



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

Judgment No. 2016-UNAT-670

Adundo
(Respondent/Applicant)

v.

Secretary-General of the United Nations

Counsel for Mr. Adundo: Didier Sepho, Esq.

Counsel for Secretary-General: Rupa Mitra

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by the Secretary-General of the United Nations of Judgment No. UNDT/2015/107, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 6 November 2015, in the case of *Adundo v. Secretary-General of the United Nations*. On 4 January 2016, the Secretary-General filed the appeal, and on 5 March 2016, Mr. Deogracious Bwire Adundo filed his answer to the appeal.

Facts and Procedure

2. The Dispute Tribunal made the following factual findings:¹

... [Mr. Adundo is] a Security Officer at the S-2 level with the Security and Safety Service (“SSS”), Department of Safety and Security (“DSS”) ...

...

... On 8 July 2014, [Mr. Adundo] was assigned to Post 33—General Assembly/Visitors Area—at the United Nations Headquarters in New York.

nor Inspector Patterson listened to his explanation or allowed him to view the video footage of the incident. [Mr. Adundo] further stated that he considered the Notice of Counsel an act of harassment and retaliation for previous proceedings that he [had] brought before [the Dispute] Tribunal. Finally, he requested that a transparent and independent body review the matter.

... On 21 July 2014, Mr. David Bonggi, Chief, SSS, requested that Special Assistant Noel Heffernan conduct an independent review of the events that gave rise to the issuance of the Notice of Counsel.

... [...] Mr. Heffernan concluded that the finding of dereliction of duty was reasonable in the circumstances, as [Mr. Adundo] had breached an operating procedure by leaving his post unmanned. Mr. Heffernan recommended that [Mr. Adundo] be given remedial instruction. He also suggested that consideration be given to downgrading the Notice of Counsel to a Performance Notice. Mr. Bonggi rejected [Mr. Heffernan's] suggestion in a hand written annotation on the memorandum the next day.

... On 13 August 2014, [Mr. Adundo] met with Mr. Black and was informed of the outcome of Mr. Heffernan's review and that he would be referred for retraining.

... On 14 August 2014, Mr. Bonggi issued Chief's Directive 2014-06 on Corrective Performance Training. The Directive stated that where an officer's performance caused a breach of security or unsafe conditions, the officer will not be reassigned to that post until retraining had been successfully completed.

... On 19 August 2014, [Mr. Adundo] received an official duty assignment for retraining. The same day Sergeant Ellis Maronie from the Training and Development Unit ("TDU") of SSS notified Mr. Mathew Sullivan, Inspector Operations, SSS, that [Mr. Adundo] had attended a TDU classroom that morning and stated that he was not going to take part in retraining because it would "serve as a sign of guilt" in relation to the Notice of Counsel. [Mr. Adundo] further stated that he was being harassed and that he had submitted a written rebuttal to the Notice of Counsel and was awaiting a written response. He would not take part in any retraining until he received such a response.

... By email dated 19 August 2014, Mr. Bonggi informed [Mr. Adundo] that his refusal of the direction from his chain of command to attend training called into question his fitness to be armed. Therefore, with immediate effect, he would be placed on weapons restriction and co-assigned under the direct supervision of a supervisor or Senior Security Officer. He was also informed that any allegation against a supervisor under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) could be submitted to the Head of Department.

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the basis of “appropriate inferences from the primary facts”⁷ without citing any evidence to support its findings.

14. Accordingly, the Secretary-General requests that the Appeals Tribunal vacate the UNDT’s Judgment, except for the findings that the Notice of Counsel and the order that Mr. Adundo undergo retraining were not unlawful.

Mr. Adundo’s Answer

15. The imposition of a weapons restriction is not a matter of managerial discretion but an administrative decision. The Appeals Tribunal recognized in *Luvai*⁸ that as a Security Officer has a license to bear firearms, a decision taken by the Administration which restricts this right is a challengeable administrative decision.

16. Contrary to the Secretary-General’s contention, the DSS Weapons MOI is part of the terms and conditions of a security officer’s appointment. Upon the delegation of authority from the Secretary-General, the Under-Secretary-General of the DSS authorizes the carriage of firearms by security officers. The use of firearms, the restriction and the revocation of the authorization to carry firearms are governed by the DSS Weapons MOI. The Secretary-General has failed to show that there is a higher norm in the United Nations legal framework governing the use of firearms and that the relevant sections of the DSS Weapons MOI were in conflict with such norms. As no other norm exists, the DSS Weapons MOI is applicable.

17. The duration of the weapons restriction was neither mentioned within the communications between the Chief of the SSS and Mr. Adundo, nor was it clear, specific or unambiguous. Additionally, the Secretary-General changed his position. First, the Secretary-General submitted to the UNDT that the weapons restriction was in force pending the outcome of an ongoing investigation. Subsequently, he claimed that the restriction would remain in force until Mr. Adundo was “ready to obey lawful commands”. The Secretary-General has failed to show that Mr. Adundo was informed of the duration of the weapons restriction.

⁷ *Ibid.*, para. 51.

⁸ *Luvai v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-417, para. 17.

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Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Lussick

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar