



1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Renán Pérez-Soto against Judgment No. UNDT/2012/078, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 30 May 2012 in the case of *Pérez-Soto v. Secretary-General of the United Nations*. Mr. Pérez-Soto appealed on 30 July 2012, and the Secretary-General answered on 1 October 2012.

Facts and Procedure

2. Mr. Pérez-Soto entered the service of the United Nations in 1989, as an Associate Programme Budget Officer at the P-2 level.

3. On 31 June 2003, Mr. Pérez-Soto was reassigned within the Department of Management from his P-2 level position as Associate Programme Budget Officer in the Office of Programme Planning, Budget and Accounts (OPPBA) to the position of Associate Human Resources Officer, Office of Human Resources Management (OHRM). He appealed this decision to the former Joint Appeals Board (JAB), which found in his favour, concluding that the contested decision was influenced by extraneous factors and constituted an abuse of authority, and recommended, *inter alia*, payment of five months' net base salary and the completion of his outstanding performance appraisals. In September 2005, the Secretary-General accepted these recommendations¹.

4. Effective 18 October 2004, Mr. Pérez-Soto was assigned back to OPPBA, with a new role in the Contributions Service. He requested administrative review of this decision and asked to be either reassigned to the position he had previously held in OPPBA or to be temporarily returned to his position in OHRM. His request for administrative review was not successful and nor was his appeal to the JAB:

[T]he [JAB] Panel *unanimously finds* no evidence that the decision to reassign [Mr. Pérez-Soto] back to OPPBA suffered from procedural flaws or was otherwise tainted by arbitrariness or ill-motivation. It therefore *unanimously concludes* that the reassignments constituted a valid exercise of managerial discretion, and *decides* to make no recommendation in the present appeal.

... However, the Panel also *unanimously considers* that, in view of the shortcomings in implementation of the decision, of the contentious environment

¹ According to the Appellant, the Secretary-General paid the compensation but did not complete the outstanding appraisals.

among the parties even prior to implementation indicative of a breakdown in trust, and of the consequent likelihood of future conflict, an intervention ... [(third party conciliation or mediation)] ... would appear crucial to re-establishing a productive and equitable working environment. (Emphasis in original.)

5. The Secretary-General accepted these recommendations and, by letter dated 13 April 2007, the Under-Secretary-General for Management requested the parties “to participate in good faith in an intervention such as mediation or conciliation ... and to report back to [her] Office within three months on the steps taken to do so”. According to Mr. Pérez-Soto, no such efforts were made. His subsequent application to the former Administrative Tribunal was transferred to the UNDT.

6. In its Judgment No. UNDT/2012/078, the UNDT first addressed the scope of the case before it, concluding that it was limited to the decision to reassign Mr. Pérez-Soto from OHRM to OPPBA. On that issue, the UNDT found that the decision to reassign Mr. Pérez-Soto was made in the best interests of the Organization and was “a matter of operational necessity caused in large part by [his] intractable attitude to any decision made about him by management”. He failed to satisfy his burden of proving that the decision to reassign him back to OPPBA was made in bad faith and the UNDT did not find ulterior motives. Whilst stating that, “[a]s a matter of good staff relations and courtesy, it would be usual for a manager to discuss the possibility of reassignment with a staff member before making the final decisions”, the UNDT held that the fact that this did not occur was “not a breach of the rules and caused no prejudice to him”.

Submissions

Mr. Pérez-Soto’s Appeal

7. Mr. Pérez-Soto requests the Appeals Tribunal to modify the Dispute Tribunal’s findings of fact with respect to the scope of his request for administrative review and the outcome of the JAB proceedings.

8. He submits that the UNDT erred in limiting the scope of his case and in considering his situation a lateral reassignment, rather than an illegal redeployment.

18. The Appeals Tribunal also notes that the UNDT was satisfied that the parties had filed all documents relevant to Mr. Pérez-Soto's receivable claims.

19. Article 19 of the UNDT Rules of Procedure provides: "The Dispute Tribunal may at any time, either on an application of a party or its own initiative, issue any order or give any direction which appears to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties."

20. The UNDT has broad discretion with respect to case management and is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and do justice to the parties.²

21. The Appeals Tribunal will not interfere lightly with the discretion of the UNDT in the

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Done in New York, United States.

(Signed)

Judge Adinyira, Presiding
21 June 2013

(Signed)

Judge Weinberg de Roca
21 June 2013

(Signed)

Judge Chapman
28 June 2013

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

(Signed)

Weicheng Lin, Registrar