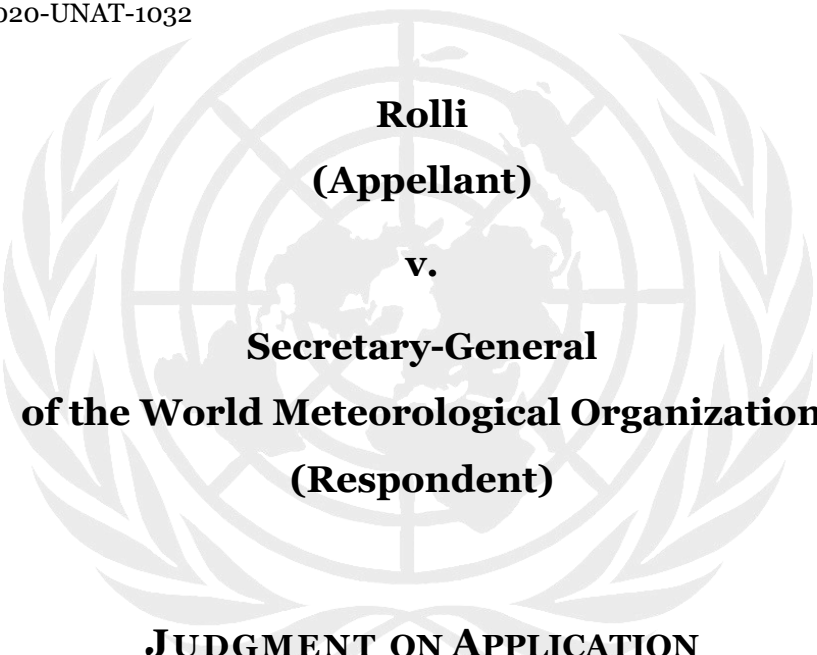




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1032



**Rolli
(Appellant)
v.
Secretary-General
of the World Meteorological Organization
(Respondent)**

**JUDGMENT ON APPLICATION
FOR REVISION OF JUDGMENT**

Before:	Judge Jean-François Neven, Presiding Judge Graeme Colgan Judge Dimitrios Raikos
Case No.:	2020-1354
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Mr. Rolli: Edward Patrick Flaherty

Counsel for WMO Secretary-General: Brigitta Exterkate

JUDGE JEAN-FRANCOIS NEVEN, PRESIDING.

1. Mr. Angiolo Rolli has submitted an application for revision of Judgment No. 2019-UNAT-952 that the United Nations Appeals Tribunal (Appeals Tribunal) issued on 25 October 2019. For reasons set out below, we dismiss the application.

Facts and Procedure

2. Mr. Rolli is a former Director, Resource Management Department of the World Meteorological Organization (WMO), who reported directly to the Secretary-General of the WMO. On 9 May 2018, the Secretary-General of the WMO sent a letter to Mr. Rolli terminating his employment on the grounds that Mr. Rolli had committed various acts of serious misconduct.

3. On 8 June 2018, Mr. Rolli appealed to the WMO Joint Appeal Board (JAB) contending that he had been summarily dismissed without a proper opportunity to be heard and requested the JAB to recommend that the Secretary-General of the WMO, pursuant to Staff Rule 1111.3(h), immediately suspend the decision and reinstate him pending the JAB's review or alternatively place him on special leave with full pay. Mr. Rolli denied the alleged misconduct.

4. On 12 February 2019, the JAB issued a report of less than two pages. It described the scope of its enquiry, its process, and methodology as follows: "The JAB examined the written statements and rebuttals and decided in its meeting on 18 January 2019 not to consider oral statements".

5. After deliberations, the JAB came to the unanimous decision that the available documentation had not provided evidence to allow a finding that the termination of Mr. Rolli's appointment was motivated by prejudice or extraneous factors.

6. The JAB unanimously recommended that the Secretary-General of the WMO maintain his initial decision.

7. On 14 February 2019, the Secretary-General of the WMO accepted the recommendation of the JAB and issued his final decision upholding his earlier decision to summarily dismiss Mr. Rolli.

8. On 15 April 2019, Mr. Rolli filed an appeal before the Appeals Tribunal. He requested the Appeals Tribunal to rescind the decision to summarily dismiss him and order his reinstatement. He also requested three years' net base salary for material damages, and two years' net base salary for moral damages, and sought costs, a reference letter, and withdrawal from his personnel file of all adverse material related to his termination.

9. In Judgment No. 2019-UNAT-952, this Tribunal decided to remand the case to the JAB in terms of Article 2(3) and Article 2(4)(b) of the Statute of the Appeals Tribunal for reconsideration in accordance with the directions in paragraphs 33 and 34 of the Judgment. Its considerations read as follows:¹

... The ultimate issue in this case, which this Tribunal must decide in terms of Article 2 of the WMO agreement, is whether the decision of the Secretary-General of the WMO to summarily terminate Mr. Rolli's employment was in non-compliance with the terms of his appointment, including the relevant rules, regulations, and issuances of the WMO and if so, whether his termination was a disproportionate disciplinary measure.

... The findings of the JAB in relation to this critical issue are not adequately reflected or articulated in the written record. Moreover, the JAB did not furnish a written decision dealing fully with the factual and legal issues. It merely found in terms of WMO Staff Rule 1111.3(k) that Mr. Rolli's termination was not motivated by prejudice or extraneous factors.

... This case is an application in terms of Article 2(10) of the Statute of the Appeals Tribunal which reads:

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 shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the

¹ Impugned Judgment, paras. 24-33.

Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal. Such special agreement shall also contain other provisions required for the Appeals Tribunal to carry out its functions vis-a-vis the agency, organization or entity. 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. In such cases remands, if any, shall be to the first instance process of the agency, organization or entity.

... The 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 United Nations 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.

... The first instance process utilized by the WMO is that before the JAB. In terms of WMO Staff Rule 1111.3(n) after consideration of an appeal, the JAB shall adopt and submit a report to the Secretary-General of the WMO. The report is considered as constituting a record of the proceedings in the appeal and must include a recommendation. In terms of WMO Staff Rule 1111.3(o) the final decision on the appeal shall be taken by the Secretary-General of the WMO.

... Article 2 of the WMO agreement confers competence on the Appeals Tribunal to determine an appeal by a staff member alleging that an administrative decision is not in compliance with the terms of employment or the rules and regulations of the WMO or if a disciplinary measure is proportional. The factual basis for the JAB's determination that Mr. Rolli's summary dismissal was justified is not clear and does not appear from the JAB report. It is accordingly not possible to establish whether the JAB made the alleged errors on the relevant questions of fact, resulting in a manifestly unreasonable decision. Additionally, the JAB limited its enquiry to determining whether the decision to dismiss Mr. Rolli was motivated by prejudice or extraneous factors. Hence, no decision was taken by the JAB determining the legal question of whether the summary dismissal of Mr. Rolli was lawful, reasonable, and procedurally fair in terms of his contract and rules and regulations of the WMO. The submission of Mr. Rolli that the JAB failed to make the necessary factual and legal findings in relation to the evidence he produced before it is therefore correct. Moreover, the final decision was taken by the Secretary-General of the WMO, who as employer, was not a neutral body.

... Article 2(3) of the Statute of the Appeals Tribunal empowers the Appeals Tribunal to affirm, reverse, modify or remand a decision of a first instance body and to issue all orders necessary or appropriate in aid of its jurisdiction. In terms of Article 2(4)(b) of the Statute of the Appeals Tribunal, where the evidence of the first instance process is deficient and the Appeals Tribunal determines that further findings of fact are necessary, the Appeals Tribunal shall be competent to remand the case to the first instance body for additional findings of fact, subject to Article 2(5) of the Statute.

... Article 2(5) envisages two possibilities. The first permits the Appeals Tribunal to receive additional documentary evidence, including written testimony, where the Appeals Tribunal determines that the facts are likely to be established by means of such documentary evidence. However, the admission of additional documentary evidence will only be permissible in exceptional circumstances and if it is in the interest of justice and the efficient and expeditious resolution of the proceedings to do so. Additionally, the evidence will not be admissible if it was known at the time and should have been presented at the first instance level.

... The second possibility envisaged under Article 2(5) of the Statute is for the case to be remanded to the first instance body. This shall occur firstly where the resolution of the factual issues by additional documentary evidence is not appropriate or possible, or, secondly, where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written testimony. Article 2(5) of the Statute, therefore, in keeping with the Appeals Tribunal's appellate nature and function, does not envisage or permit the Appeals Tribunal to hold hearings for the purpose of receiving oral or other forms of non-written testimony. An appeal to the Appeals Tribunal is primarily an appeal on the record of the first instance body. The oral proceedings contemplated in Article 8 of the Statute of the Appeals Tribunal are for the purpose of hearing oral argument and submissions in relation to the factual record and not for fact-finding. The process of fact-finding is reserved by the statutory scheme to the first instance body. This arrangement is applied to specialized agencies subject to the Appeals Tribunal's jurisdiction by Article 2(10), which explicitly provides that remands should be to the first instance process of the agency.

... The Appeals Tribunal holds that this appeal cannot be determined without additional fact-finding that may require oral testimony in relation to several material issues. Mr. Rolli's appeal to the JAB must be reconsidered and re-determined 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. We propose therefore to remand the case to the JAB to reconsider the appeal and to make various essential factual and legal determinations. The findings must be substantiated on proper evidence (including where necessary oral testimony) and be set out in a written decision determining the ultimate issue, as contemplated in Article 2(10) of the Statute of the Appeals Tribunal read with Article 2 of the agreement.

In paragraph 34, the Appeals Tribunal listed the issues and questions on which the JAB was directed to make findings.

10. On 20 January 2020, the United Nations and the WMO concluded a new agreement on the “Extension of the Jurisdiction of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal to the World Meteorological Organization”. It was agreed that “[s]ubject to the conditions in the attached Annex, [the WMO] accepts the jurisdiction of the Dispute Tribunal and the Appeals Tribunal”, and “[a]s a transitional measure, all cases pending before the Joint Appeals Board of [the WMO] shall be transferred to the Dispute Tribunal as from the effective date of this Agreement”.²

11. By way of application filed on 20 January 2020, Mr. Rolli now seeks revision of Judgment No. 2019-UNAT-952. The WMO filed its comments on the revision application on 20 February 2020.

Submissions

Mr. Rolli’s Application for Revision

12. The remand order issued by the Appeals Tribunal, and in particular its reference to the need to have Mr. Rolli’s appeal considered by a neutral first instance body, coupled with the objective inability of the JAB to function as a neutral first instance process, are the new facts that require the Appeals Tribunal to revise its said Judgment.

13. Accordingly, the Applicant requests that the Appeals Tribunal revise the subject Judgment as follows:

- a. That it quash its order to remand the case for further consideration by the JAB;
- b. That it proceed to render a judgment on the merits based on the pleadings submitted in UNAT Case No. 2019-1249, and as part of that process, that it rule on the Applicant’s motions pending before it requesting leave to file a rejoinder to the reply of the WMO;
- c. That, in the event the Appeals Tribunal rejects the foregoing request for revision, it nonetheless revise the said Judgment to:

² Articles 1 and 6(2) of the UN-WMO Agreement of 20 January 2020.

- i. Order the WMO to reinstate the Applicant on special leave with full pay from 25 October 2019 (the date of the public announcement of our Judgment) with full retroactive effect, until such time as the JAB has completed its reconsideration of the case pursuant to the order of the Appeals Tribunal in Judgment No. 2019-UNAT-952, and until the appeal has been finally adjudicated;
 - ii. Fix a deadline for the JAB to submit its findings, no later than 31 March 2020, thus enabling consideration of the appeal of the expected new decision from the WMO—if necessary—in the June 2020 session of the Appeals Tribunal;
 - iii. Order the WMO to reimburse the Applicant for all legal fees he incurs as a result of the remand of the appeal to the JAB (through the date of final adjudication of the appeal) which arose through no fault of the Applicant, but solely as a result of the WMO to comply with the UN-WMO Agreement, and also due to the fact that the WMO has no ombudsperson or equivalent of the United Nations Office of Staff Legal Assistance; and
 - iv. Order the WMO to bar the WMO Legal Counsel (who will likely be a witness before the JAB during its consideration of the issues and questions raised by the Appeals Tribunal in subparagraphs 34-22, 34-23, 34-26 and 34-27 of said Judgment) from any participation whatsoever in the appeal, except as a witness before the JAB, to avoid having the work of the JAB tainted by a real or perceived conflict of interest by the WMO Legal Counsel.
- d. That it order such other relief as the Appeals Tribunal deems necessary, just and fair.

The WMO's Comments

14. Further to Article 6, paragraph 2 of the Agreement signed between the United Nations and the WMO in January 2020 and the remanding of the Applicant's appeal by the Appeals Tribunal for reconsideration, in accordance with the directions stipulated in Judgment No. 2019-UNAT-952, the United Nations Dispute Tribunal (UNDT) has been seized of the said appeal for reconsideration. The WMO submits that, as UNDT will reconsider the case, there is no requirement for the Appeals Tribunal to revise its Judgment No. 2019-UNAT-952.

15. The WMO, therefore, requests the Appeals Tribunal to reject Mr. Rolli's application for revision.

Considerations

16. Mr. Rolli asks this Tribunal to revise the Judgment delivered on 25 October 2019. The Tribunal's power to do so lies in Article 11(1) of the Statute of the Appeals Tribunal, and Article 24 of this Tribunal's Rules of Procedure.

17. These provisions are reproduced below, respectively:

Article 11

1. Subject to article 2 of the present statute, either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

Article 24

Revision of Judgments

Either party may apply to the Appeals Tribunal, on a prescribed form, for a revision of a judgement on the basis of the discovery of a decisive fact that was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application for revision will be sent to the other party, who has 30 days to submit comments to the Registrar on a prescribed form. The application for revision must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

18. Neither the remand order issued by the Appeals Tribunal, nor the need to have Mr. Rolli's appeal considered by a neutral first instance body, coupled with the objective inability of the JAB to function as a neutral first instance process, are new facts which were, at the time Judgment No. 2019-UNAT-952 was rendered, unknown to the Appeals Tribunal.

19. The Agreement concluded between the United Nations and the WMO on 20 January 2020 implies that, in compliance with the guidelines set out in the Judgement delivered on 25 October 2019, a neutral first instance body has been seized of Mr. Rolli's appeal for reconsideration.

20. What has emerged since the Judgment was delivered on 25 October 2019, cannot be, and are not, new "decisive facts" relating to Mr. Rolli's claims that were made to the JAB (which is what Articles 11 and 24 quoted above allow for), but are rather changed legal provisions that still enable him to have a neutral first instance body determine those claims as the Appeals Tribunal has directed the body to do.

21. Several of Mr. Rolli's claims made in his application for revision are additional to those that were before the Appeals Tribunal and as such are not justiciable by us now, but (without giving any indication by us of their validity) these claims should be made to the UNDT, which is now seized of his case by operation of the 20 January 2020 Agreement between the United Nations and the WMO.

22. The application for revision is dismissed.

Judgment

23. The application for revision of Judgment No. 2019-UNAT-952 is dismissed.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Neven, Presiding
Brussels, Belgium

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Raikos
Athens, Greece

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

(Signed)

Weicheng Lin, Registrar