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

**McCloskey
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Sophia Adinyira Judge Luis María Simón
Case No.:	2013-478
Date:	2 April 2014
Registrar:	Weicheng Lin

7. On 7 February 2012, Mr. McCloskey filed a request for management evaluation of: the

12. On 27 December 2012, the Secretary-General filed a brief addressing the merits. In his brief, the Secretary-General advised the UNDT that, in light of *Johnson*,² the ITU “has rescinded the challenged decision to require utilization of foreign tax credits. [Mr. McCloskey] is accordingly no longer required to use his spouse’s foreign tax credit to reduce his tax liability attributable to his 2010 United Nations earning”. The Secretary-General further advised the UNDT that the ITU “will request” Mr. McCloskey

Mr. McCloskey was not required to use his wife's foreign tax credits, he cannot claim there is any obligation to reimburse him for their use.

16. The UNDT erred on a question of law in failing to recognize that the Organization can rescind an administrative decision in the course of an ongoing formal challenge to the decision. Once the administrative decision is rescinded, it is for the UNDT to determine the degree to which the application challenging the decision has been rendered moot and what adverse consequences, if any, continue to be suffered by the staff member.

17. The rescission of a contested decision can result in the imposition of additional administrative requirements on a staff member. In light of the rescission of the ITU's decision to require Mr. McCloskey to apply his wife's foreign tax credits, it is permissible for the ITU to "request" that he now follow the necessary administrative procedures that are a consequence of the rescission – namely, to file an amended tax return for 2010 in which he does not claim his wife's foreign tax credits. The Organization will reimburse Mr. McCloskey for any ancillary costs or penalties associated with the amended filing.

18. The UNDT erred in law and fact when it ordered that any reimbursement to

Mr. McCloskey's Answer

20. The UNDT did not err in applying *Johnson*. It makes no difference whether the administrative decision is rescinded by order of a tribunal or by the Organization. In either case, the ITU acted unlawfully in requiring the staff member to use foreign tax credits to

credits (USD 34,920.00) applied by Mr. McCloskey would not be refunded to him by the ITU. The Secretary-General claims that the rescission of the decision moots Mr. McCloskey's request for a refund. That is not so.⁷ As a consequence of the ITU's unlawful decision, Mr. McCloskey has been harmed in the amount of the foreign tax credits he was required to use since he no longer has use of these credits to reduce his or his wife's income tax liability in future years. Thus, his claim for a refund is not moot, as the UNDT correctly determined.⁸

30. The Secretary-General argues that the ITU need not provide a refund of the foreign tax credits to Mr. McCloskey. Rather, he contends that Mr. McCloskey should be responsible for obtaining his own refund by filing an amen

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Dated this 2nd