



**JUDGE MARY FAHERTY**, Presiding.

### Synopsis

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Mr. Zekarias Bekele against Judgment No. UNDT/2010/175 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 8 October 2010 in the case of *Bekele v. Secretary-General of the United Nations*.

2. The function of the Appeals Tribunal is to determine whether the Dispute Tribunal erred in law or fact, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction as prescribed by the Statute of the Appeals Tribunal. The burden of satisfying the Appeals Tribunal that the Judgment of the Dispute Tribunal is defective rests with the Appellant. The claims made by Mr. Bekele before this Tribunal are largely those canvassed before the Dispute Tribunal. It is our considered view that the Dispute Tribunal, in the instant case, took due regard of the arguments that the Appellant is now canvassing before this Tribunal, and that the Dispute Tribunal, having regard to the parameters of what it could compensate the Appellant for, made adequate provision for Mr. Bekele's economic and social losses in its overall award to him. Thus, this Tribunal upholds the UNDT's order that Mr. Bekele be paid his back-salary and an additional six months' net base salary, save that the interest payable on such compensation is to be calculated on the basis of the Appeals Tribunal's decision in *Warren*.<sup>1</sup>

### Facts and Procedure

3. Mr. Bekele joined the United Nations Economic Commission for Africa (UNECA) as a Security Officer at the G-2 level with the Security and Safety Service (SSS) in December 2001. His contract was renewed several times before it expired on 31 December 2008, when he was

local police. On the morning of Monday, 17 April 2006, Mr. Ourgie, Head of Investigation Team, SSS/UNECA, went to the police station to visit Mr. Bekele. According to Mr. Ourgie, he met Mr. Bekele in the office of the Chief Inspector at the police station. Mr. Bekele explained to Mr. Ourgie that he had quarreled with his former house maid at his home and then suddenly a group of police officers descended on his residence and arrested him. He also complained to Mr. Ourgie that he had been beaten. Mr. Ourgie was shocked at the bruises and injuries on Mr. Bekele's body and advised Mr. Bekele to show the bruises to the Court at his bail hearing that day. Mr. Ourgie later escorted Mr. Bekele's wife to the bail hearing. On the afternoon of 17 April 2006, Mr. Bekele telephoned UNECA to report that he had been released on bail.

5. On the afternoon of 17 April 2006, Mr. Ourgie dispatched two emails to Mr. Fairall, Chief, SSS/UNECA. The first email reported Mr. Bekele's arrest and detention and Mr. Ourgie's visit with Mr. Bekele at the police station. Mr. Ourgie's second email reported Mr. Bekele's release on bail.

6. It is not clear whether, when or how UNECA reported the incident of Mr. Bekele's arrest and detention to the headquarters in New York as required under paragraph 3 of administrative instruction ST/AI/299 dated 10 December 1982 entitled "Reporting of arrest or detention of staff members, other agents of the United Nations and members of their families". Paragraph 3 provides:

When there is evidence to suggest that any United Nations staff member – whether internationally or locally recruited – other agent of the United Nations or member of their immediate families has been arrested or detained by authorities of a Government, the designated official for security matters at the duty station concerned immediately shall report the incident by the fastest means of communication available (such as cable, radio or telephone) to the Assistant Secretary-General for General Services at United Nations Headquarters who is also the United Nations Security Co-ordinator for the Secretary-General.

7. Mr. Fairall stated to the UNDT that he must have reported the matter to New York, but could not recall the manner in which the report had been made. According to the UNDT, UNECA did not make any representation to the Ethiopian Government through appropriate channels on the matter of Mr. Bekele's arrest and detention as required under paragraph 4 of ST/AI/299, which reads:

The designated official at the duty station where the arrest or detention has taken place shall immediately contact the Foreign Ministry of the Government concerned and request:

- (a) All relevant information about the arrest or detention;
- (b) The Government's co-operation in arranging, as a matter of urgency, that representatives of the United Nations be given access to the individual arrested or detained

8. Following his return to duty Mr. Bekele was reassigned within SSS. On 25 May 2006 the rape charges against Mr. Bekele were dropped after the Prosecutor determined that there was insufficient testimonial or medical evidence for the case to proceed.

9. On 15 August 2007, sixteen months after his arrest and detention, Mr. Bekele wrote to the Secretary-General complaining about the cruel and unusual treatment to which the Government of Ethiopia had subjected him and requesting his relocation to another duty station outside Ethiopia in view of his "well-founded fears" for his safety. Mr. Bekele stopped reporting to duty on 29 August 2007.

10. In a memorandum dated 28 September 2007, the Chief of Administrative Law Unit (ALU), OHRM, advised Mr. Bekele of the outcome of the administrative review in respect to the issues that he had raised in his letter of 15 August 2007. The Chief of ALU was clearly mistaken when she wrote "[y]our arrest in April 2007 was not arbitrary..."<sup>2</sup> But she then stated that the UNECA Administration reported the incident of Mr. Bekele's arrest and detention to the headquarters in April 2007. The Chief of ALU advised Mr. Bekele that the Administration was not in a position to grant his request for relocation and urged him to report to duty or provide an explanation for his absence.

11. In a letter dated 14 November 2007, the Chief of Human Resources Services Section, UNECA, asked Mr. Bekele to report immediately to UNECA or to provide reasons for his

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adequate financial resources". On 16 November 2010, the

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jurisdiction vested in it. The burden of satisfying the Appeals Tribunal that the Judgment of the Dispute Tribunal is defective rests with the Appellant. The claims made by Mr. Bekele before this Tribunal are largely those canvassed before the Dispute Tribunal. It is our considered view that the Dispute Tribunal, in the instant case, took due regard of the arguments that the Appellant is now canvassing before this Tribunal, and that the Dispute Tribunal, having regard to the parameters of what it could compensate the Appellant for, made adequate provision for Mr. Bekele's economic and social losses in its overall award to him.

33. Thus, this Tribunal upholds the UNDT's order that Mr. Bekele be paid his back-salary and an additional six months' net base salary, save that the interest payable on such compensation is to be calculated on the basis of the Appeals Tribunal's decision in *Warren*.<sup>3</sup>

#### Judgment

34. The appeal is therefore rejected.

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<sup>3</sup> *Warren v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-059.

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