, decided not to depart from the recommendation of the JAB/WMO and to maintain the implementation of the ICSC's decision. The Appellants were notified of the Secretary-General of the WMO's decision on 22 July 2019.

11. In a request for review dated 2 October 2019 the Appellants pointed out to WMO that they had been deprived of a neutral first instance review of the merits of their appeals and requested, *inter alia*, that their cases be remanded to the JAB/WMO for a full review on the merits, and that the deadline to challenge the decision-at-issue before the Appeals Tribunal be extended until 2 December 2019. Through a letter dated 9 October 2019, the WMO rejected both requests.

12. On 21 October 2019, the Appellants filed their appeal.

13. On 20 December 2019, the Secretary-General of the WMO filed a motion to the Appeals Tribunal and requested an extension of time to file an answer to the appeal, and that the case be remanded to the JAB/WMO. The Secretary-General of the WMO explained that he requested this remand in light of the oral pronouncement that the Appeals Tribunal made on 25 October 2019 in the case of *Rolli v. Secretary-General of the World Meteorological Organization*.²

14. By Order No. 2020-365, dated 31 January 2020, the Appeals Tribunal rejected the motion holding that under its Statute, it may remand a case to the first instance process only after, but not before, it has heard and passed judgment on the appeal, and thus had no power to remand the case at this stage of the proceedings. It was further noted that under the 20 January 2020 agreement between the WMO and the United Nations, the JAB/WMO no longer has authority to consider the merits of the case. The Appeals Tribunal allowed the Secretary-General of the WMO to file his answer to the appeal by 8 February 2020.

15. The WMO has joined the United Nations' Internal Justice System as a result of the agreement between the WMO and the United Nations, dated 20 January 2020.

16. On 10 February 2020, the Appeals Tribunal received the Secretary-General of the WMO's answer to the present appeal.

² *Rolli v. Secretary-General of the World Meteorological Organization*, Judgment No. 2019-UNAT-952.

17. On 21 February 2020, the Appellants filed a motion requesting to strike the answer from the record as it had been filed out of time.

18. On the same day, the Secretary-General of the United Nations requested he be allowed an opportunity to present his views on issues of general importance to the organization, in the alternative, to file a friend-of-the-court brief pursuant to Article 17 of the Appeals Tribunal's Rules of Procedure as it would "assist the Appeals Tribunals in its deliberations."

Submissions

Appellants' Appeal

19. In their 21 October 2019 appeal, the Appellants argue, *inter alia*, the decision a violation of the July 2017 agreement between the United Nations and the WMO on the Appeals Tribunal's competence to receive appeals by WMO staff members. In their opinion, the WMO does not have a neutral first instance internal appeal process. Pursuant to Article 2(10) of the Appeals Tribunal's Statute a "special agreement [by which an organization accepts the Tribunal's competence] may only be concluded if the [signatory organization] utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law". Accordingly, as stated in the Preamble to the 2017 agreement, the Appeals Tribunal's competence to receive appeals by WMO staff members rests upon the basis that "the World Meteorological Organization utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact, and law". According to the WMO's Regulation and Rules, as explicitly stated in the WMO Standing Instructions, Chapter 4, "The [Joint Appeals] Board's recommendation(s) and opinion are not legally binding on the Secretary-General [of the WMO], who is entitled to depart from its recommendation(s) if he has clear reasons to do so". The WMO's internal process is not neutral because the Secretary-General of the WMO has the final decision-making authority; said official is however not a neutral and/or impartial decision-maker since he serves as the Organization's leading executive officer.

20. Relying on ILOAT Judgment 4138, the Appellants allege the WMO's incorrect understanding of its obligation to implement ICSC decisions and the ICSC's irregular decisions by overstepping its mandate, by its illegal reduction of the gap closure measure, by the illegal constitution of the ACPAC, and by basing its decisions on the conclusions of the ACPAQ. The

Appellants further submit that the impugned decision is unnecessarily injurious, and that the reports of several technical experts demonstrate that the ICSC's calculations were flawed for multiple reasons (as the case is remanded to the UNDT, the Appellants' submissions on the lawfulness of the contested decision have been substantially shortened).

21. The Appellants request: (i) that the impugned decision be rescinded; (ii) their March 2018 payslip and all subsequent payslips implementing the ICSC's contested decisions regarding the post adjustment for the duty station of Geneva be rescinded; (iii) that the WMO provide the Appellants with new revised payslips as from the March 2018 payslip with a PAM not based on the revised post adjustment index resulting from the 2016 cost-of-living survey; (iv) and that WMO pay the Appellants an amount equivalent to the difference between the remuneration actually paid to them since March 2018 and the remuneration that would have been paid to them during the same period but for the implementation of the ICSC decisions, with interest at the rate of 5 per cent per annum from due dates until the date of final payment. Alternatively, the Appellants request that the Appeals Tribunal remand the case back to the WMO for a decision by a neutral first instance.

The Secretary-General of the WMO's Answer

22. With regard to the allegation that the WMO does not have a neutral first instance internal appeals process, the Secretary-General of the WMO submits that this concern has been addressed, and in January 2020, the Organization has joined the Administration of Justice System of the United Nations. Therefore, the Secretary-General of the WMO requests the Appeals Tribunal to remand this case to the first instance process, the UNDT, to hear and pass judgment on the appeal in accordance with Article 2 of the Statute of the Appeals Tribunal.

23. Further, the Secretary-General of the WMO submits that the ILOAT and United Nations Tribunals have developed divergent approaches with respect to the receivability of challenges to decisions by legislative bodies and their subsidiary organs. The Appellants' claims wholly relate to alleged flaws in the decisions of the ICSC and the methodology employed by the ICSC in making such decisions. They have not alleged that the Secretary-General of the WMO failed to comply with any statutory requirement or preconditions that attach to the exercise of his authority to execute ICSC decisions. The General Assembly has reaffirmed unequivocally that "resolutions of the General Assembly and the decisions of the International Civil Service Commission are binding on the Secretary-General and on the Organization", and has not

qualified this directive that the Secretary-General of the WMO is bound by ICSC decisions only when they are correct and “based on methodology which ensures that the results are stable, foreseeable, and clearly understood or transparent”; this only exists in the ILOAT jurisprudence.

24. The Secretary-General of the WMO requests the case be remanded to the first instance process (the United Nations Dispute Tribunal) as the WMO has joined the United Nations’ Internal Justice System as a result of the Agreement between the WMO and the United Nations dated 20 January 2020. In the alternative, the Appeals Tribunal should confirm whether the impugned judgment is in line with the ICSC’s decisions and the resolutions of the General Assembly or whether the principle of equal pay for equal work is of fundamental importance and represents a sound reason for the Appeals Tribunal to set aside the impugned decision and adopt the ruling of the ILOAT.

Considerations

Preliminary issues

25. The Appellants request an oral hearing. As the case is remanded to the UNDT there is no need for an oral hearing before the Appeals Tribunal.

26. The Secretary-General of the WMO’s answer to the appeal was submitted out of time, and we will not accept it. However, as the case is remanded to the UNDT, this is of little relevance. We add, for clarity, that both parties may present their submissions before the Dispute Tribunal.

27. As to the request of the Secretary-General of the United Nations to be allowed to present his views on issues of general importance to the organization, or, in the alternative, to file a friend-of-the-court brief we find no need to make a determination on this application because the case is remanded to the Dispute Tribunal.

Whether the impugned decision is in accord with Article 2(10) the Appeals Tribunal Statute

28. Like the Appellants we are concerned that the contested “decision”, whether that is the JAB/WMO report or the Secretary General’s final decision resulting from the report, does not conform to the requirements of Article 2(10) of the Statute of the United Nations Appeals Tribunal which provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Appeals Tribunal, consonant with the present statute. [...] Such special agreement may only be concluded if the agency, organization or entity utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law. [...]

29. In *Rolli*³, the Appeals Tribunal reviewed the application of Article 2(10) to the appeal process and the role of the JAB/WMO in that process. Rule 1111.1 of the WMO Staff Regulations and Rules establishes the JAB/WMO “to consider and advise the Secretary-General of the WMO regarding appeals filed by staff members ...” Rule 1111.3(n) provides that the JAB/WMO shall submit a report to the Secretary-General of the WMO with the JAB/WMO’s recommendation. Rule 1113.1(o) confirms that the final decision on the appeal shall be taken by the Secretary-General of the WMO. Rule 1112.1 and Regulation 11.2 provides that the application to the Administrative Tribunal is not receivable unless the applicant has previously submitted the dispute to the JAB/WMO and the JAB/WMO has communicated its “opinion” to the Secretary-General of the WMO.

30. The Appeals Tribunal in *Rolli* ruled that:⁴

[t]he intention of Article 2(10) is to allow specialized agencies by agreement to accept and submit to the terms of the jurisdiction of the Appeals Tribunal consonant with the Statute of the Appeals Tribunal. As the ordinary jurisdiction of the Appeals Tribunal is to hear and pass judgement on appeals against a judgement rendered by the Dispute Tribunal, Article 2(10) requires the special agreement to include provisions establishing a neutral first instance process that includes a written record and a written decision providing reasons, based on factual and legal findings. It is intended that the neutral first instance process will result in a decision based on a record that can be the subject of a possible appeal. Appeals before the Appeals Tribunal are appeals on the record.

³ *Rolli v. Secretary-General of the World Meteorological Organization*, Judgment No. 2019-UNAT-952.

⁴ *Id.*, para. 27.

The Appeals Tribunal further held that the JAB/WMO failed to make the necessary factual and legal findings in relation to the evidence produced, and the final decision was taken by the Secretary-General of the WMO, who as employer, was not a neutral body. The Appeals Tribunal then remanded the matter back to the JAB/WMO to reconsider and re-determine by a neutral process that produces a record of decision and a written decision including a statement of the relevant facts, the relevant law and reasons for the decision.

31. The same concern applies to the case at bar. Based on the legal framework under the 2017 Special Agreement, the JAB/WMO's report is not a "decision" from a "neutral first instance process" but simply provides advice or recommendations to the Secretary General, who can adopt the recommendations or ignore them. The JAB/WMO's report may provide a written record of events and some findings, however, it is not a "decision" from a neutral first instance process as it simply provides non-binding "recommendations" or "opinions". On the other hand, the role of the Secretary-General of the WMO cannot be regarded as a neutral body in the appeal process because he is a party of the case. As stated in other judgments, we are not satisfied that the essential elements of a neutral first instance process are present to have constituted a decision that could be appealed to the Appeals Tribunal.⁵

32. In January 2020, the WMO entered into a subsequent agreement with the United Nations extending the jurisdiction of the United Nations Dispute and Appeals Tribunals to the WMO. The effective date is stated to be 20 January 2020. As a transitional measure, the 2020 Agreement provides all cases pending before the JAB/WMO shall be transferred to the Dispute Tribunal from the effective date of the Agreement. It is silent on cases pending before the Appeals Tribunal. However, in the preamble, the Agreement confirms the Appeals Tribunal's jurisdiction is now to hear and pass judgment on appeals filed against a judgment rendered by the Dispute Tribunal and this Agreement supersedes the earlier 2017 Special Agreement.

33. Therefore, the matter has to be remanded to the Dispute Tribunal under Article 2(10) of the Appeals Tribunal Statute for a decision from the Dispute Tribunal which now constitutes the neutral first instance process for the WMO.

⁵ See *Dispert & Hoe v. Secretary-General of the International Maritime Organization*, Judgment No. 2019-UNAT-958; *Spinardi v. Secretary-General of the International Maritime Organization*, Judgment No. 2019-UNAT-957; *Rolli v. Secretary-General of the World Meteorological Organization*, Judgment No. 2019-UNAT-952; *Sheffer v. Secretary-General of the International Maritime Organization*, Judgment No. 2019-UNAT-949.

Judgment

34. The case is remanded to the UNDT.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 4th day of August 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar