



JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/103, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 28 July 2016, in the case of *Fayek v. Secretary-General of the United Nations*. Ms. Maha Fayek filed the appeal on 8 August 2016, and the Secretary-General filed his answer on 6 October 2016. On 7 October 2016, Ms. Fayek filed a motion seeking leave to file a reply to the Secretary-General's answer and on 19 October 2016, the Secretary-General filed his response to the motion.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant joined the Organization on 1 August 2000 as a Radio Producer at the P-3 level in the French Language Unit, Radio Section, Radio and Television Service, News and Media Division, Department of Public Information (DPI). At the time of the ... application [before the UNDT], she [wa]s serving as Chief, UN Radio Guira FM at the P-4 level at [the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA)].

... On 4 April 2013, the Applicant filed a complaint of prohibited conduct against the Chief of the French Language Radio and the then Director of the News and Media Division of DPI.

... On 9 April 2014, a fact-finding panel was established to review the Applicant's allegations. On 17 March 2015, the panel submitted its report with the outcome of the investigation.

... By letter dated 11 April 2016, the Under-Secretary-General for Communications and Public Information informed the Applicant of the conclusion of the investigation and the actions taken by the Office of Human Resources Management (OHRM) in relation to her allegations. The case in relation to the Applicant's allegations was closed.

... On 10 July 2016, the Applicant filed an application with the [Dispute] Tribunal ... contesting the decision to close the case after investigation of her complaint against her supervisor and the then Director of the News and Media Division of [DPI] for prohibited conduct under ST/SGB/2008/5 (prohibition of discrimination, harassment

¹ Impugned Judgment, paras. 3-7 (paragraph 7 incorporating part of paragraph 1).

including sexual harassment, and abuse of authority). The Applicant also contest[ed] the decision not to grant her compensation for the damages that she allegedly suffered.

3. On 28 July 2016, the UNDT issued Judgment on Receivability No. UNDT/2016/103 dismissing Ms. Fayek's application as not receivable. The UNDT found that requesting management evaluation was a mandatory first step in the judicial process. The contested decision to close Ms. Fayek's case concerning allegations of prohibited conduct did "not fall under any of the two categories of decisions for which a management evaluation is not required

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

11. Ms. Fayek argues that the contested decision was taken as a result of the report of a fact-finding panel and that a fact-finding panel qualifies as a technical body pursuant to the provisions of Staff Rule 11.2. She therefore argues that she was not required to request management evaluation.

12. Contrary to Ms6lm6Mek's reasoning, fact-f6lu5.91io

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Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Murphy

(Signed)

Judge Knierim

Entered in the Register on this 26th day of May 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar