

Judgment No. 2015-UNAT-581



JUDGE RICHARD LUSSICK , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Mohamed Hussein Mohamed Ahmed Selim against Judgment No. UNDT/2014/125, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 16 October 2014 in the case *Selim v. Secretary-General of the United Nations*. Mr. Selim filed his appeal on 13 November 2014 which he subsequently perfected. The Secretary-General answered on 3 February 2015.

Facts and Procedure

2. The following facts are uncontested:

As of 28 September 2001, [Mr. Selim] was assigned to the (then) United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC). His assignment required travel to the different regions in the Democratic Republic of the Congo (DRC) - namely Kindu, Kisangani, Goma, Beni and Kinshasa.

Submissions

Mr. Selim's Appeal

8. The Appellant submits that the Dispute Tribunal failed to exercise its jurisdiction when it declined to address his three distinct claims relating to the Administration's failure: (a) to give him the benefit of [a] FS-4 post although he had been performing the duties of that post since 2004; (b) to apply the rule limiting the duty station of staff members working in hazardous areas every 18 months; and (c) to assign him to suitable duties or be allowed to take medical retirement after he incurred work-related injury in 2010 and to grant him appropriate compensation. In failing to address these three claims, the UNDT merely hid behind objections of a procedural nature.

9. The UNDT also erred on a question of law by failing to properly characterize the Appellant's claims, the first relating to his status as a staff member and regularization of his post, and the second concerning his workplace injury.

10. The UNDT committed errors in procedure failing to consider documents which Mr. Selim had submitted after the case management hearing of 22 May 2014. The documents established that the Appellant had notified the decisions being challenged and had requested management evaluation through repeated complaints to management, contrary to the UNDT's findings. The documents further established that the Appellant had been incapable of submitting his compensation claims to the ABCC because of his injury and that he had submitted the issue to Human Resources and the Ombudsman. Thus, both Human Resources and the Ombudsman were aware of his injury and were responsible for submitting his claims and should have referred his case to the ABCC.

11. The UNDT erred on questions of fact in relation to the facts set out at paragraphs 15, 22 and 26 of the Judgment and these errors resulted in a manifestly unreasonable decision. In relation to paragraph 26, the UNDT erred in replacing the burden on him to prove which administrative decisions he challenged, rather than requesting the Administration to produce the Appellant's personnel records to enable the UNDT to take a considered and informed decision on the matter before it.

12. The Appellant requests that his application be found receivable and that the UNDT assess the merits of his claims. He also requests that the Appeals Tribunal:

- (a) order production of his personnel record containing all the exchanges between the parties and the decisions taken by the Administration ;
- (b) [u]rgently and on an interim basis order the Respondent to continue to pay the Appellant s full salary while he continues treatment for his workplace related injury and provide him with medical coverage;
- (c) assign him to a post with duties shorable to perform given his current medical state or grant him a full pension under the medical benefits regime;
- (d) award him compensation for the harm suffered as a result of his injury; and
- (e) adjust his salary to that of a Logistics Assistant, FS-4, with retroactive effect.

The Secretary-General's Answer

13. The UNDT correctly concluded that the Appellant had failed to identify the administrative decision that he was contesting. The annexes to the appeal, which consist of the Appellant s correspondence with the Administration expressing discontent at his situation and medical reports describing his health, do not show otherwise. Further, notwithstanding that Mr. Selim had sent letters to various departments, including OHRM, the UNDT correctly concluded that the Appellant had not requested management evaluation. NI22 Tc .2

Considerations

Preliminary matters

15. Firstly, Mr. Selim has requested an oral hearing. The Appeals Tribunal does not consider that there are grounds for an oral hearing that an oral hearing would not assist in the expeditious and fair disposal of the case. Mr. Selim's request is therefore denied.

16. Secondly, since filing his appeal, Mr. Selim has filed additional documents. In February 2015, he filed an updated medical report and in August 2015 he filed documents concerning an unrelated claim arising from a decision in September 2014 to terminate his

... Even if the Tribunal were to sift through the Applicant's submissions and find the impugned decision, the Applicant has not been able to show that he has requested management evaluation of that or any other administrative decision.

... In the absence of any evidence that Applicant submitted a claim to the ABCC, the Tribunal has no jurisdiction to consider his claim for compensation for work related injury.

18. Mr. Selim argues that the UNDT erred in placing the burden on him to identify the administrative decisions being challenged when it should have requested the Administration to produce his personnel record.

19. Mr. Selim also alleges that the UNDT committed a procedural error in neglecting to consider documents he presented to it after case management hearing on 22 May 2014. He claims that these documents identified the decisions being challenged and were evidence that he had requested an evaluation from the Administration.

20. Mr. Selim further maintains that the UNDT erred in rejecting his claim as not receivable given that, because of his resignation, Human Resources and the Ombudsman were responsible for submitting his claim and should have referred his case to the ABCC.

21. We find that Mr. Selim's arguments on the issue of receivability are entirely without merit, for the following reasons.

22. Article 2(1)(a) of the Statute of the Dispute Tribunal confers jurisdiction upon the UNDT to hear and pass judgment on an application [t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms contract and ter

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b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation disputes arising at Headquarters and 45 calendar days for other offices;

4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

31. The Appeals Tribunal has consistently held that a timely request for 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*.¹¹

32. Mr. Selim's argument that Human Resources and the Ombudsman were responsible for submitting his claims and should have referred his case to the ABCC has no legal basis. The UNDT considered the applicable law governing the situation, which is set out in Appendix D to the Staff Rules. Appendix D provides that claims for compensation must be submitted within four months of the injury, provided that in exceptional circumstances the Secretary-General may accept for consideration a claim made at a later date. The ABCC then makes recommendations concerning the claim to the Secretary-General, who then decides on the claim. In the present case, there was no evidence that a claim had been made, and thus no determination by the Secretary-General existed. Thus the UNDT did not err in coming to the conclusion that since Mr. Selim failed to submit a claim to the ABCC as required by the Rules, the UNDT had no jurisdiction to consider his claim for compensation for work-related injuries.

¹¹ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 38, citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-52, *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300, and *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-299.

33. The Appeals Tribunal has consistently held that staff members have to ensure that they are aware of Staff Regulations and Rules and the applicable procedures in the context of the administration of justice in the United Nations internal justice system and that ignorance cannot be invoked as an excuse for missing deadlines.

34. The Appeals Tribunal is satisfied that UNDT's conclusions were fully consistent with the jurisprudence of the Appeals Tribunal and with the evidence on record. Mr. Selim has failed to establish that the UNDT failed to exercise the jurisdiction vested in it or committed any error of law, fact or procedure.

35. Accordingly, the appeal fails.

Judgment

36. The appeal is dismissed and the Judgment of the UNDT is affirmed.

THE UNITED NATIONS APPEALS TRIBUNAL