

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2020-UNAT-1012

JUDGE GRAEME COLGAN , PRESIDING .

1. Dr. RoseMarie Heftberger appeals against the decision of the Secretary General of the International Civil Aviation Organization (“ICAO”) on advice from the ICAO Advisory Joint Appeals Board (“AJAB” or “Board”) declining her appeal against the ICAO Secretary General’s decision on her challenge to her non-appointment to the position of Chief, Safety and Air Navigation Oversight Audit Section of ICAO.

2. For reasons set out below, we conclude ~~that the Board’s decision is not supported by the evidence and is therefore set aside.~~

ICAO's Staff Rules, and thereby in the manner in which Dr. Heftberger's appeal was dealt with. That judgment is *Spinardi*.¹

10. Because this jurisdictional point has been made in a number of judgements issued since *Spinardi*, we confine our reasoning in those cases as it is applicable.

... After full consideration, the Board shall, by a majority vote, adopt and submit a report to the Secretary General. The report should include a summary of the case and the recommendations of the Board with the result of the vote on each of the recommendations. Any member of the Board may have a dissenting opinion included in the report. The report shall be considered as constituting a written record of the proceedings and a written decision providing reasons, fact and law and will include the Board's recommendation.

... In the case of an appeal against a decision to terminate or take other action on the grounds of inefficiency, the Board shall not consider the substantive question of efficiency, but only evidence that the decision has been motivated by prejudice or by some other extraneous factor.

... The Board shall make every effort to send its report to the Secretary General within three weeks after completion of the hearing.

... The decision taken by the Secretary General, after the Board has forwarded its report, shall be notified to the staff member together with a copy of the Board's report not later than 15 working days after receipt by the Secretary General of the Board's report. Except in disciplinary cases, a copy of the communication will also be transmitted to the Executive Committee of the Staff Association.

...

... In cases where the Secretary General decides not to accept a recommendation by the Board which is favorable to the appellant, the Secretary General shall provide a fully reasoned decision.

13. As in *Spinardi* and the cases which have followed it, the decision of Dr Heftberger's

complaints was not e th4 -1.732 /TT2 1 T.002 Tc 0.074 -0.001 Tc7.230.077 Tw 6.874 0 6

14. While the AJAB's "opinion" is detailed (running to 21 pages on A4 paper) and contains
- o "reasons, facts and law", it cannot be said that it is a mere summary of the facts and law.

Judgment

16. The appeal is allowed, the ICAO Secretary General's and/or the AJAB's decision is set aside, and the case is remanded to the AJAB for decision in accordance with Article 2(10) of the Appeals Tribunal Statute, that is by "a neutral first instance process that includes a written record and a written decision providing reasons, fact and law".

Original and Authoritative Version: English

Dated this 27th day of June 2020.

(Signed)

Judge Colgan, Presiding
Auckland, New Zealand

(Signed)

Judge Raikos
Athens, Greece

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 9th day of July 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar