



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

Judgment No. 2018-UNAT-821

**Haydar
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Dimitrios Raikos Judge Sabine Knierim
Case No.:	2017-1110
Date:	22 March 2018
Registrar:	Weicheng Lin

Counsel for Ms. Haydar:	Edwin Nhliziyo
Counsel for Secretary-General:	Nathalie Defrasne

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 harassment". [...] [Ms. Haydar] copied the Chief PM, Mr. Gerard Buckley, Chief of MINUSCA's Supply Chain Management, Mr. Milan Trojanovic, MINUSCA's Director of Mission Support (DMS), and another staff member on this email.

... On the same day, Mr. Buckley responded to [Ms. Haydar's] email. He clarified that: (i) as a P-5 officer, [the Chief PM] was nominally his deputy who had full authority to act on his behalf by tasking and monitoring IWH staff; (ii) [the Chief PM] had changed the venue of the brainstorming session to the MINUSCA premises upon receipt of [Ms. Haydar's] request; (iii) [Ms. Haydar] did have a reporting line to the [Chief PM]; (iv) he had had occasion to caution [Ms. Haydar] about her attitude but it

¹ Impugned Judgment, paras. 11-26.

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 adverse ePAS was only trying to mount a new attack on her credibility. She ended her email by saying she was simply asking for “due process, mutual respect and an end to the harassment”.

... On the same day, Mr. Buckley responded [...]. He explained, *inter alia*, that [Ms. Haydar] was the one alleging professional harassment and expressed his support for an investigation into her allegations. He explained that while several IWH staff members had complained about [her], only two had submitted written complaints but the IWH supervisor had failed to act on them. He indicated that he was attaching copies of the complaints to his email.

... The DMS, by a memorandum dated 29 April 2016, informed [Ms. Haydar] of his decision to temporarily [re]assign her with immediate effect from IWH to the Supply Unit “pending resolution of [her complaint of professional harassment] and to ensure that all staff work in a harmonious environment that is conducive to high performance”.

... [Ms. Haydar] requested management evaluation of the decision to reassign her from IWH to the Supply Unit on 1 May 2016.

... 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 environment, constituted an administrative decision. The UNDT, however, found that her challenge to this decision was not receivable because she failed to request a management evaluation of this decision as required by Staff Rule 11.2(a) and Article 8(1)(c) of the UNDT Statute.

4. Ms. Haydar filed an appeal on 27 August 2017. On 28 August 2017, the Appeals Tribunal Registry informed her counsel that the submission was incomplete and did not conform to the format and requirements of the Appeals Tribunal Registry and requested she refile by 30 August 2017. On 21 September 2017, Ms. Haydar's counsel informed the Appeals Tribunal Registry that he had not received this communication as it had gone to his spam folder. On 18 October 2017, Ms. Haydar filed a request for waiver seeking to refile her appeal. By way of Order No. 299 (2017), dated 26 October 2017, the Appeals Tribunal granted Ms. Haydar a waiver to file an amended appeal by 31 October 2017. She filed a perfected appeal on 3 November 2017.

Submissions

Ms. Haydar's Appeal

5. Ms. Haydar argues that the UNDT erred in law and facts and requests the following relief: 1) that the Appeals Tribunal overturn the UNDT Judgment, 2) that the Appeals Tribunal refer MINUSCA management for serious misconduct regarding false claims made to the MEU that there were ten complaints against her, for their conspiracy to give her derogatory performance evaluations, and for harassment and abuse of power creating a hostile work environment; and 3) that the Appeals Tribunal award her damages of at least two years' net base salary for emotional and moral suffering.

6. Ms. Haydar argues that she had clearly identified the administrative decisions before the UNDT and that the UNDT failed to apply the standards set forth in *Chaaban*² wherein this Tribunal stated, "[t]he Dispute Tribunal was not limited to the staff member's description of the contested or impugned decision; quite properly, it could consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or

² *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-611, para. 18.

impugned decisions to be reviewed”. Ms. Haydar also cited to *Andati-Amwayi*,³ wherein this Tribunal held that, “[w]hat constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision”. Ms. Haydar argues that before pronouncing on receivability, the UNDT should have weighed these elements.

7. Ms. Haydar also argues that the UNDT erred in law and fact by failing to apply Administrative Instruction ST/AI/292 (Filing of Adverse Material in Personnel Records), which calls for a staff member to have an opportunity to comment before adverse material enters his or her official file. Thus, MINUSCA and the MEU acted unlawfully and the UNDT should have taken the letter and spirit of ST/AI/292 into account. Also, Ms. Haydar cites to Article 10(4) of the UNDT Statute, which provides that prior to a review on the merits, the UNDT finding that a procedure set forth in an administrative issuance has not been observed may with the concurrence of the Secretary-General remand the case for institutional correction. Thus, Ms. Haydar argues that non-adherence to ST/AI/292 should have triggered the UNDT to invoke Article 10(4) of its Statute. Ms. Haydar also argues that the UNDT erred in fact and law in failing to refer her claims of numerous managerial abuses to the Secretary-General under Article 10(8) of the UNDT Statute. Lastly, Ms. Haydar argues that the UNDT committed a procedural error in scheduling a case management meeting but then rendered its Judgment before the meeting took place. Since the UNDT held that she failed to clearly identify the impugned administrative decision, the UNDT should have used the case management mechanism to obtain clarity.

The Secretary-General’s Answer

8. The Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety as the UNDT correctly concluded that the application was not receivable. The UNDT properly held that Ms. Haydar challenged the decisions rendered by the MEU, which are not reviewable administrative decisions, and accordingly her application is not receivable. The Secretary-General, recalling the Appeals Tribunal’s jurisprudence, argues that the burden is on Ms. Haydar to establish that the administrative decision in issue was in non-compliance with the terms of her appointment or contract. Ms. Haydar did not meet this burden because she failed to identify a reviewable administrative decision, and instead made unsubstantiated averments without supporting details. The UNDT correctly held that

³ *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 19.

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* pursuant to Article 8(1) of the UNDT Statute. In addition, the Secretary-General argues that Ms. Haydar has not established any errors warranting a reversal and the Appeals Tribunal has consistently held that it is not sufficient for an appellant to merely repeat arguments already presented before the UNDT.

9. The Secretary-General also argues that Ms. Haydar's assertion that the UNDT should have considered ST/AI/292 does not support her argument that the UNDT made any errors. The burden is on Ms. Haydar to identify alleged defects in the Judgment. Ms. Haydar's vague allegations that the UNDT has "looked the other way" and that false and unverified information made its way to her file or as information before the UNDT, do not constitute a proper challenge of the UNDT's Judgment. Ms. Haydar is vague in her appeal as to what adverse documents or information were ever included in her personnel file.

10. Lastly, the Secretary-General notes that Ms. Haydar attached several documents to her appeal that were not presented to the UNDT. While the Appeals Tribunal may accept additional evidence under Article 2(5) of its Statute and may order production of documents or other evidence in accordance with Article 8(1) of the Appeals Tribunal's Statute, Ms. Haydar has failed to request leave to present such new documents nor has she explained in her appeal why additional evidence is necessary. The Secretary-General therefore urges the Appeals Tribunal to reject the newly introduced evidence.

Considerations

11. Ms. Haydar appeals on the ground that the UNDT erred in law and in fact when it found that her application was not receivable in that it failed to clearly identify an administrative decision within the meaning of Article 2(1)(a) of the UNDT Statute. For the reasons which follow, we find that this appeal is entirely without merit.

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. In this case we have ignored other statements by Counsel attacking a UNDT Judge, except to say that they are irrelevant, unprofessional, and an abuse of the appeals process.

⁵ *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-611.

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