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

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Judgment No. 2024-UNAT-1436



**James Wan**  
**(Respondent/Appellant on Cross-Appeal)**

**v.**

**Secretary General**  
**of the International Civil Aviation Organization**  
**(Appellant/Respondent on Cross-Appeal)**

**J**

Counsel for Mr. Wan: George G. Irving

Counsel for Secretary General: Christopher M. Petras

**JUDGE KATHARINE MARY SAVAGE, PRESIDING.**

1. Before the Appeals Board of the International Civil Aviation Organization (ICAO and Appeals Board, respectively), Mr. James Wan, a former D-1 level Deputy Director, Administration and Services Bureau of ICAO, appealed the decision to impose on him the disciplinary sanction of summary dismissal for serious misconduct (impugned decision). By Decision No. ICAO/2022/007, the Appeals Board affirmed the summary dismissal but nevertheless found that the decision by the President of the ICAO Council (the President) to approve Mr. Wan's summary dismissal was based upon five distinct findings, one of which was "patently incorrect", with the result that the decision of the President was found to be a nullity. The Appeals Board ordered that Mr. Wan be paid his salary and benefits from the date of their cessation until the approval by the President of the Council, if any, is properly obtained, provided that such payment shall not exceed the payment of salary and benefits for a period greater than two years.

2. The ICAO Secretary General appeals against this decision and Mr. Wan cross-appeals.

3. For the reasons that follow, we grant the appeal and dismiss the cross-appeal.

**Facts and Procedure<sup>1</sup>**

4. Mr. Wan joined ICAO in 2009. At the time of the impugned decision, Mr. Wan held the D-1 post of Deputy Director, Administration and Services Bureau of ICAO.

5. Two investigations were conducted by the United Nations Office of Internal Oversight Services (OIOS) into misconduct allegations involtd( )Ti imf I2, we Wa(f De)-5.2(a(in)Tj-8 Tc 0.027 0 Td

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provided to again comment on the allegations before the disciplinary measure was imposed, which he did.

20. The Secretary General submits that there was no evidence of a tainted investigation, and it was therefore manifestly unreasonable for the Appeals Board to place greater weight on the one mischaracterized finding in the Secretary General's Memorandum over the consistent and corroborated evidence of Mr. Wan's conflict of interest contained in the investigative reports, coupled with his implicit admissions of his misconduct. Given the seriousness of the counts before the President and the nature of the conflict-of-interest charges which could not reasonably be disputed, Mr. Wan's termination for serious misconduct was justified. Even with the one alleged finding by OIOS erroneously included, it made no difference in that it was not in itself determinative of the matter given Mr. Wan's serious misconduct on the other counts which justified his summary dismissal.

21. The Secretary General therefore requests that the Appeals Tribunal affirm Mr. Wan's summary dismissal for misconduct effective from 8 December 2021; and reverse the Appeals Board's Decision declaring the approval by the President of the Council a nullity and requiring that Mr. Wan be paid his salary and benefits, including pension contributions, from the date of their cessation in December 2021 until approval by the President of the Council pursuant to Staff Regulation 9.9, if any, is obtained.

**Mr. Wan's Answer**

22. Mr. Wan opposes the appeal contending that there is no error in fact in the finding that the summary of the findings presented to the President was based upon an entirely false premise. He contends that the inclusion of inaccurate information appears specifically designed to prejudice him in that this was a highly politicized and sensitive issue for the Council. It was entirely reasonable for the Appeals Board to conclude that this was highly prejudicial to Mr. Wan and tainted the resulting decision. Mr. Wan claims that the Secretary General's contention that his error in law was of no consequence relegates the unique provision for approval by the President for disciplinary decisions for higher level staff to a mere *pro forma* exercise. s thMa .4 fe.2(e102-0.0196c 0.12 ( .4

President's ability to review the proportionality of the disciplinary measure impaired by the false information he was given. The Appeals Board found that this was not a mere procedural irregularity, but a fundamental element of due process, an essential precondition that is a right of ICAO staff incorporated into the ICAO Staff Regulations by the Council for good reason.

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### **Considerations**

*Preliminary issue: legal representation*

33. Mr. Wan raises as a preliminary issue in this appeal that he was placed at a considerable disadvantage, which directly impacted the outcome of his case, by the fact that he was unrepresented before the ICAO Appeals Board. This was so since ICAO Staff Rule 111.1(15) does not provide for in-house counsel or, until recently, the ability to engage counsel of a staff member's choice. This while ICAO was represented by counsel.

34. ICAO Staff Rule 111.1(15) provides that a staff member may present that staff member's appeal "in person or may be assisted or arrange to have it presented on that staff member's behalf by any other active or retired staff member serving or residing at the duty station where the hearing is conducted (counsel)".

35. In *Heftberger*,<sup>9</sup> a direct challenge to ICAO Staff Rule 111.1(15) was raised on appeal before this Tribunal and opposed by the Secretary General on the basis that the ICAO Staff Regulations and Rules form part of a staff member's contract of employment and that the UNAT does not have the authority to amend or not to apply such Rules. This Tribunal nevertheless raised a concern regarding the restrictions on representation imposed on staff members by the Staff Regulations and Rules on the basis that such limitations were unexplained and constituted a significant constraint on what is regarded as a fundamental right of a staff member, namely to legal representation of his or her choice.<sup>10</sup>

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panel of his relationship with Dr. S.<sup>17</sup> The Appeals Board found that on clear and convincing evidence the established facts clearly showed that Mr. Wan had committed misconduct.<sup>18</sup>

summary dismissal under Regulation 9.17". The decision of the Appeals Board as a "neutral first instance process" is, in terms of Article XI, Staff Regulation 11.2, to be "final" and, in terms of Staff Regulation 11.3, to be "final and binding on all of its members". In addition,

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a nature as to justify the remittal of the approval decision to the President for reconsideration “if any”. This is more so given that the clear facts support the outcome reached by the Appeals Board to affirm the dismissal decision taken. There exists no basis in law to justify the





**Judgment**

56. The Secretary General's appeal is granted, and the order of remittal, together with the award of compensation, is reversed. The cross-appeal is dismissed.

Original and Authoritative Version: English

Decision dated this 22<sup>nd</sup>