



Judgment No. 2013-UNAT-377



Counsel for Appellant: Self-represented

Counsel for Respondent: Amy Wood

1.

... On 8 December 2011, [Mr. Balinge] wrote a memorandum, in French, to the ICTR Registrar requesting him to open an investigation into alleged excessive abuse of discretionary powers and other irregularities committed by the Chief of the Language Services Section (“Chief/LSS”) as it concerned the work of the Retention Panel.

4. The Dispute Tribunal rejected Mr. Balinge's application as "it is entirely based on unsubstantiated allegations". The UNDT found that Mr. Balinge did not show the unlawfulness of the contested administrative decision beyond mere assertions and allegations.

5. The Registry of the Appeals Tribunal received Mr. Balinge's appeal on 7 January 2013. The Secretary-General answered on 8 March 2013. On 29 April 2013 Mr. Balinge submitted a motion for leave to file a reply to the Secretary-General's answer. In Order No. 142 (2013), the Appeals Tribunal rejected Mr. Balinge's motion, as he failed to show exceptional circumstances.

### **Submissions**

#### **Mr. Balinge's Appeal**

6. Mr. Balinge submits that the UNDT erred on questions of fact by ignoring or not thoroughly considering the evidence or "facts" submitted by him. Mr. Balinge claims that had the UNDT considered his evidence, the unlawfulness of the contested administrative decision would have been evident. In particular, he submits that the various facts, as established by the Dispute Tribunal in its Judgment, are false.

7. Specifically, Mr. Balinge contests the following facts as found by the UNDT, claiming:

- The Retention Panel did not follow the criteria established by the SRTF in the downsizing process;
- His post was not one of those "earmarked for abolition in the LSS";
- The UNDT did not adequately assess the case, before it concluded at paragraph 7 that Mr. Balinge "had scored low marks with the Retention Panel".

8. Mr. Balinge requests that the Appeals Tribunal accept his evidence so as to enable it to adequately address the flaws of the UNDT Judgment. Mr. Balinge draws the attention of the Appeals Tribunal to an undated one-page document, which lists his post as a non-abolished post. Mr. Balinge had submitted the same document to the UNDT.

9. In addition, Mr. Balinge submits that the UNDT erred on questions of law, fact and procedure by not considering the issue of the ICTR's failure to conduct a preliminary investigation. He asserts that he addressed this issue before the ICTR and the UNDT, but no

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16.

20. No procedural flaw of the Retention Panel was established by Mr. Balinge before the UNDT or this Tribunal. Neither can any irregularity be inferred from an undated document, which supposedly listed his post as non-abolished.

21. Finally, the issue related to the non-initiation of a preliminary investigation was adequately considered by the UNDT as not being part of Mr. Balinge's management evaluation request. Furthermore, the failure to undertake that kind of investigation does not constitute a sufficient ground to cause the illegality of the impugned decision or to render incorrect the first instance court's conclusions on this matter.

22. Essentially, the Appellant has not shown any real error of fact or law in the impugned Judgment which would warrant its reversal. The contested Judgment is, therefore, affirmed.

**Judgment**

23. The appeal is dismissed in its entirety and the UNDT Judgment affirmed.

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2013 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Faherty

*(Signed)*

Judge Weinberg de Roca

Entered in the Register on this 19<sup>th</sup> day of December 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar