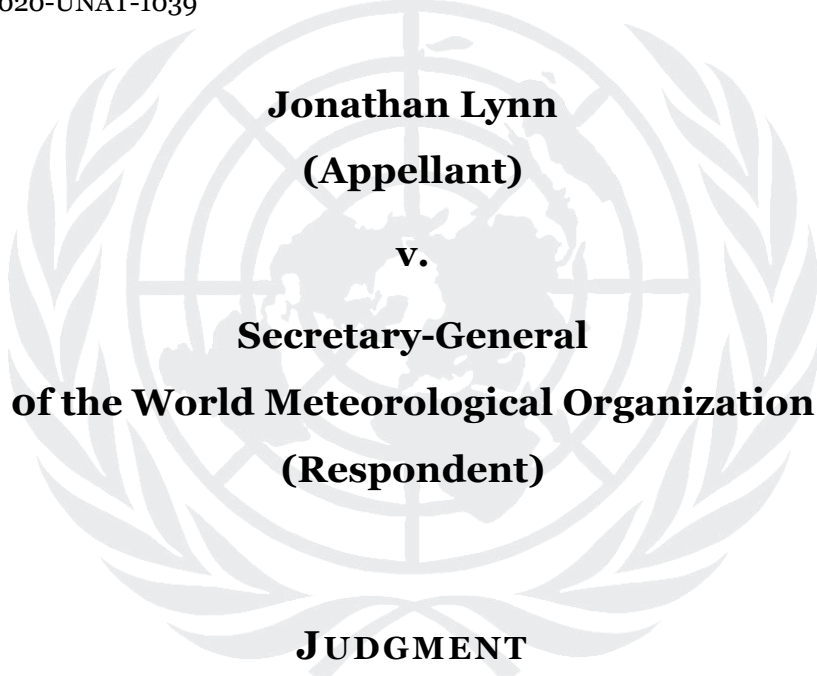




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1039



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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Sabine Knierim Judge Kanwaldeep Sandhu
Case No.:	2019-1325
Date:	26 June 2020
Registrar:	Weicheng Lin

Counsel for Mr. Lynn:	Jean-Didier Sicault
Counsel for WMO Secretary-General:	Brigitta Exterkate

JUDGE MARTHA HALFELD, PRESIDING.

1. Mr. Jonathan Lynn, a staff member of the World Meteorological Organization (WMO), has appealed against the decision of the Secretary-General of the WMO to maintain the implementation of the International Civil Service Commission (ICSC's) decision with respect to the Geneva post adjustment multiplier (PAM).

2. On appeal, the United Nations Appeals Tribunal (Appeals Tribunal) remands the case to the United Nations Dispute Tribunal (UNDT) for adjudication, as a result of the agreement between the United Nations and the WMO on the extension of the jurisdiction of the UNDT and Appeals Tribunal to the WMO, signed on 20 January 2020 and effective the same date.

Facts and Procedure

3. The Joint Appeals Board of the WMO (JAB/WMO) established the following facts in its report dated 20 June 2019:¹

... In accordance with Article 10 and 11 of its statute, the International Civil Service Commission (ICSC) recommends to the UN General Assembly, salary and post adjustment scales for the UN Common System. To this end, the ICSC is supported by the Advisory Committee on Post Adjustment Question (ACPAQ) – a panel of experts that advises the ICSC Secretariat on the methodology underpinning the post adjustment system.

... At headquarter duty stations such as Geneva, cost-of-living surveys are conducted at least once every five years, most recently in September / October 2016. In the years preceding the 2016 survey, the ICSC approved a number of ACPAQ recommended changes to the methodology for calculating the post adjustment multiplier. The full Impact of these changes was first apparent in March 2017 following the review of the 2016 survey results by the 84th meeting of ACPAQ, and subsequently when the 84th meeting of the ICSC decided on the staggered implementation of a 6.7% reduction on to the post adjustment multiplier in August and November 2017.

... Following this ICSC decision, the majority of the UN organizations in Geneva sought clarification and explanations from the ICSC on the reasons for the substantial reduction. Despite high-level Interventions from many UN organizations, details and explanations were not forthcoming. Consequently, the Geneva-based organizations tasked a group of statisticians and lawyers to review the results of the survey which culminated in a report that was submitted to the ICSC in early July 2017 outlining a number of problems with methodology and results of the survey.

¹ JAB/WMO report, paras. 5-12.

... The shortcomings identified in the report were discussed with high-level delegations from the UN organizations that attended the 85th meeting of the ICSC in Vienna in July 2017. Taking Into account the appeals, the Commission decided to reintroduce the gap closure measure² which augmented the post adjustment index derived from the 2016 survey by 3%. In addition, the ICSC approved a personal transitional allowance equivalent to the difference between the revised and prevailing post adjustment multipliers for a period of six months and thereafter reduced at four month Intervals by 3% until phased out.

... Also at the 85th meeting, the ICSC reaffirmed that the 2016 cost-of-living survey were carried out in accordance with the approved methodology. They took note of the report produced by the Geneva group of statisticians and requested ACPAQ to consider its findings in its future work on improving the methodology underpinning the post adjustment system which Is to be carried out in collaboration with representatives of the administrations and staff federations of the United Nations Common System.

... In accordance with the ICSC decision taken at the 84th meeting of the ICSC, the initial impact of the post adjustment reduction was expected to be reflected in the salaries of WMO staff In the February 2018 payroll, however, due to delays in receiving pertinent information from the ICSC about the exact figures, the reductions were reflected in their March and June 2018 salaries.

... (...)

... 12. In the period following the implementation of the March and June 2018 reductions to the post adjustment multipliers, the appellants filed requests for review and thereafter appeals of the decisions to implement each of the reductions citing that:

(a) the ICSC decision: (i) went against established case law for the international civil service; (ii) had not been reviewed for legality; (iii) was unjustified and unjustifiable; (iv) resulted from factual errors; (v) was a consequence of other prior inadmissible decisions; (vi) violated fundamental principles for changes in conditions of service; (vii) violated the acquired rights of staff; (viii) caused unnecessary and/or undue injury; (ix) was procedurally flawed; and (x) as consequence of all of the foregoing, Illegal and void as a whole.

(b) As a direct consequence, WMO's implementation of this updated post adjustment multiplier bears the same underlying flaws as cited under 12 (a) above;

² A measure designed to mitigate negative impacts on salaries resulting from cost-of-living surveys that are significantly lower than the prevailing pay Index. The measure was set at 5 per cent prior to its abolition by the ICSC in 2015, however, when reintroduced at the 85th meeting of the ICSC, it was set at 3 per cent. No reason was provided for the reduction.

(c) As a consequence of 12 (a) and 12 (b), the overall Implementation of this reduction of post adjustment was against the principles in established law governing the conditions of service of international civil servants, and as such was unlawful in its entirety.

4. The JAB/WMO agreed that they were not competent to adjudicate on the essential issues of the appeal challenging the ICSC decision and, therefore, recommended “that the appellants pursue these grievances using the other avenues of the United Nations’ Internal Justice System available to them. In the interim, the JAB/WMO recommended that the Secretary-General of the WMO maintain his decision to implement the reduced post-adjustment multiplier issued by the ICSC in March and June 2018.”³

5. Insofar as the request related to WMO’s implementation of the decision, the JAB/WMO concluded that the Secretary-General of the WMO, “was required to (carry out this implementation) by the relevant statutes and governing body decision, and that his actions were therefore within his mandate. The JAB/WMO was also of the opinion that the Secretary-General of the WMO acted reasonably, in particular through the due diligence efforts made to understand the reasons for the post adjustment reduction and the efforts made to try to convince the ICSC to reconsider their decision.”⁴

6. On 19 July 2019, the Secretary-General of the WMO, issued the challenged decision not to depart from the JAB/WMO’s recommendation and maintain the implementation of the ICSC’s decision to reduce the post adjustment multiplier for staff members of the WMO.

7. On 18 October 2019, Mr. Lynn filed an appeal with the Appeals Tribunal against the decision by the Secretary-General of the WMO.

8. On 20 December 2019, the Secretary-General of the WMO filed a motion for extension of time to file an answer and remand the case to the JAB/WMO for its reconsideration, in light of the oral pronouncement that the Appeals Tribunal made on 25 October 2019 in the case of *Rolli*.⁵ By Order No. 366 (2020), dated 5 February 2020, the Appeals Tribunal rejected both the motion and the remand to the JAB/WMO at that stage of proceedings.

³ JAB/WMO report, para. 20.

⁴ JAB/WMO report, para. 19.

⁵ *Rolli v. Secretary-General of the World Meteorological Organization*, Judgment No. 2019-UNAT-952, issued on 20 December 2019.

9. On 10 February 2020, the Secretary-General of the WMO filed his answer to the appeal. The case was registered as Case No. 2019-1325.

Submissions

Mr. Lynn's Appeal

10. Mr. Lynn asserts that his application is receivable *ratione materiae*, owing to the fact that the Secretary-General of the WMO, stated that he would not object to any appeal against his decision. On the merits, his appeal is mainly based on jurisprudence rendered by the Administrative Tribunal of the International Labour Organization (ILOAT), which recognised the illegality of the two-tier reduction that affected his remuneration first from March 2018, and then from June 2018, as a result of decisions by the ICSC, the last of which was on 17 July 2017.

11. Mr. Lynn contends that the ICSC lacked authority to decide on the post-adjustment multiplier, no recommendation having ever been made to the UN General Assembly for the reduced PAM. Moreover, the ICSC did not provide adequate justification for such a reduction, despite the doubts cast on its decision by the independent consultant engaged by the ICSC itself, which did not explain why the reduction from 5 per cent to 3 per cent was necessary.

12. To Mr. Lynn, the methodology was thus neither transparent, nor foreseeable, nor clearly understood, and has been questioned by the "Geneva senior statisticians". Besides this, the indices used to calculate the cost-of-living comparisons were not stable. These flaws are not in accordance with the general principles of law applicable to salary adjustments.

13. Mr. Lynn further maintains that the reduction in the PAM violates his acquired rights and legitimate expectations, as acknowledged in the ILOAT judgment, and that there has been violation of the WMO obligation not to cause him unnecessary harm. Lastly, Mr. Lynn argues that there is a need for convergence of the ILOAT and the Appeals Tribunal opinions, for the sake of the common system of remuneration and the respect of general principles of law affirmed by the Tribunal.

14. Mr. Lynn requests rescission of the Secretary-General of the WMO's decision to implement the ICSC decision regarding the revised post adjustment insofar as it relates to his pay slips from March 2018. He also requests that the Appeals Tribunal order the WMO to provide him with new pay slips disregarding the adjustment and that he be paid compensation at the amount equivalent to the respective difference, with interest, as well as costs.

The Secretary-General of the WMO's Answer

15. The Secretary-General of the WMO requests that the Appeals Tribunal remand the case to the UNDT, in compliance with a new agreement signed in January 2020, on extension of the UNDT and the Appeals Tribunal's jurisdiction to the staff members of the WMO, following the Appeals Tribunal's Judgment in *Rolli*, in October 2019.

16. The Secretary-General of the WMO further affirms that the principles on which the ILOAT jurisprudence is based are inconsistent with the legal framework applicable to the United Nations Secretariat and to the WMO. In the WMO, the Staff Regulations and Rules explicitly stipulate that the ICSC is the competent authority to determine the post adjustment multiplier. Citing the Appeals Tribunal's judgment in *Lloret-Alcaniz*,⁶ the Secretary-General maintains that there is no scope for reviewing the legality of the legislative decision taken by the ICSC and its methodology, since the decisions are binding on the Organisation. Therefore, the claims must be rejected for lack of jurisdiction.

17. On the merits, the Secretary-General of the WMO points out that, according to Article 11(c) of the ICSC Statute, the ICSC is the competent authority to establish post adjustment multipliers for duty stations as a means of classifying them. The General-Assembly established, in its resolution 72/255, that the adjustment in the PAM is the result of the 2016 cost-of-living survey, by calling upon the organisations to fully cooperate with the ICSC decisions. However, the ILOAT jurisprudence gave no deference to the General Assembly's interpretation of the ICSC's mandate, nor to its changes to the PAM. To the Secretary-General of the WMO, there is no need for the General Assembly to approve the decisions taken by the ICSC regarding changes in PAM.

⁶ *Lloret-Alcaniz et. al, v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840.

18. Nevertheless, the ILOAT jurisprudence has had the consequence of WMO staff members being paid less than their colleagues in other Geneva based United Nations organisations, hampering the ability of WMO to attract and retain the right talent. Therefore, the principle of equal pay for equal work may represent a sound reason for the Appeals Tribunal to adopt the ruling of the ILOAT.

19. The Secretary-General of the WMO reiterates his request that the case be remanded to the UNDT for a new judgment. On the merits, he requests confirmation of whether the administrative decision is in line with the ICSC's decision and the resolutions of the United Nations General Assembly or whether the principle of equal pay for equal work is a sound reason for the Appeals Tribunal to set aside the impugned decision and adopt the ruling of the ILOAT.

Considerations

20. The main issue for consideration and determination in the present case is whether the decision to reduce the post-adjustment multiplier for the duty station in Geneva was lawful. The purpose of the post-adjustment multiplier is based on the principle of equal pay for international civil servants by ensuring similar purchasing power for all duty stations.

21. As discussed, this post adjustment multiplier, which is based on cost-of-living surveys in the different headquarters of the Organisation, was reduced following an ICSC decision. By means of this decision, a gap closure measure was reintroduced and a personal transitional allowance was approved, in order to alleviate the impact of the reduction on the staff members' pay slips, for a period of six months and thereafter gradually decreased by 3 per cent every four months. The initial effects of the reduction were implemented from March 2018 onwards.

22. In his answer to the appeal, the Secretary-General of the WMO, requests the case be remanded to the UNDT, following an agreement between the United Nations and the WMO on the extension of the jurisdiction of the UNDT and Appeals Tribunal to the WMO. The new agreement was signed on 20 January 2020, thus, after the filing of the appeal. Mr. Lynn opposed this request, contending that it was without substance, as his case had moved

through the first instance process effective at the time and should not be sent back for a reconsideration by the same process.⁷

23. The Appeals Tribunal will therefore decide on this preliminary issue to determine whether the case shall be remanded and, if so, whether the remand should be to the UNDT.

24. At the time when the appeal was filed, owing to the 2017 agreement between the United Nations and the WMO then in force, Article 2(10) of the Statute of the Appeals Tribunal applied. It reads as follows:

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 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.

25. The Appeals Tribunal has already stated in *Rolli* that “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

⁷ Order No. 366 (2020), dated 05 February 2020.

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.”⁸

26. In that case, as in the present one, the first instance utilized by the WMO was the JAB/WMO. According to WMO Staff Rule 1111.3(n), after consideration of the appeals in both the cases of *Rolli* and the present one, the JAB/WMO adopted and submitted reports to the Secretary-General of the WMO. The JAB/WMO report, which included a recommendation, was then considered as constituting a record of the proceedings in the appeal and included a recommendation. According to WMO Staff Rule 1111.3(o), the final decision on the appeal was taken by the Secretary-General of the WMO. The appeal against this last decision in *Rolli* was then examined and determined by the Appeals Tribunal, in accordance with the previous agreement between the United Nations and the WMO, which was dated 2017.

27. The case in *Rolli* was remanded to the JAB/WMO for reconsideration of the appeal on its merits.⁹ The Appeals Tribunal then agreed with Mr. Rolli that the JAB/WMO had failed to make the necessary factual and legal findings in relation to the evidence he had produced before it. Also, the JAB/WMO had not provided a written decision dealing fully with the factual and legal issues, as it would have been necessary, according to Article 2(10) of the Statute of the Appeals Tribunal when it is read with Article 2 of the then in force Agreement between the United Nations and the WMO, dated 18 July 2017.¹⁰

28. The present case followed the same procedure. The JAB/WMO recommended that the Secretary-General of the WMO maintain his decision to implement the reduced post adjustment multiplier issued by the ICSC in March and June 2018. Then, the Secretary-General of the WMO issued his decision and did not depart from the JAB/WMO’s

⁸ *Rolli v. Secretary-General of the World Meteorological Organization*, Judgment No. 2019-UNAT-952, para. 27.

⁹ The case in *Rolli* dealt with his summary dismissal. The JAB/WMO was found not to have justified the factual basis for its determination, nor had it taken a decision 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 (para. 29).

¹⁰ In paragraph 32 of *Rolli*, the Appeals Tribunal found: “An appeal to the Appeals Tribunal is primarily an appeal on the record of 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.”

report, maintaining the implementation of the ICSC decision. Nevertheless, the JAB/WMO's report may provide a written record of events and some finding; however, the report is not a "decision" from neutral first instance process as it simply provides non-binding "recommendations" or "opinions". In addition, the role of the Secretary-General of the WMO cannot be regarded as a neutral body in the appeal process.¹¹ As stated in *Spinardi*, 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.

29. The case, therefore, needs to be remanded for proper consideration by a neutral process that produces a record of the proceedings and a written decision.

30. Nonetheless, after the Judgment issued in the present case, the 2017 agreement between the United Nations and the WMO was superseded by a new agreement concluded on 20 January 2020 between the same parties, on the extension of the jurisdiction of the UNDT and Appeals Tribunal to the WMO. In relevant parts, the new agreement provides:

Whereas the World Meteorological Organization ("Organization") is 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 and participating in the common system of conditions of service;

(...) (referring to the UNDT)

Whereas in accordance with Article 2, paragraph 1, of its Statute, the United Nations Appeals Tribunal ("Appeals Tribunal") shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal; (...)

Article 1

Subject to the conditions in the attached Annex, the Organization accepts the jurisdiction of the Dispute Tribunal and the Appeals Tribunal.

(...)

Article 6

1. The effective date of this Agreement shall be 20 January 2020.

¹¹ See *Rolli supra*; *Spinardi v. Secretary-General of the International Maritime Organization*, Judgment No. 2019-UNAT-957;

2. As a transitional measure, all cases pending before the Joint Appeals Board of the Organization shall be transferred to the Dispute Tribunal as from the effective date of this Agreement.

3. This Agreement supersedes the “Agreement between the United Nations (UN) and the World Meteorological Organization (WMO) Extending the Competence of the United Nations Appeals Tribunal to the World Meteorological Organization with Respect to Applications Alleging Non- Compliance with the Terms of Appointment or Contracts of Employment of Staff Members of the World Meteorological Organization” of 1 July 2017.

(...)

31. Under these circumstances, the remand in this case cannot be to the JAB/WMO, whose functions have been emptied as removed by the new agreement.¹² As a result, it is ordered that the case be remanded to the UNDT to reconsider the appeal and make legal determinations.

¹² Article 6 of the 2020 agreement.

Judgment

32. The Appeals Tribunal remands the case to the UNDT for adjudication, as a result of the agreement between the United Nations and the WMO on the extension of the jurisdiction of the UNDT and Appeals Tribunal to the WMO, signed on 20 January 2020 and effective the same date.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Halfeld, Presiding
Bournemouth, United Kingdom

(Signed)

Judge Knierim
Hamburg, Germany

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 14th day of August 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar