

Translated from French

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

**Mr. Castelli
(Respondent/Applicant)**

v.

**Secretary-General of the United Nations
(Appellant/Respondent)**

JUDGMENT

Before:	Judge Jean Courtial, Presiding Judge Inés Weinberg de Roca Judge Sophia Adinyira
Case No.:	2009-017
Judgment No.:	2010-TANU-037
Date:	1 July 2010
Registrar:	Weicheng Lin

Counsel for Respondent/Applicant: Nicholas Christonikos

THE UNITED NATIONS APPEALS TRIBUNAL

Case No. 2009-017

entitled to a relocation grant. The Dispute Tribunal noted that there had been no change in the staff member's employment status and found that the break in service was an artificial device that served no managerial purpose and was solely designed to help the administration evade the payment of the grant sought by Mr. Castelli.

8. The Dispute Tribunal found that Mr. Castelli had been with the administration under two successive contracts that were each for a period of less than a year. Therefore, neither of the contracts required review by the central review bodies. The Dispute Tribunal added that even assuming that the second contract had been drawn up in violation of rule 104.14 of the Staff Rules in effect at the time, which was applicable to appointments of one year or longer, the failure by the administration to abide by its own rules could not cause the second contract to be invalid. According to the Dispute Tribunal, the second contract could only be terminated in compliance with the relevant Staff Regulation 1017, which provided that the contract could be terminated by the administration if the staff member had not been in service for a period of one year or longer.

with the relevant Staff Regulation 1017, which provided that the contract could be terminated by the administration if the staff member had not been in service for a period of one year or longer.

13. The Dispute Tribunal had committed an error in law in finding that under rule 104.14 (h)(i) Mr. Castelli's appointment need not have been reviewed by a central review body. Appointment for a specific mission should be clearly distinguished from appointment against a Headquarters-based support post. Mr. Castelli had not been appointed for a mission.

Respondent

14. The judgment of the Dispute Tribunal was reasonable in that it awarded him neither more nor less than full compensation for the expenses he had incurred, as required for his and his wife's relocation to New York.

15. The appellant had failed to show why the judgment was manifestly unreasonable. His appeal only repeats the same arguments he had submitted unsuccessfully to the Dispute Tribunal. His claims are either not substantiated by any evidence, are irrelevant or are simply erroneous.

16. By filing such a frivolous appeal, the appellant has manifestly abused the appeals process and forced the respondent to dedicate time and effort to his defence.

17. The respondent prays the Appeals Tribunal to uphold judgment No. 2009/075 of the Dispute Tribunal and award him the amount of \$10,000 as costs.

Considerations

18. This case is about the claim filed by Mr. Castelli for the relocation grant provided for in section 11 of administrative instruction ST/AI/2006/5 on excess baggage, shipments and insurance in effect at the material time. Section 11 of the administrative instruction states that internationally recruited staff members entitled to unaccompanied shipment "may opt for a lump-sum payment in lieu of the entitlement. This lump-sum option shall be known as a 'relocation grant'."

19. The Dispute Tribunal found in its judgment that the administration had conceded that continuous employment for a period of one year or longer gives rise to entitlement to such a grant, regardless of whether the period exceeding a year is a result of a single contract, or two consecutive contracts. The appellant did not dispute that finding, which is entirely consistent with rule 107.21 (h) of the Staff Rules, in effect at the time, which entitles staff members with appointments of less than a year to the same benefits, "[w]here the appointment or assignment is extended for a total period of one year or longer".

20. However, the appellant contends that the Dispute Tribunal erred on a question of law and a question of fact by failing to recognize that the second contract by which Mr. Castelli's appointment was extended beyond a year was invalid, because it had not been submitted for review by a central review body. He submits that it was incumbent upon the administration to respond by requiring the staff member to take a break in service in order to cure that defect.

21. We recognize that rule 104.14 (h)(i) of the Staff Rules, promulgated in ST/SGB/2003/1, made all appointments of one year or longer subject to review by the central review bodies. To find otherwise would be to deprive rule 104.14 (h)(i) of any meaning and effect such as would allow it to be circumvented.

22. However, the Appeals Tribunal finds that the administration could not infer from such impropriety that it could require Mr. Castelli to take a break which would operate to deny him the relocation grant to which he was entitled, since his cumulative period of employment exceeded one year.

23. The contracts by which the Organization employs staff members, including fixed-term contracts covered by the Staff Regulations, are not regular contracts, given the particular relationship established between staff members and the Organization. Such contracts are for the most part governed by the Regulations, which set out the basic conditions of service, and by the Staff Rules and the Secretary-General's administrative instructions.

24. Unless it is fake or fraudulent, a staff member's appointment contract gives rise to entitlements upon the signing and acceptance by the staff member of his/her letter of appointment. This holds true even where the administration improperly handled the recruitment process, provided that the staff member acted in good faith, i.e., where the impropriety was entirely attributable to the administration. While staff members' acquired rights do not operate to prevent the General Assembly from supplementing or amending the provisions of the Staff Regulations, as stipulated in regulation 12.1 of the new Regulations, the administration may not subvert the entitlements of a staff member by abusing its powers, in violation of the provisions of the Staff Regulations and Staff Rules.

25. In this case, there was no provision in Mr. Castelli's letter of appointment or in the Staff Regulations and Rules that would allow the administration to require him to take a break in service tantamount to terminating his appointment contract and reappointing him three days later. In this regard, the Dispute Tribunal did not commit an error of law when it referred to Chapter IX, article 9.1 (b) of the version of the Staff Regulations in effect at the time, which provided that the Secretary-General could only terminate a staff member's fixed-term contract for one of the reasons specified in paragraph (a) or as specified in the letter of appointment. None

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