



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/007  
(UNAT 1524)  
Judgment No.: UNDT/2010/077  
Date: 30 April 2010  
English  
Original: French

**Before:** Judge Jean-François Cousin  
**Registry:** Geneva  
**Registrar:** Víctor Rodríguez

SIMS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for applicant:**  
None

**Counsel for respondent:**  
Linda Starodub, UNOV

## Introduction

1. The applicant contests the decision by which the Secretary-General, subsequent to a report by the Vienna Joint Appeals Board (JAB), rejected his appeal against the Administration's decision of 1 November 2004 restricting his right of access to the Vienna International Centre (VIC) to occasions on which he had an appointment with a staff member of the Centre.

2. He requests compensation in the amount of three years of his net salary when he was still a staff member and apologies from the persons who took the contested decisions.

## Facts

3. The applicant retired on 31 December 1995 when serving as a P-4 Social Affairs Officer in New York. He was subsequently appointed a member of the Vienna Panel of Counsel.

4. On 17 March 2004, the Director, Division for Management, at the United Nations Office at Vienna (UNOV) sent an e-mail to the Under-Secretary-General for Management informing her of violations by the applicant of the Guiding Principles of Conduct for counsel in the United Nations.

5. On 29 April 2004, the Presiding Officer of the Vienna Joint Appeals Board (JAB) wrote to the Co-ordinator of the Vienna Panel of Counsel complaining about the applicant's conduct and competence in representing appellants before JAB.

6. On 1 November 2004, a decision was taken to bar the applicant from entering VIC without a prior appointment with a staff member who would be responsible for escorting him during his visit.

7. On 4 November 2004, the applicant wrote to the Director, Division for Management, UNOV, asking the Director to state the reasons for his decision of 1 November 2004. On 20 December 2004, the Director confirmed that decision.

8. On 28 January 2005, the applicant submitted to the Secretary-General a request for administrative review of the decision of 1 November 2004 restricting his right of access to VIC.

9. On 24 April 2005, the applicant filed an appeal with the Vienna JAB.

10. On 16 March 2006, the Secretary of the Vienna JAB informed the applicant of the composition of the panel constituted to consider his appeal.

11. On 23 March 2006, the applicant requested that his appeal be heard by the New York JAB.

12. By undated letter the Presiding Officer of the New York JAB informed the applicant that the New York JAB was not competent to advise the Secretary-General on his appeal.

13. On 27 June 2006, in its report to the Secretary-General, the Vienna JAB informed him that it was not competent *ratione loci* to consider the appeal.

14. On 22 November 2006, the Acting Under-Secretary-General, Department of Management, informed the applicant that the Secretary-General had, in a final decision, rejected his appeal on the grounds that, at the time of the decision in question, he was not a staff member and that the appeal did not relate to the non-observance of his terms of appointment as a staff member but to his relationship as a retiree with VIC.

15. On 18 January 2007, the Under-Secretary General for Management indicated to the applicant that he was only entitled to enter VIC if he had an appointment with a staff member.

16. The applicant filed an application with the United Nations Administrative Tribunal (UNAT) on 26 February 2007.

17. Pursuant to General Assembly resolution 63/253, the application was transferred to the United Nations Dispute Tribunal (UNDT) on 1 January 2010.

### Parties' contentions

18. The applicant's contentions are:
- a. The contested decision constitutes an abuse of power because no precise reason was given for the denial of access and it contravenes staff regulation 1.2 (a) and (b) and staff rule 101.2 (g);
  - b. Whereas he has a right of access to VIC as a former staff member and counsel for staff members, the decision was taken solely for the purpose of harassment;
  - c. The then staff rule 111.2 (d) (ii) also applied to former staff members and he is therefore entitled to contest the decision. Article 2, paragraph 2, of the Statute of the UNAT provided that the Tribunal was open to any staff member even after his or her employment had ceased;
  - d. Administrative instruction ST/AI/333 provides for the issuance of Headquarters grounds passes to former staff members on conditions that he meets and the granting of permission for access by visitors is an entirely different matter. Access for former staff members is therefore a right;
  - e. The decision is contrary to administrative instruction ST/AI/333 on personal identification cards at Headquarters, to the procedures of the United Nations Security and Safety Section at VIC and to administrative instruction ST/AI/351 on assistance and representation by counsel in disciplinary and appeal cases;
  - f. The Secretary-General's decision is a hindrance to his role as counsel for staff members who are his clients and who have themselves suffered reprisals after filing appeals;
  - g. The decision by the Presiding Officer of the New York JAB not to consider his appeal is contrary to the rules;
  - h. His rights as counsel have been infringed. He is a member of the Panel of Counsel, a body set up by the Secretary-General pursuant

to paragraph 4 of administrative instruction ST/AI/351. The Secretary-General's offer to former staff members to serve on the Panel constitutes a contract;

- i. The bar was introduced for the purpose of hindering the lodging of appeals by staff members. Three of the applicant's clients were barred from access to VIC, a step taken to hamper them and their counsel in submitting their appeals against the Administration

19. The respondent's contentions are:

- a. The applicant's claims relating to three of his clients are not receivable because they were not appealed before a JAB and concern persons who are not parties to the present application;
- b. The applicant's claim regarding the limitation of his access to VIC is irreceivable because of the provisions of staff regulation 11.1 and staff rule 111.2 (a). It is not an appeal against an administrative decision alleging the non-observance of the applicant's terms of appointment;
- c. The fact that a retiree volunteers to be a member of the Panel of Counsel does not imply that he has a contract of employment and is subject to the Staff Rules;
- d. Limitation of access places the applicant in the same situation as counsel who are not former staff members and does not hinder his work as counsel since help is available to him from the Office of the Co-ordinator of the Panel of Counsel.
- e. With respect to the applicant's right to enter United Nations premises as a retiree, administrative instruction ST/AI/333 concerns only access to Headquarters and not to other of the Organization's offices. In any event, the right applies only in normal circumstances and not in cases where the former staff member disrupts normal work;

- f. The memorandum of 29 April 2004 from the Presiding Officer of the Vienna JAB gives the reasons for the restriction of the applicant's access.

### Judgment

20. The applicant, a former United Nations staff member and, at the time of the contested decision, a member of the Vienna Panel of Counsel, contests the decision by which the Secretary-General, subsequent to a report by the Vienna Joint Appeals Board (JAB), rejected his appeal against the Administration's decision of 1 November 2004 restricting his right of access to the Vienna International Centre (VIC) to occasions on which he had an appointment with a staff member of the Centre.

21. He contends that the decision is illegal because, in view of his status as a former United Nations staff member on the one hand and his status as a member of the Panel of Counsel on the other, his right of access to VIC cannot be so restricted.

22. In support of his claim that as a former United Nations staff member he has a right of unlimited access to the premises of VIC, the applicant bases himself only on administrative instruction ST/AI/333 of 29 November 1985, which concerns the issue of personal identification cards at Headquarters and provides that, other than in exceptional circumstances, retired staff members have access to the premises. However, he cannot rely on this document, which concerns only the right of access to Headquarters in New York, to contend that he has a right of access to VIC.

23. Staff regulation 11.1 provides that staff members may appeal "an administrative decision alleging the non-observance of their terms of appointment, including all pertinent regulations and rules". Staff rule 111.2 (a) provides that a staff member who wishes to appeal an administrative decision must do so "pursuant to staff regulation 11.1".

24. Article 2 of the Statute of the former UNAT provides that "[t]he Tribunal shall be competent to hear and pass judgment upon applications

alleging non-observance of contracts of employment of staff members of the Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all permanent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations".

25. The Secretary-General was therefore right in finding that the contested decision did not infringe either the applicant's terms of appointment as a former staff member or the rights recognized to retired staff members by rules or regulations and that it could therefore not be appealed on the ground of such infringement.

26. The applicant also contends that his membership of the Panel of Counsel gives him rights deriving from his status as a contractor with the Administration. However, it does not follow from any text deriving from the Staff Regulations or the Staff Rules that a United Nations retiree who volunteers to act as counsel for serving staff members is thereby placed in a contractual relationship with the Organization. Hence, the applicant, like any other counsel outside the Organization, had no entitlement by reason of his membership of the Panel to contest decisions by the Secretary-General before the former UNAT.

27. Lastly, while the applicant contends that the restriction of his access to VIC hinders his activities as counsel and infringes his clients' right to defence, only the clients would, if they felt they had just cause, be entitled to contest obstacles created by the Administration to the exercise of the rights recognized to them by reason of their status.

28. It follows from the above that the decision criticised by the applicant could not be contested either before the Secretary-General or before the former UNAT or, therefore, before the present Tribunal. It has, consequently, been possible to decide the case without requiring the production of documents other than those already on file on the one hand and without holding an oral hearing on the other.

**Decision**

29. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

*(signed)*

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Judge Jean-François Cousin

Dated this 30th day of April 2010

Entered in the Register on this 30th day of April 2010

*(signed)*

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Victor Rodríguez, Registrar, UNDT, Geneva