



THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2021-UNAT-1128

JUDGE KANWALDEEP SANDHU , PRESIDING .

1. On 27 March 2020, the United Nations Appeals Tribunal (Appeals Tribunal) issued Judgment No. 2020-UNAT-1003 in the 2 m h1B2I51(0.133 Tw -tubtype /f 5ILBody <F.1 (T)e /2cTJ rwu)5. Tw

5. We deny the applications for reasons below.

Facts and Procedure

6. In May 2013, the Applicant, a now retired staff member of the Office of the High Commissioner for Human Rights (OHCHR), requested a rebuttal of her performance appraisals for the periods 2010-11 and 2011-12, in which she received the ratings of “partially meets performance expectations”. She subsequently followed up on multiple occasions regarding the status of her request, even after she retired in October 2016.

7. On 19 July 2017, the Applicant requested management evaluation of the decision “not to respond to and/or take appropriate and timely action to consider, complete and report on request for rebuttal on her performance appraisal filed on 13 May 2013” (the Contested Decision). Having received no response to her management evaluation request, the Applicant filed an application with the Dispute Tribunal challenging the Contested Decision on 17 October 2017.

8. On 29 November 2017, a rebuttal panel issued its reports, recommending an upgrade of the Applicant’s rating to “successfully meets performance expectations” for the 2010-2011 time period but recommending no change to the 2011-2012 rating of “partially meets performance expectations”.

9. On 5 August 2019, the UNDT issued Judgment on Receivability No. UNDT/2019/134, dismissing the application as not receivable. The UNDT found that an inordinate delay in the rebuttal process of an appraisal was not an administrative decision, unless it was shown that it had, by itself, a direct and negative impact on a staff member’s conditions of service. The Applicant therefore needed to demonstrate that the delay in conducting the rebuttal process on her rating “partially meets performance expectations”, by itself, had a direct and negative impact on her conditions of service.

10. With respect to her claim for the long-service step entitlement, the UNDT noted there was no evidence that the Applicant had applied for or challenged a decision pertaining to the long-service step. Therefore, there was no reviewable administrative decision concerning the long-service step. Regarding the Applicant’s eligibility to participate in the Young Professionals Programme (YPP) exam, the UNDT also noted that there was no reviewable administrative decision in that regard either.

11. On appeal, in its majority opinion, the Appeals Tribunal affirmed the UNDT decision that the Applicant's application was not receivable. The majority found the Applicant did not actually apply for the long-service stotnr o1 (lo)3.4 (n)-1 p

rebuttal of performance appraisals had no direct legal effect and was neither an administrative decision nor an implied decision.”

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20. The Applicant requests the Appeals Tribunal to grant a retroactive award of her long-service step and the related recalculation of her pension benefit based on the reversal of her 2010-2011 performance report and award any damages it deems fit and just under the circumstances.

The Respondent's Observations

21. The Respondent argues the Applicant has incorrectly quoted paragraphs 38 and 43 of the Judgment in her application for interpretation and there is no allegation of ambiguity in the text of either paragraph 38 or 43, as required in the test for interpretation previously outlined by UNAT.⁶

22. Also, as per *Abbasj* the Respondent says this applies to 1.5 (e) 740(5)(i) 2.5 (.6 (8) 1 (ant) 39 (e)-3.1 (r p)-2.

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30. The majority Judgment does not need interpretation or clarification as it leaves no reasonable doubt as to what it means¹² Rather, we find the application “constitutes a disguised way to criticize the Judgment or to disagree with it.”¹³ Therefore, we deny the application for interpretation.

Application for Revision

31. Article 11(1) of the Statute provides that a party may apply for revision “on the basis of the discovery of a decisive fact which was, at the time of the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence.”¹⁴

32. Therefore, in an application for revision, an applicant must show or identify: (i) fact(s) that, at the time of the Appeals Tribunal’s judgment, were unknown to both the Appeals Tribunal and the party applying for revision, (ii) that such ignorance was not due to the negligence of the applicant, and (iii) that the facts identified would have been decisive in reaching the decision.¹⁵

33. The Applicant does not identify a decisive fact unknown at the time of the Judgment . She says that she has unsuccessfully written to the Administration , after discerning that irrespective of the Judgment, she is still entitled to the long-service step benefit as per the Staff Rules, which would also impact her pension benefit. However, this is not a fact that is relevant to the issues before the Appeals Tribunal as this relates to events subsequent to the Judgment. As such, this cannot be “decisive” to the majority decision on the issues.

34. The Applicant makes several submissions and allegations of how the Appeals Tribunal erred, or misunderstood, or misinterpreted matters in its Judgment. However, she does not identify a decisive fact, that at the time of the Judgment, was unknown and would have been decisive in reaching the decision.

¹² *El Shaer v. Commissioner-General of the United Nations Relief and Works Agency for*

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Judgment

39. The applications are dismissed

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Dated this 25th day of June 2021.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Colgan