



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

**Cherif
(Appellant)**

v.

**Secretary General
Of the International Civil Aviation Organization
(Respondent)**

JUDGMENT

Before:	Judge Mark P. Painter Presiding Judge Kamaljit Singh Garewal Judge Jean Courtial
Judgment No.:	2011-UNAT-165
Date:	21 October 2011
Registrar:	Weicheng Lin

subject to certain exceptions, “the written approval of the President of the Council for any hiring, appointment, promotion, extension and te

ICAO's Submission

12. ICAO contends that the two decisions that Mr. Cherif is appealing are not administrative decisions but rather regulatory as they fall within the Council's purview who, under Article 58 of the Convention on International Civil Aviation,² can determine and modify the Secretary General's conditions of employment.

13. ICAO further expresses that apart from cases where the Appellant and the Secretary General agree to a direct submission in front of the Appeals Tribunal, the Appellant must, which did not occur in this instance, first seek a review of the decision in front of the AJAB and exhaust the internal remedies available to him.

14. While ICAO's Regulations and Rules did not anticipate a situation in which the Secretary General would be the one contesting a decision, "staff members are required to seek a review from the authority taking the administrative decision". Whereas administrative decisions are usually taken by the Secretary General, in this case the decision making body was the Council to which the Secretary General is directly accountable and which, similarly to the Secretary General's authority too suoaf moh2.6(se-7.5()5cisi)ary tap-6.5(epoi-

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17. ICAO contends that, in addition, the appeal

23. The two decisions Mr. Cherif is contesting are not, within the mandate of the Appeals Tribunal, administrative decisions. They are decisions of the governing body pertaining to terms of its relationship with its employee, the Secretary General. Under Article 58 of ICAO's Convention, the Council can determine and modify the Secretary General's conditions of employment: "Subject to any rules laid down by the Assembly and to the provisions of this Convention, the Council shall determine the method of appointment and of termination of appointment, the training, and the salaries, allowances, and conditions of service of the Secretary General and other personnel of the Organization, and may employ or make use of the services of nationals of any contracting State."⁵ That is exactly what happened here.

24. The Council's decisions to restrict the Secretary General's hiring authority are within its powers.

Judgment

25. This appeal is dismissed for want of subject-matter jurisdiction.

Original and authoritative version: English

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

(Signed)

Judge Painter, Presiding

(Signed)

Judge Garewal

(Signed)

Judge Courtial

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

(Signed)

Weicheng Lin, Registrar

⁵ Convention on International Civil Aviation, Chicago, 4 April 1947, Article 58, Chapter XI.