



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2010/007  
(UNAT 1524)  
Judgment No.: UNDT/2010/077

Original: French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Victor Rodríguez

SIMS

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

**Introduction**

subsequent to a report by the Vienna Joint Appeals Board (JAB), rejected his appeal against the Administration's decision of 1 November 2004 restricting

8. On 28 January 2005, the applicant submitted to the Secretary-General a request for administrative review of the decision of 1 November 2004 restricting his right of access to VIC.

9. On 24 April 2005, the applicant filed an appeal with the Vienna JAB.

10. On 16 March 2006, the Secretary of the Vienna JAB informed the applicant of the composition of the panel constituted to consider his appeal.

11. On 23 March 2006, the applicant requested that his appeal be heard by the New York JAB.

12. By undated letter the Presiding Officer of the New York JAB informed the applicant that the New York JAB was not competent to advise the Secretary-General on his appeal.

13. On 27 June 2006, in its report to the Secretary-General, the Vienna JAB informed him that it was not competent *ratione loci* to consider the appeal.

14. On 22 November 2006, the Acting Under-Secretary-General, Department of Management, informed the applicant that the Secretary-General had, in a final decision, rejected his appeal on the grounds that, at the time of the decision in question, he was not a staff member and that the appeal did not relate to the non-observance of his terms of appointment as a staff member but to his relationship as a retiree with VIC.

**Parties' contentions**

18. The applicant's contentions are:

- a. The contested decision constitutes an abuse of power because no precise reason was given for the denial of access and it contravenes

staff regulations 1.0 (a) and (b) and staff rule 101.0 (a).

and counsel for staff members, the decision was taken solely for the purpose of harassment;

The then staff rule 111.0 (3) (3) also applied to former staff

to paragraph 4 of administrative instruction ST/AI/351. The

~~Secretary-General is free to remove staff members to serve on the~~

Panel constitutes a contract;

- f. The memorandum of 29 April 2004 from the Presiding Officer of the Vienna JAB gives the reasons for the restriction of the applicant's access.

### Judgment

90. The applicant, a member of the United Nations staff, has filed an appeal against the decision of the Vienna Panel of Counsel, dated 29 April 2004, by which the Secretary-General, subsequent to a report by the Vienna Joint Appeals Board (JAB), rejected his appeal against the

of the contested decision, a member of the Vienna Panel of Counsel, contests the decision by which the Secretary-General, subsequent to a report by the Vienna Joint Appeals Board (JAB), rejected his appeal against the

planning non observance of contracts of employment of staff members of the

Secretariat of the United Nations or of the terms of appointment of such staff members. The words 'contracts' and 'terms of appointment' include all permanent regulations and rules in force at the time of alleged non-observance, including the staff pension regulations".

25. The Secretary General was therefore right in finding that the

Secretary General did not act in accordance with the applicable terms of

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**Decision**

29. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

*(signed)*

Judge Jean-François Cousin

Dated this 30th day of April 2010

Entered in the Register on this 30th day of April 2010

*(signed)*