



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Haydar
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

J

JUDGE RICHARD LUSSICK , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2017/050, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 28 June 2017, in the case of *Haydar v. Secretary-General of the United Nations*. Ms. Hawa Haydar filed the appeal on 27 August 2017 and an amended appeal on 3 November 2017. The Secretary-General filed an answer on 8 January 2018.

Facts and Procedure

2. The following facts are uncontested:¹

... [Ms. Haydar] is a P-3 Supply Officer with [the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic] (MINUSCA). She was assigned to the Integrated Warehouse Section (IWH) when she joined MINUSCA.

... On 21 April 2016, [...] Chief of MINUSCA's Property Management Section (Chief PM), invited Ms. Haydar and other MINUSCA staff members to attend a brainstorming session on streamlining the Integrated Warehouse Section's (IWH) operations at his home on Saturday, 23 April [2016].

... [Ms. Haydar] responded to the [Chief PM] the same day requesting that the brainstorming session be conducted on MINUSCA premises since the meeting was work-related.

... On 22 April 2016, [Ms. Haydar] emailed the MINUSCA Chief Human Resources Officer (CHRO) asserting that the Chief PM had insulted her by telling her to "make [herself] useless somewhere". She further asserted that she did not report to the [Chief PM] and saw no reason as to "why he has to bother me continuously". [Ms. Haydar] asked the CHRO for protection "from this kind of professional

had had no effect on her; and (v) he had received complaints regarding [her] attitude and general behavior from her supervisor and several IWH staff. In light of the foregoing, the Chief PM requested that the DMS reassign [her] to the Supply Section or any other suitable function within the Mission “whilst her allegations of Professional Harassment are investigated”.

... On 23 April 2016, the [Chief PM] informed Mr. Buckley that he had to cancel the brainstorming session that afternoon because [she] forbade the IWH Operations Manager from preparing the meeting room. According to the [Chief PM], he found the other staff members standing outside the meeting room waiting for it to be prepared and when he asked [Ms. Haydar] for an explanation, she completely ignored him.

... Mr. Buckley forwarded [the Chief PM’s] email to the DMS, with a copy to Ms. [Haydar] and others. He told the DMS that he found [Ms. Haydar] to be obstructive and non-cooperative and reiterated his request to have her immediately transferred out of IWH.

... [Ms. Haydar] emailed the DMS on 26 April 2016, with a copy to Mr. Buckley, the CHRO and others, expressing shock at Mr. Buckley’s request to have her transferred “on the basis of unverified allegations”. She asserted that she was a victim of “spurious allegations” against her by others but that these allegations had never been investigated. She pointed out that before any adverse action was taken against her, the allegations against her had to be verified. Lastly, she informed the DMS that her e-PAS was under rebuttal and that [the Chief PM], who had been party to the 0 T645 Tw [(prepaTshe een p(be)e.001.3(atilityf [(0y(o).5(e Tw [4yi)5)l-(atilityf [(0y(01.e(.5(e emeCN 0 Jthe m her, tand c(m.)678(d reitgto M(atilth)72((ee))TJ -(mpletel)-.6(p)o)5.r6.9(at sho6(reqJthe))TJ 0 -2.0958 TD 0

... On 19 May 2016, the Under-Secretary-General for Management (USG/DM) responded to [Ms. Haydar's] request for management evaluation. He was of the view that the contested decision was a reasonable exercise of managerial discretion and decided to uphold it.

... On 24 August 2016, the Rebuttal Panel (the Panel) that had been constituted at [Ms. Haydar's] request to assess her 2014/2015 performance appraisal finalized its report. The Panel concluded that the e-PAS was not conducted in conformity with United Nations rules and unanimously recommended that her overall rating be changed to "satisfactory". According to [Ms. Haydar], she received the report on 26 September 2016.

... On 22 October 2016, [Ms. Haydar] submitted a request for management evaluation seeking the removal of her [Second Reporting Officer] SRO's and [First Reporting Officer] FRO's comments and rating in her 2015/2016 e-PAS.

... On 23 November 2016, [Ms. Haydar] submitted a request for management evaluation against the Panel report of 24 August 2016 and the procedures followed by the Rebuttal Panel.

... On 25 and 29 November 2016, [the Management Evaluation Unit] MEU responded to [Ms. Haydar's] requests of 22 October and 23 November. MEU informed her that her requests were not receivable because there were no reviewable administrative decisions.

... [Ms. Haydar] filed an application with the [UNDT] in Nairobi on 23 February 2017.

3. On 28 June 2017, the UNDT issued its Judgment and dismissed Ms. Haydar's application as not receivable. The UNDT, noting the unwieldy nature of her application, concluded that Ms. Haydar was contesting the MEU responses. In this regard, the UNDT held, in accordance with established jurisprudence, that the Administration's response to a request for management evaluation is not a reviewable administrative decision within the meaning of Article 2(1)(a) of the UNDT Statute. Although this warranted dismissal of her application at this juncture, the UNDT examined each of Ms. Haydar's claims for receivability. The UNDT held that Ms. Haydar's claims that there was a "conspiracy to underrate her performance" and that she was going up against a "wall of silence" were not receivable administrative decisions as she had failed to provide any supporting details about the alleged conspiracy or a causal link between the conspiracy and her temporary reassignment, leaving these claims to amount to mere averments. The UNDT held that Ms. Haydar was estopped from challenging the delay in releasing the results of an investigation into her reassignment, as she has failed to prosecute this claim within a separate prior application filed before the UNDT. The UNDT found that Ms. Haydar's

submission that the Administration failed to investigate her allegations of a hostile work

Ms. Haydar is estopped from re-litigating her claim that the Administration failed to conduct an investigation into her allegations of a hostile work environment, because she never requested an investigation into the circumstances of her temporary reassignment, which was done so MINUSCA could resolve her allegations of professional harassment by the Chief PM. She is also estopped because she failed to complete her application on this issue when she filed previously with the UNDT resulting in its dismissal. The UNDT was also correct in holding that, because Ms. Haydar did not request a management evaluation of her claim that the Administration failed to investigate her allegations of hostile work environment, the claim was not receivable *ratione materiae*

12. Article 2(1)(a) of the UNDT Statute confers jurisdiction upon the UNDT to hear and pass judgment on an application to 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 “terms of appointment” include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance.

13. Thus, a statutory burden is placed upon an applicant to establish that the administrative decision in issue was in non-compliance with the terms of his or her appointment or contract of employment. Such a burden cannot be met where the applicant fails to identify an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on the applicant's contractual rights.⁴

14. It is clear from the UNDT Judgment that the UNDT was cognisant of the applicable law in its perusal of Ms. Haydar's application in search of an administrative decision capable of being reviewed. The UNDT found Ms. Haydar's application to be of an “unwieldy nature” but nevertheless carefully examined the numerous complaints in her application and accompanying documentation in an attempt to identify the administrative decision or decisions she was contesting. It was unable to do so.

15. We have reviewed Ms. Haydar's application to the UNDT and we agree with the UNDT that the numerous complaints do not identify any specific reviewable administrative decision.

16. We are satisfied that the UNDT did not err in law or in fact in finding that Ms. Haydar's application was not receivable in that it failed to identify an administrative decision within the meaning of Article 2(1)(a) of the UNDT Statute.

17. As acknowledged by the UNDT, this finding was sufficient to dispose of the application. However, the UNDT went on to rule on several other claims made by Ms. Haydar. We see no error in its findings that such complaints were also not receivable.

18. Ms. Haydar's appeal fails to persuade us of the existence of any reviewable administrative decision that the UNDT overlooked.

⁴ *Selim v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-581; *Reid v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-419; *Obino v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-405; *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049.

19. Ms. Haydar's submissions regarding this Tribunal's jurisprudence, which she claims is pertinent to her case are not correct. She claims that, pursuant to this Tribunal's decision in *Chaaban*,⁵ the UNDT should have "considered the application as a whole" to arrive at what was the disputed administrative decision. *Chaaban* has no application to the present case. In *Chaaban*, the impugned decision was readily discernible by relating the remedies requested in the staff member's application to two very clear administrative decisions.

20. We note that Ms. Haydar has attached to her appeal several documents which were not presented to the UNDT. No application has been filed requesting leave to adduce such evidence on appeal. Consequently, we rule that the documentation is not admissible.

21. The appeal has no merit and is dismissed.

22. On one final matter, this Tribunal notes that Counsel for an appellant is required to state the grounds of appeal accompanied by submissions and evidence in support, if any.

Judgment

23. The appeal is dismissed and Judgment No UNDT/2017/050 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22nd day of March 2018 in Amman, Jordan.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

Entered in the Register on this 23rd day of May 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar