



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

Judgment No. 2013-UNAT-355

**Johnson
(Respondent)**

v.

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

JUDGMENT ON APPLICATION FOR INTERPRETATION

Before:	Judge Inés Weinberg de Roca, Presiding Judge Mary Faherty Judge Sophia Adinyira
Case No.:	2013-434
Date:	21 June 2013
Registrar:	Weicheng Lin

Counsel for Respondent: Robbie Leighton

Counsel for Applicant: Phyllis Hwang/Paul Oertly

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an application for interpretation of Judgment No. 2012-UNAT-240, rendered by the Appeals Tribunal on 29 June 2012 in the case of *Johnson v. Secretary-General of the United Nations*. The Secretary-General filed his application on 7 January 2013 and Ms. Moira Louise Johnson submitted comments on 22 January 2013.

Facts and Procedure

2. Ms. Johnson is a citizen of the United States who worked as a consultant in Switzerland before becoming a staff member of the Office of the High Commissioner for Refugees, and later the United Nations Development Programme. As a consultant, Ms. Johnson had earned foreign tax credits under United States tax law, which she later used, as recommended by the Income Tax Unit (Tax Unit), to discharge her tax liability on salaries and fees paid by the United Nations.

3. In March 2010, Ms. Johnson requested reimbursement from the Tax Unit for the tax credit she used in 2009, amounting to USD 15,239.00. The Tax Unit denied the request, claiming that her use of tax credit had reduced her tax liability balance to zero, thus she had no outstanding balance. She appealed the decision before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva.

4. On 17 August 2011, the UNDT rendered judgment No. UNDT/2011/144 disposing of Ms. Johnson's application. The UNDT found that the use of foreign credits by United States taxpayers constitutes "a payment method" and should be recognized as such. The UNDT ordered the Secretary-General to refund Ms. Johnson the amount of staff assessment on her salary and emoluments for 2009, without taking into account the foreign tax credits in dispute.

5. The Secretary-General appealed this judgment and Ms. Johnson cross-appealed. By Judgment No. 2012-UNAT-240, the Appeals Tribunal rejected both the Secretary-General's appeal and Ms. Johnson's cross-appeal and affirmed the UNDT's judgment in its entirety. The Secretary-General now requests an interpretation of this Judgment.

6. On 31 May 2013, the Secretary-General filed a motion to amend his pleadings in his application for interpretation of Judgment No. 2012-UNAT-240. Specifically, the Secretary-General requests that the Appeals Tribunal strike paragraphs 18 to 21, and to consider the application amended accordingly. The Appeals Tribunal will therefore not consider paragraphs 18 to 21 of the Secretary-General's application.

Submissions

The Secretary-General's Application

7. The Secretary-General requests clarification as to whether, in confirming the UNDT Judgment, the Appeals Tribunal intended to confirm the UNDT's order that the Tax Unit shall calculate the settlement of Ms. Johnson's 2009 taxes without taking into consideration the disputed tax credit. This, he submits, will necessarily entail the filing of an amended tax return for 2009 by Ms. Johnson so that it does not take into account her foreign tax credit. Ms. Johnson will be required to pay her new tax liability of USD 15,239, and the Tax Unit will subsequently reimburse her for that amount. She will be able to retain her foreign tax credits for future years.

Ms. Johnson's Comments

8. Ms. Johnson replies that the Judgment of the Appeals Tribunal is clear and that the Secretary-General's application is not a genuine request for interpretation, but rather an "attempt to re-litigate issues" that have already been decided by the Appeals Tribunal. As such the application is not receivable.

9. Ms. Johnson requests that the Appeals Tribunal order the execution of Judgment No. 2012-UNAT-240. Ms. Johnson further requests that the Appeals Tribunal award costs against the Secretary-General for abuse of the appeals process.

Considerations

10. The Appeals Tribunal has consistently held that:

... An application for "reconsideration", "guidance", "ruling on issues of appellate jurisdiction" and "approach", or any application which, in fact, seeks a review of a final judgment rendered by the Appeals Tribunal can, irrespective of its title, only succeed if it fulfills the strict and exceptional criteria established by Article 11 of the Statute of

the Appeals Tribunal (discovery of a decisive fact previously unknown not due to negligence, clerical or arithmetical mistakes, and interpretation of the meaning).

... As this Tribunal stated in *Shanks* and *Costa*, the authority of a final judgment – *res judicata* – cannot be so readily set aside. There are only limited grounds, as enumerated in Article 11 of the Statute of the Appeals Tribunal, for review of a final judgment.

... In this respect, the applicant’s arguments are irrelevant if they do not meet the requirements clearly established in the Statute to ensure the finality of a judgment.

... Neither can the parties rely on the Tribunal’s “inherent power to reconsider” to obtain a revision expressly forbidden by the Statute from a rule based on the concept of *res judicata*, designed to avoid litigation *ad aeternum*, particularly applicable to the highest court of a judicial system.¹

11. In the present case, the application filed by the Secretary-General does not fulfill the requirements of Article 11 of the Statute of the Appeals Tribunal. It therefore becomes manifestly inadmissible. The Appeals Tribunal’s Judgment clearly states that the utilization of foreign tax credits constitutes a reimbursable payment method (paragraph 47). In accordance with the Secretary-General’s application, the Tax Unit has calculated the relevant reimbursable amount at USD 15,239.

Judgment

12. The Secretary-General’s application is rejected. The Secretary-General is hereby ordered to pay to Ms. Johnson the aforementioned amount, USD 15,239, which shall bear interest as follows:

-- United States prime rate with effect from the date on which Ms. Johnson should have received her refund (presumed by the Appeals Tribunal to be 30 days from the date of her claim) until the issuance of Judgment No. 2012-UNAT-240 (12 September 2012); and

-- United States prime rate plus five per cent from 13 September 2012.

The aforementioned interest rates also dispose of Ms. Johnson’s request for costs.

¹ *Beaudry v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-129, paras. 16 to 19, footnote omitted, citing *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-063 and *Shanks v. United Nations Joint Staff Pension Board*, Judgment No. 2010-UNAT-26*bis*.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding
21 June 2013

(Signed)

Judge Faherty
28 June 2013

(Signed)

Judge Adinyira
21 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar