



Counsel for Abrate et al.:

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Counsel for WMO Secretary-General:

Brigitta Exterkate

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2020-UNAT-

10. The Secretary-General of the WMO, on 19 July 2019, decided not to depart from the recommendation of the JAB/WMO and to maintain the implementation of the ICSC's decision. The Appellants were notified of the Secretary-General of the WMO's decision on 22 July 2019.

11. In a request for review dated 2 October 2019 the Appellants pointed out to WMO that they had been deprived of a neutral first instance review of the merits of their appeals and requested, *inter alia*, that their cases be remanded to the JAB/WMO for a full review on the merits, and that the deadline to challenge the decision-at-

Appellants further submit that the impugned decision is unnecessarily injurious, and that the reports of several technical experts demonstrate that the ICSC's calculations were flawed for multiple reasons (as the case is remanded to the UNDT, the Appellants' submissions on the lawfulness of the contested decision have been substantially shortened).

21. The Appellants request: (i) that the impugned decision be rescinded; (ii) their March 2018 payslip and all subsequent payslips implementing the ICSC's contested decisions regarding the post adjustment for the duty station of Geneva be rescinded; (iii) that the WMO provide the Appellants with new revised payslips as from the March 2018 payslip with a PAM not based on the revised post adjustment index resulting from the 2016 cost-of-living survey; (iv) and that WMO pay the Appellants an amount equivalent to the difference between the remuneration actually paid to them since March 2018 and the remuneration that would have been paid to them during the same period but for the implementation of the ICSC decisions, with interest at the rate of 5 per cent per annum from due dates until the date of final payment. Alternatively, the Appellants request that the Appeals Tribunal remand the case back to the WMO for a decision by a neutral first instance.

The Secretary-General of the WMO's Answer

22. With regard to the allegation that the WMO does not have a neutral first instance internal appeals process, the Secretary-General of the WMO submits that this concern has been addressed, and in January 2020, the Organization has joined the Administration of Justice System of the United Nations. Therefore, the Secretary-General of the WMO requests the Appeals Tribunal to remand this case to the first instance process, the UNDT, to hear and pass judgment on the appeal in accordance with Article 2 of the Statute of the Appeals Tribunal.

23. Further, the Secretary-General of the WMO submits that the ILOAT and United Nations Tribunals have developed divergent approaches with respect to the receivability of challenges to decisions by legislative bodies and their subsidiary organs. The Appellants' claims wholly relate to alleged flaws in the decisions of the ICSC and the methodology employed by the ICSC in making such decisions. They have not alleged that the Secretary-General of the WMO failed to comply with any statutory requirement or preconditions that attach to the exercise of his authority to execute ICSC decisions. The General Assembly has reaffirmed unequivocally that "resolutions of the General Assembly and the decisions of the International Civil Service Commission are binding on the Secretary-General and on the Organization", and has not

qualified this directive that the Secretary-General is bound by ICSC decisions only when they are correct and "based on methodology which ensures that the results are foreseeable, and clearly understood or transparent"; this only exists in the ILOAT jurisprudence.

24. The Secretary-General is bound by ICSC decisions only when they are correct and "based on methodology which ensures that the results are foreseeable, and clearly understood or transparent"; this only exists in the ILOAT jurisprudence.

The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the SecretaryGeneral of

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34. The case is remanded to the UNDT.

Original and Authoritative Version: English

Dated this 26th day of June 2020.

(Signed)

Judge Knierim , Presiding
Hamburg, Germany

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

(Signed)

Judge Sandhu
Vancouver, Canada