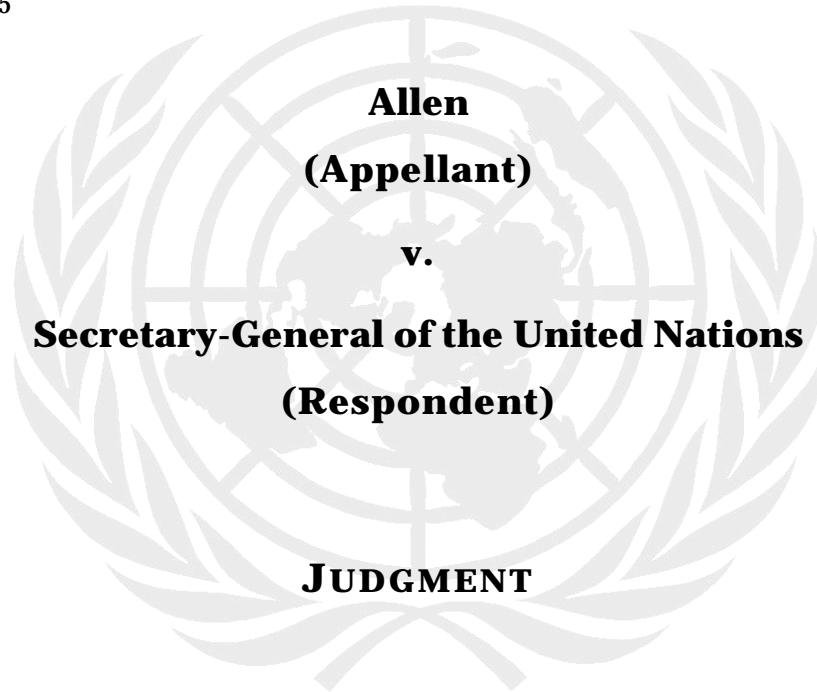




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-195



**Allen
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Mark P. Painter, Presiding Judge Sophia Adinyira Judge Luis María Simón
Judgment No.:	2011-UNAT-187
Date:	21 October 2011
Registrar:	Weicheng Lin

Counsel for Appellant:	Not represented
Counsel for Respondent:	John Stompor

JUDGE MARK P. PAINTER, Presiding.

Synopsis

1. Mr. Fabian Allen contested a lateral transfer. He was transferred from Officer-in-Charge (OiC), Human Resources Management Section (HRMS), United Nations Conference on Trade and Development (UNCTAD), to that of Chief, General Services and Travel Unit (GSU), UNCTAD. He alleged that the transfer decision violated various rules, and contravened a prior judgment of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). Because Mr. Allen had not asked for the implementation of the prior judgment, and only contested the instant transfer, the UNDT found that the previous judgment was not before it. The UNDT also found that the contested decision did not violate any applicable rules. We affirm the UNDT Judgment.

Facts and Procedure

2. Mr. Allen entered the service of the Organization in 1989, as a Clerk in New York. He served from May 1992 to December 1995 in the Procurement Division. He was then redeployed to the Staff Development Service until December 2001. After serving in various functions, Mr. Allen was appointed, in April 2007, as Human Resources Officer with UNCTAD at the P-3 level, step 1.

3. Effective 2 October 2007, Mr. Allen was designated OiC against the post of Chief, HRMS, UNCTAD. This was a P-5 position temporarily vacant as its regular incumbent was provisionally assigned to the Department of Peacekeeping Operations. On 12 February 2008, Mr. Allen was granted a Special Post Allowance (SPA) to the P-4 level, effective retroactively from 2 October 2007.

4. On 19 September 2008, the Acting Deputy Secretary-General of UNCTAD sent a memorandum to all UNCTAD staff, announcing the reassignment of four staff members, including Mr. Allen, to the position of Chief, GSU, UNCTAD, at the P-3 level, effective 6 October 2008. This was presented as “further staff redeployment”, with reference to a series of previous like measures that affected a significant number of staff members.

5. On 21 November 2008, Mr. Allen contested the reassignment decision. On 22 January 2010, the UNDT issued Judgment No. UNDT/2010/009. The UNDT found that there was a breach of ST/SGB/172 and ST/SGB/274, which prescribe mandatory consultations with the relevant staff representatives before implementing decisions affecting an important number of staff in a unit, as well as “a lack of good faith in the Administration’s dealings with [Mr. Allen]”. The UNDT ordered, *inter alia*, the rescission of the 19 September 2008 decision to reassign Mr. Allen.

6. On 11 March 2010, the Secretary-General submitted a request for interpretation under Article 30 of the UNDT Rules of Procedure. By Order No. 42 (GVA/2010) dated 9 April 2010, the UNDT rejected the request for interpretation. The UNDT emphasized that the contested passage clearly meant that Mr. Allen was to be restored to the position he occupied on 19 September 2008. It specified that this finding was “obviously without prejudice [to] the Administration’s prerogative to subsequently modify the position to which [Mr. Allen] [was] assigned by means of a new decision, provided the latter [was] reached in observance of the applicable rules and principles”.

7. On 13 April 2010, in the course of a meeting on how Judgment No. UNDT/2010/009 would be implemented, the Deputy Secretary-General, UNCTAD, gave Mr. Allen a memorandum, which stated that, in compliance with Judgment No. UNDT/2010/009, he would be reassigned to HRMS effective that same day and placed as OiC, HRMS, UNCTAD “with immediate effect”. That same day, Mr. Allen summarized his understanding of the conversation in an email to the Deputy Secretary-General, UNCTAD. He stated that he had been told that he was designated OiC, HRMS, UNCTAD, but that he would continue to work in the GSU.

8. By email dated 14 April 2010, the Deputy Secretary-General, UNCTAD, answered that Mr. Allen’s understanding was not correct. He stated that “the purpose of the meeting was twofold: (1) to inform [Mr. Allen] about the implementation of paragraph 52(1) of the judgment, and (2) to have the opportunity to consult with him as regards his future assignment”. He stated that the position of Chief, GSU, UNCTAD was commensurate with Mr. Allen’s qualifications and skills and that “such assignment would be in the best interest of the Organization”.

9. In reply, Mr. Allen alleged that the Administration's course of action was "an attempt ... to disregard or nominally implement UNDT's judgement" and requested that the Deputy Secretary-General, UNCTAD, clarify the final decision.

10. By memorandum dated 14 April 2010, the Deputy Secretary-General, UNCTAD, informed Mr. Allen that "[f]ollowing [their] consultations on 13 April 2010, [he was] assigned to the position of the Chief, General Services and Travel Unit effective 15 April 2010".

11. In May 2010, Mr. Allen filed a request for management evaluation of the 14 April 2010 decision. By letter dated 15 July 2010, the Management Evaluation Unit informed Mr. Allen of its finding that "the contested administrative decision did not violate [his] contract of employment or terms of appointment and should be upheld".

12. In August 2010, Mr. Allen filed an application before the UNDT. On 8 December 2010, the UNDT rendered Judgment No. UNDT/2010/212 which disposed of Mr. Allen's application.

13. As a preliminary matter, the UNDT specified that the scope of Mr. Allen's application was limited to the decision to reassign him to the position of Chief, GSU, UNCTAD, as of 15 April 2010, which was communicated to Mr. Allen by memorandum of 14 April 2010. It held that the formerly contested decision of 19 September 2008 was *res judicata*, since it had been decided upon by the UNDT's executable Judgment No. UNDT/2010/009 and that therefore Mr. Allen's first reassignment was not within the scope of the application. Similarly, the UNDT found that the implementation of Judgment No. UNDT/2010/009 was not under review since Mr. Allen had not initiated the procedure under Article 12(4) of the UNDT Statute, which is available in case a given judgment is not duly executed, and since at the time the UNDT judgment was rendered, the conditions to do so were no longer fulfilled. As the UNDT Judge wrote, "[b]y application filed on 25 August 2010, the Applicant sought review by the [UNDT] of the decision to reassign him from the position of [OIC, HRMS, UNCTAD, to that of Chief, GSU, UNCTAD], dated 14 April 2010 and effective the following day, 15 April 2010".¹ Thus, the previous judgment was not subject to review in this case.

¹ *Allen v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/212, para. 1.

14. The UNDT found that the reassignment decision did not breach any applicable rule or principle and rejected Mr. Allen's application. It found that, contrary to Mr. Allen's assertion, Section 2.4 of ST/AI/2006/3/Rev.1, which provides for the power of the heads of departments to transfer staff members within their departments or offices to vacant posts at the same level, "does not preclude other kinds of transfer to be lawfully made". It further found that the impugned decision did not violate ST/SGB/172 and ST/SGB/274, since it did not affect "groups of staff" or "at least a significant number of staff in a particular unit or service", but Mr. Allen alone. The UNDT also rejected Mr. Allen's argument that the Organization failed to act in good faith in its dealings with him.

15. Mr. Allen appeals the UNDT Judgment.

Submissions

Mr. Allen's Appeal

16. Mr. Allen submits that the UNDT erred in finding that Judgment No. UNDT/2010/009 had been properly implemented, and that the conditions for an order for execution of the Judgment were no longer met.

17. Mr. Allen submits that the UNDT erred in finding that the contested reassignment decision dated 14 April 2010 did not breach any applicable rule or principle. He mainly reiterates the contentions already made before the UNDT.

18. Mr. Allen requests that Judgment No. UNDT/2010/212 be rescinded.

Secretary-General's Answer

19. The Secretary-General submits that the UNDT correctly found that the implementation of Judgment No. UNDT/2010/009 was not under review in the present case, and that the conditions were no longer met for an application for an order for execution of Judgment No. UNDT/2010/009. He also submits that Mr. Allen failed to establish that the UNDT erred in finding that Judgment No. UNDT/2010/009 had been implemented.

20. The Secretary-General submits that the UNDT correctly found that the contested decision was in conformity with the applicable rules, and that Mr. Allen had failed to establish any errors in such finding warranting the reversal of the Judgment.

Considerations

21. The UNDT was correct that Mr. Allen did not ask for the implementation of Judgment No. UNDT/2010/009, and it was not under review in this case.

22. Mr. Allen's reassignment decision did not breach any applicable rule. "Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations."²

23. The UNDT correctly held that the contested transfer decision did not contravene Section 2.4 of ST/AI/2006/3/Rev.1. This provision merely applies to lateral transfers to vacant posts, but does not preclude other kinds of transfers to be lawfully made.

24. The UNDT further correctly held that the contested transfer decision did not violate ST/SGB/172 and ST/SGB/274, which apply only to "groups of staff" or "at least a significant number of staff in a particular unit or service". They were therefore not applicable to the contested transfer, which only concerned Mr. Allen. We also find no error in the UNDT's decision to reject Mr. Allen's argument that the Organization failed to act in good faith in its dealings with him.

² Staff Regulation 1.2(c).

Judgment

25. The UNDT Judgment is affirmed.

Original and authoritative version: English

Dated this 21st day of October 2011 in New York, United States.

(Signed)

Judge Painter, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

Entered in the Register on this 2nd day of December 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar