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

**Kazazi
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Mary Faherty Judge Luis María Simón
Case No.:	2014-643
Date:	2 July 2015
Registrar:	Weicheng Lin

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2014/071, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 24 June 2014 in the case of *Kazazi v. Secretary-General of the United Nations*. Mr. Mojtaba Kazazi appealed on 25 August 2014 and the Secretary-General answered on 27 October 2014.

Facts and Procedure

2. On 31 October 2012, the Appellant separated from the United Nations Compensation Commission (UNCC) after 21 years in their service. His wife also worked at the UNCC from 1 September 1999 until her separation on 30 June 2005.

3. On 24 June 2013, the Appellant wrote to a Senior Human Resources Officer with the Human Resources Management Service (HRMS), United Nations Office at Geneva (UNOG), stating that he was deprived of his entitlement to full repatriation grant at the dependency rate, and reiterating his previous request for the payment of full repatriation grant at the dependency rate for the length of his service.

4. On 30 July 2013, the Appellant again contacted the Senior Human Resources Officer with HRMS/UNOG claiming the payment of full repatriation grant at the dependency rate.

5. On 23 August 2013, the Senior Human Resources Officer e-mailed the Appellant and informed him that her delay in responding was due to the fact that his case required internal consultations. She informed the Appellant that since both he and his wife had been staff members with the Organization, under the applicable regulations and rules they were both entitled *only* to repatriation grants at the single rate.

6. On 22 September 2013, the Appellant e-mailed the Chief of HRMS/UNOG, again requesting payment of the full repatriation grant at the dependency rate.

7. On 25 November 2013, the Appellant sent another e-mail to the Chief of HRMS/UNOG, and the Director of UNOG's Division of Administration, referencing his e-mail of 22 September 2013. He expressed his hope that the Chief of HRMS could correct the

13. On 24 June 2014, the UNDT issued the Summary Judgment currently under appeal and dismissed the application. The UNDT found that the Appellant had failed to file a timely request for management evaluation in accordance with the strict timelines prescribed by Staff Rule 11.2(c). It noted the jurisprudence of the Appeals Tribunal establishing that the UNDT has no discretion to waive deadlines for management evaluation or decision review, and holding that reiteration of a request does not reset the clock for the running of statutory timelines. The UNDT noted that even if it considered that time began to run as of 23 August 2013 when HRMS notified him for the second time of the outcome of his request, the Appellant did not submit his request for management evaluation within the ensuing 60 days. The UNDT further held that the Director's response of 17 December 2013 merely constituted a confirmation of the earlier decision of 23 August 2013 and did not reset the 60-day time-limit set forth under Staff Rule 11.2(c); despite its unfortunate wording advising the Appellant that he could still request management evaluation, the letter had no impact on the deadline to file a request for management evaluation. Consequently, in the absence of a timely request for management evaluation, the UNDT found his UNDT application was not receivable *ratione materiae*.

Submissions

Mr. Kazazi's Appeal

14. The Appellant contests the UNDT Judgment and the MEU's decision which found that his request for management evaluation was time-barred.

15. The UNDT erred in "rewriting the facts of the case" and in criticizing the actions of the Chief of HRMS and the Director of Administration who should know that they had already issued "an administrative decision" prior to December 2013. The UNDT erred in failing to consider whether the HRMS officials were properly authorized to make the contested decision given that they act under the authority of the Director of Administration. He submits that the Director of Administration's letter of 17 December 2013 constitutes the key administrative decision and therefore his request for management evaluation of 16 February 2014 was made in good faith and was timely.

16. The Summary Judgment also has a number of factual and legal errors and confuses questions of fact and law. The UNDT found that it had no jurisdiction *ratione materiae* when it should have considered its jurisdiction *ratione temporis*, which in this case turned on a

Considerations

Preliminary issue – Request for confidentiality

21. As a preliminary matter, citing the “private and personal nature of the case”, the Appellant requests that this Tribunal order the deletion of his name and particulars from the Summary Judgment, as well maintain the privacy of his name in any judgment issued by this Tribunal. Article 10(9) of the Appeals Tribunal Statute provides that “[t]he judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal”. Our jurisprudence shows that the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability, and personal embarrassment and discomfort are not sufficient grounds to grant confidentiality.¹ The application for confidentiality is denied.

Appeal on its merits

22. Mr. Kazazi contends that in finding that HRMS’ decision of 23 August 2013 was an “administrative decision”, the UNDT erred in failing to consider whether HRMS officials were properly authorized to make that decision given that they act under the authority of the Director of Administration.

23. The Secretary-General submits that the Dispute Tribunal correctly established that the contested administrative decision was made

of 23 August 2013, as there is no evidence that the Appellant raised this before the UNDT. Nonetheless, there is no merit in this submission.

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been communicated to him earlier. Neither can a staff member unilaterally determine the date of an administrative decision.⁷

32. For Mr. Kazazi to do nothing until he had confirmation of the administrative decision of 23 August 2013 from the Director of Administration personally was unreasonable. A staff member's preference to resort to repeating his or her demands through ongoing consultation or negotiations with the Administration does not absolve him or her of the obligation to comply with the deadline stipulated in the Staff Rules.⁸

33. The UNDT correctly considered whether it could be said that in December 2013 the Administration was considering whether to revisit its decision of August 2013.⁹

management evaluation is a mandatory first step in the appeal process and in the absence of this administrative review, an application to the Dispute Tribunal is not receivable *ratione materiae*.¹⁴ In the circumstances, we find that the UNDT correctly found that Mr. Kazazi's application was not receivable *ratione materiae*.

Summary Judgment

39. Mr. Kazazi also contests the decision of the Dispute Tribunal to hear the matter summarily, arguing that the UNDT deprived itself of the explanations and assistance of the parties to the case and deprived him of an opportunity to present his case and be heard.

40. Mr. Kazazi has no legal or factual basis for advancing this proposition since his application was given due consideration by the Dispute Tribunal within the legal parameters of the application, as determined by that Tribunal.

41. Regarding the Dispute Tribunal's decision to proceed by way of summary judgment, summary judgment is an appropriate tool to.0176 T3M

of summary judgment without taking any argument or evidence from the parties because the Dispute Tribunal Statute prevents the UNDT from receiving a case which is not receivable.¹⁶

43. In Mr. Kazazi's case, the application was not receivable in the absence of a timely request for management evaluation. Accordingly, the UNDT correctly applied Article 9 of its Rules of Procedure when it elected to issue a summary judgment.

Judgment

44. The appeal is dismissed. The UNDT Judgment is affirmed.

¹⁶ *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, citing *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, and *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Faherty
(Signed)
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