



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

Judgment No. 2015-UNAT-566

**Terragnolo
(Appellant)**

v.

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

JUDGMENT



J

7.

Case No. UNDT/NY/2014/046 to the Appellant's claim challenging the ASG/OHRM's decision not to conduct an investigation under ST/SGB/2008/5. The Secretary-General filed his reply on 9 July 2014.

13. On 25 July 2014, the Dispute Tribunal issued Judgment No. UNDT/2014/107, in which it determined that the application was not receivable *ratione materiae* as the absence of a response from OHRM within ten working days did not constitute an appealable administrative decision. Further, the UNDT found that the Appellant had failed to request management evaluation of the ASG/OHRM's decision of 25 April 2014. Additionally, the UNDT awarded costs against the Appellant in the amount of USD 1,500 for abuse of process.

14. On 23 September 2014, the Appellant filed an appeal of Judgment No. UNDT/2014/107, and the Secretary-General filed his answer on 24 November 2014.

Submissions

Mr. Terragnolo's Appeal

15. The UNDT erred in finding the application was not receivable since the Appellant did comply with Article 8(1)(c) and (d) of the UNDT Statute and had sought management evaluation. The fact that the MEU found the Appellant's request was not receivable was irrelevant to the UNDT's jurisdiction.

16. The Administration has an explicit obligation to *promptly* respond to a staff member's request for an investigation under ST/SGB/2008/5. The Appellant could reasonably consider that OHRM's failure to promptly respond to his request was an implicit denial of the request. Thus, the Appellant did not act in bad faith by seeking management evaluation after two weeks of silence had passed. To the contrary, "it was utterly clear to the Appellant that the Administration [...] was not intent to conduct the requested investigation when he submitted the request for management evaluation".

17. The UNDT erred on fact and law in holding that the application was frivolous and in relying on *Ishak*² to award costs. The staff member in *Ishak* made baseless charges against the UNDT, whereas the Appellant did not. The Internal Justice Council has clarified that

² *Ishak v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-445 and Judgment No. 2011-UNAT-152.

frivolous proceedings are “those claiming trivial reliefs”, which is not the Appellant’s situation. The Appellant also did not abuse process in that his application did not contain claims for w O tuation.

response from the other. Third, the Appellant's reliance on *Tabar*³ is misplaced since the Administration's delay in responding to a staff member's request in that case was two months, not two weeks.

23. The Appellant has failed to demonstrate that the UNDT erred in awarding costs against him for abuse of the proceedings. The UNDT correctly found that the Appellant knew or reasonably should have known that management evaluation is an essential step in the appeals process and could not have reasonably believed that it was proper to request management evaluation of an allegedly implied decision after a delay of only ten work-days.

24. The Appellant's claims as to errors in law in relation to the UNDT's award of costs also have no merit given that there is no requirement that: (a) a party must request an award of costs before the UNDT can award costs against the other party, (b) the UNDT is limited to awarding costs only when a party attacks the UNDT, (c) the UNDT must warn a party before it can award costs against them, and (d) costs can only be awarded against a party who incurs costs as a result of litigation or who ignores orders of the Tribunal. The Appeals Tribunal has affirmed several awards of costs by the Dispute Tribunal and has itself awarded costs against staff members whose applications and appeals were frivolous.

25.

27. The Appellant requests an oral hearing because “[t]he scope of unresolved issues in the lower court warrants a hearing”. This request misses the mark. There are no unresolved issues on appeal before us. The sole issue is whether the UNDT erred in not receiving the application. The Appeals Tribunal does not find that an oral hearing would assist it in resolving the issue on appeal. Thus, the Appellant’s request for an oral hearing is denied.

Did the Dispute Tribunal err in concluding the application was not receivable?

28. The Dispute Tribunal found that the application was not receivable *ratione materiae* on two grounds. First, the Appellant had “failed to comply with the mandatory requirement of article 8.1(c) of the [Dispute] Tribunal’s Statute and staff rule 11.2(a)” to request management evaluation of the 25 April 2014 decision. Second, it was not reasonable for “a delay of ten working days” to be “considered as an implied unilateral decision”; thus, there was no implied decision for the Dispute Tribunal to review.

29. Article 8(1)(c) of the UNDT Statute provides that an application shall be receivable if “[a]n applicant has previously submitted the contested decision for management evaluation, where required”. Further, Article 8(3) of the UNDT Statute prohibits the Dispute Tribunal from “suspend[ing] or waiv[ing] the deadlines for management evaluation”.

30. Staff Rule 11.2(a), which was in effect in 2014, required that “[a] staff member wishing to formally contest an administrative decision [...] shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision”. This means that a request for management evaluation of a claim raised in an application must be submitted for management evaluation by the staff member *prior* to bringing an application before the Dispute Tribunal.⁴

31.

32. The Appeals Tribunal has previously noted that a staff member must be familiar with the Staff Rules and understand his or her obligation to act in conformance with those rules.⁵ By his conduct in this case, it is clear that the Appellant knows of the requirement for management evaluation of a decision before seeking judicial review. Yet, the Appellant did not afford the Administration an opportunity to resolve his complaints before bringing legal action, as required by Staff Rule 11.2(a).

33. Thus, the Appeals Tribunal determines that the UNDT did not make an error of law in concluding that the Appellant had not complied with Article 8(1)(c) and Staff Rule 11.2(a) and, thus, his application was not receivable *ratione materiae*.

34.

... Section 5.14 of ST/SGB/2008/5 [...] states that “[u]pon receipt of a formal complaint or report, the responsible official will *promptly* review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation” [...].

... What constitutes a prompt reply is not defined but common sense dictates that it must refer to a reasonable period in the circumstances of a particular complaint. Having

award costs against that party.” “In view of this limitation, it is incumbent on ... [the Dispute] Tribunal awarding costs to state the reasons on which its award of costs is based.”⁹

38. The UNDT stated its reasons for awarding costs against the Appellant, as follows:¹⁰

... Costs may be awarded against an applicant who presents a frivolous claim before the Tribunal.

... In assessing whether the [Appellant’s] claim is frivolous and, if so, whether the making of such a claim amounts to an abuse of process, the Tribunal takes note of the fact that the [Appellant] is no stranger to the [Dispute] Tribunal’s procedures, having filed five applications before the Dispute Tribunal [...] in the past 36 months.

... By no stretch of the imagination could [the Appellant] reasonably have construed the Appeals Tribunal’s ruling in *Tabari*^[11] as sanctioning the filing of a request for management evaluation, followed by a claim to the [Dispute] Tribunal, on the basis of an implied decision after a delay of only ten working days.

... The [Appellant] has filed a huge volume of unnecessary documents and has taken up time and resources which could have been expended in dealing with the cumulative backlog of cases. Such conduct amounts to an improper use of the proceedings before the court. There can be no doubt that the [Appellant] knew or ought reasonably to have known that step one in the process is to receive an administrative decision. Step two is to submit that decision, where appropriate, to a management evaluation. Step three is to file a reasoned application before the [Dispute] Tribunal within the applicable time limit.

... On 29 April 2014, the [MEU] informed the [appellant] that his previous request for management evaluation of the implied refusal of OHRM was not receivable as there had not been an administrative decision which may be the subject of management evaluation. Notwithstanding this clear indication, the [Appellant] filed his application, without complying with step two of the process [...].

... The [Appellant] has filed a huge volume of documents in support of a claim that is frivolous. The [Dispute] Tribunal finds that the manner in which the [Appellant] has conducted these proceedings amounts to an abuse of process [...].

39. The Appeals Tribunal finds no errors of fact or law by the UNDT in awarding costs against the Appellant. The Appellant was well-aware of his obligation to comply with Staff Rule 11.2(a), yet he: (a) intentionally failed to seek management evaluation of a written decision and, nevertheless, filed an application for judicial review; and (b) filed an application for

⁹ *Machanguana v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-476, para. 12 (internal cites omitted).

¹⁰ E1(nte)-54 Tc1(d2ry-Gggn aiq)5.5(obl)15.4(a5(n)4(5(n)4..7(ate 3l06(nts i4.1(a)2.5Elc cbo)o)1906o)o)1906o31(a)2.12.5Elc ch

judicial review when it was unreasonable for him to assume there was an implied decision – especially after being advised by the MEU on 29 April 2014 that there was no decision for it to review.

40. The filing of a frivolous application that was clearly not receivable by a staff member who has prior experience before the tribunals of the United Nations' internal justice system is a manifest abuse of the Dispute Tribunal's process. As we held in *Mosha*, it is not an error for the UNDT to award costs against a party filing a frivolous application, which is an abuse of process.¹²

41. Further, the Appeals Tribunal finds the UNDT did not err when it also considered the huge volume of unnecessary documents filed to support the frivolous application as another factor supporting its conclusion that the Appellant manifestly abused the proceedings.

42. Finally, there is no merit to the Appellant's several claims that the UNDT cannot legally award costs unless: (a) the application seeks frivolous relief, (b) the other party has requested costs, (c) prior notice is given to the party against whom costs may be awarded, or (d) a party has criticized the Tribunal or refused to comply with its orders. None of these are requirements or limitations set forth in either Article 10(6) of the UNDT Statute or the Appeals Tribunal's jurisprudence.

Judgment

43. The appeal is denied and Judgment No. UNDT/2014/107 is affirmed.

¹² *Mosha v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-446.

Original and Authoritative Version: English

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

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Faherty

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar