



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1433

Palash Kanti Das
(Respondent/Applicant)

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case No.:	2023-1815
Date of Decision:	22 March 2024
Date of Publication:	6 May 2024
Registrar:	Juliet E. Johnson

Counsel for Mr. Das: Self-represented

Counsel for Secretary-General: Patricia C. Aragonés

amount equivalent to the staff member's leave entitlement based on a deemed period of continuous employment of the staff member spanning both periods of employment and the duration of the intervening period of non-employment by the Oe Oe npF4 (h (at004 AHt)-6..it [(o)(

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21. The UNDT rescinded the contested decision on the basis of Mr. Das having had a legitimate expectation to the monies he received and had relied on this expectation which, had it been dishonoured by the recovery of the monies overpaid to him, would have been to his detriment.¹⁷ The UNDT rejected his claim for moral damages as it was not supported by evidence as it is required to be. There is no appeal by Mr. Das against that outcome of the case before the UNDT.

22. The Respondent has received the money that the UNDT determined was his. The impugned administrative decision will only take effect practically if and when the Respondent might again be appointed to a UN role.

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29. The Secretary-General submits that the UNDT exceeded its competence when it found that the overpayment was exceptionally justified. By granting an entitlement expressly prohibited by the Staff Rules and Regulations, it has effectively amended the regulatory framework.

Mr. Das' Answer

30. The Respondent requests that the Appeals Tribunal reject the appeal and uphold the impugned Judgment.

31. He argues that the appeal should not be permitted on any statutory grounds because the Secretary-General has used new facts and terms that are misleading and confusing; namely, introduced a new term “recovery decision”. Furthermore, 24 May 2021 as the beginning of the timeline for the receivability of the application, as stated in the appeal, is a new fact directly contradicting paragraphs 34-35 of the Secretary-General’s reply before the UNDT.

32. Mr. Das contends that the Secretary-General has failed to specifically identify any errors in the impugned Judgment. The Secretary-General has not considered the entirety of the application for identifying the notification of the contested decision and has misinterpreted the impugned Judgment. The claim that the UNDT allowed Mr. Das to unilaterally decide the date of the notification is incorrect in regard to the fact that he raised the issues related to the gross and net amounts of the overpayment with UN Women and/or the GSSU several times—on 26 May, 29 June and 18 August 2021—but UN Women never addressed the issue. It is vital to examine the language of notifications. The letter of 12 August 2021 did not mention the date of 24 May 2021 nor the term “gross”, but merely that “UN Women must take action”.

33. Turning to the lawfulness of the contested decision, Mr. Das disagrees with the Secretary-General’s criticism that the UNDT relied only on irrelevant jurisprudence. The UNDT’s conclusion was not based on the legitimate expectation emerging from the context of non-renewals of appointment. In the present case, the legitimate expectation was not created by unlawful actions but from the principle of good faith as he relied on the Secretary-General’s advice and directions.

34. Mr. Das argues that the UNDT did not err factually. Since the conversation in March 2021 between him and the CR took place verbally, the only evidence on the content of the CR’s advice is the CR’s e-

35. He submits, furthermore, that during the period from March 2021 to 5 November 2021 when he asked for clarifications, the Secretary-General did not raise the arguments now raised before the Tribunals. In the appeal, the Secretary-General has not provided any evidence to refute the UNDT's findings. Moreover, the CR's e-mail of 5 April 2021 is evidence that the Administration was aware of the facts: in the resignation e-mail of 31 March 2021, copied to the HR department of UN Women, he requested guidance and support from it. It had full knowledge of the lump-sum payment made in November 2016 and the accrued 78 days of annual leave as of March 2021.

Considerations

36. The essential questions facing the UNDT were three. First, was management evaluation sought by Mr. Das within the statutory period allowed for this after receiving advice of the relevant administrative decision? If so and second, did Mr. Das 2 eed021.6 7 (g)2.9 (htt.1 (nnuh Td(.)Tj0.041 Tw4130.062

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elemental detail of it. The administrative decision was that overpaid monetised leave had to be refunded and this decision, and notification of it to Mr. Das, did not change from the initial advice Of it on 24 May 2021.

45. Mr. Das' fundamental objection was to having to repay any money at all in the circumstances in which he alleged that at all times he had acted to his detriment in reliance on an assurance that he would be entitled to receive payment for 60 days untaken accumulated annual leave. While he also challenged the detail of how much he should have to repay should he be obliged in law to do so, this was a detail of the fundamental decision that he should repay all commutated leave.

46. We further note that whether the distinct administrative decision was the one taken on 24 May 2021, as the Secretary-General submits and as we accept the evidence shows, we are satisfied that Mr. Das was on notice of the contested decision on 13 August 2021 at the latest, making him at least 24 days beyond the 60 days available to him when he first sought management evaluation of it on 5 November 2021.

47. The administrative decision triggering the statutory appeals process was not about the repayment amount and whether it should be calculated on either a net or a gross basis, which was the subject of the correspondence leading up to 2 October 2021, the date which the UNDT held was when the administrative -1.717]TJ-0. Td() Nove6s (ro)-1.ttl9 (m)3.d

explanation of what the UNDT meant by this cryptic reference, we will assume in Mr. Das' favour that this meant new grounds for, or explanations of, the Administration's decision.

49. However, even if, in responding to Mr. Das' correspondence, the Secretary-General did expand upon the reasoning or even add further justifications for the administrative decision previously made, it is the administrative decision that was contested and not the subsequently expressed discussion of its reasoning that must be the subject of management evaluation. Put

