



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

Judgment No. 2018-UNAT-877

**Atome (De Bondt)
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Murphy Judge Martha Halfeld
Case No.:	2018-1170
Date:	26 October 2018
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Stéphanie Cartier

JUDGE SABINE KNIERIM, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/042 (Judgment on Receivability), rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 21 March 2018, in the case of *Atome v. Secretary-General of the United Nations*.¹ Mr. Atome Raygi De Bondt filed the appeal on 22 April 2018, and the Secretary-General filed his answer on 25 June 2018. On 6 August 2018, Mr. De Bondt filed a motion seeking leave to file additional pleadings and on 15 August 2018, the Secretary-General filed his comments on the motion.

Facts and Procedure

2. On 5 February 2018, Mr. De Bondt filed an application with the UNDT in Nairobi, claiming that the Organization had not paid him at the step levels stipulated in his 2009 and 2010 letters of appointment. On 2 March 2018, the Secretary-General filed a motion for leave to file a reply limited to receivability. By letter dated 9 March 2018, Mr. De Bondt filed a response to the motion. On 21 March 2018, the UNDT issued Judgment No. UNDT/2018/042 rejecting Mr. De Bondt's application on the ground that the application was not receivable *ratione materiae* because Mr. De Bondt had failed to request management evaluation and it was further not receivable *ratione temporis* because the application was filed more than three years after receipt of the contested decision.

Submissions

Mr. De Bondt's Appeal

3. The UNDT misconstrued Mr. De Bondt's application by stating that he was contesting the determination of his 2010-2011 step in grade. He was not contesting the determination of the step levels in his contracts; rather, he claimed that he was paid at steps 1 and 2, in 2009-2010 and 2010-2011, respectively, instead of at steps 10 and 7, as provided in his contracts.

¹ It appears that, contrary to common practice, the UNDT has erroneously named the case after Mr. Bondt's first name. The Appeals Tribunal routinely addresses individuals by their titles and surnames and will do so accordingly in Mr. Bondt's case.

4. The UNDT failed to make reference to Mr. De Bondt's response to the Secretary-General's motion seeking leave to file a reply limited to receivability, in which he explained that his claim concerned the Organization's failure to comply with the terms of his letters of appointment. Mr. De Bondt was not contesting a decision before the UNDT; rather, he was asking that a mistake or omission be rectified. Since Mr. De Bondt was never informed why he was not paid at the step levels stipulated in his letters of appointment, despite an e-mail exchange with the officer who had signed the contract on behalf of the Secretary-General, he fails to understand what the UNDT and the Secretary-General are referring to, when the issue is the Secretary-General's non-compliance with his contractual obligations and when there is no decision for him to contest.

The Secretary-General's Answer

5. The UNDT correctly dismissed the application as not receivable *ratione materiae*. Article 8(1)(c) of the UNDT Statute and Staff Rule 11.2, subparagraphs (a) and (c), require staff members to seek management evaluation as a mandatory first step before filing an application with the UNDT. In the present case, the UNDT correctly found that Mr. De Bondt had not proffered any document showing that he had filed a request for management evaluation.

6. The UNDT also correctly dismissed Mr. De Bondt's application as not receivable *ratione temporis*. Pursuant to Article 8(4) of the UNDT Statute, an application shall not be receivable, if it is filed more than three years after the applicant's receipt of the contested administrative decision. The Appeals Tribunal has held that this time limit is an "absolute restriction on [the UNDT's] judicial discretion".² Mr. De Bondt became aware of the contested decisions in 2009 and 2010. He, however, waited more than seven years, i.e. until February 2018, to file his application.

7. Mr. De Bondt has failed to demonstrate any error warranting the reversal of the Judgment. Even if, as he argues, the UNDT had erroneously characterized his claims and even if his 2009 and 2011 communications with the Administration were accepted as requests for management evaluation, he waited until more than seven years later before he filed his application with the UNDT. Therefore, the UNDT's conclusion that his application is not receivable *ratione temporis* remains correct.

² *Khan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-727, para. 23, citing *Reid v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-389, para. 14.

Mr. De Bondt's Motion Seeking Leave to File Additional Pleadings

8. Mr. De Bondt requests leave to file additional pleadings to avoid a “misinterpretation” of his case. He reiterates that there has not been an administrative decision that he should have contested, but simply an error in that he was paid at a step lower than the step stipulated in his contract. He also emphasizes that the officer who had signed the contract on behalf of the Secretary-General did not exercise due diligence to correct the mistake made.

9. As to the contention that his application before the UNDT was time-barred, Mr. De Bondt submits that in his view, “as long as the extension of a contract cumulates the seniority (years), the book shall remain open until the separation” and since at separation, the final payment takes into account factors such as seniority and balance of unused leave benefits, an unresolved dispute should also be considered at that time.

10. The fact that the Secretary-General contends that Mr. De Bondt's application was time-barred instead of verifying his claim, demonstrates an accountability issue.

The Secretary-General's Comments on Mr. De Bondt's Motion Seeking Leave to File Additional Pleadings

11. In his Motion, Mr. De Bondt merely reiterates facts and statements detailed in his appeal. He fails to articulate how the circumstances of his request are exceptional. As such, Mr. De Bondt has not demonstrated any exceptional circumstances justifying the need to file additional pleadings and his motion should be denied.

Considerations

Additional Pleadings

12. As a preliminary matter, Mr. De Bondt's motion for leave to file additional pleadings is refused. Neither the Appeals Tribunal Statute (Statute) nor the Appeals Tribunal Rules of Procedure (Rules) provide for an appellant to file an additional pleading after the respondent has filed his or her answer. Article 31(1) of the Rules and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal allow the Appeals Tribunal to grant a party's motion to file additional pleadings only if there are exceptional circumstances justifying the

motion.³ Mr. De Bondt has not demonstrated any exceptional circumstances which would justify the Appeals Tribunal exercising its discretion to allow him to file additional pleadings.

Merits of the appeal

13. Before the UNDT, Mr. De Bondt claimed that the Organization had not complied with his terms of appointment when it paid him at step levels lower than those stipulated in his 2009 and 2010 letters of appointment. The UNDT rejected his application on the ground that the application was not receivable *ratione materiae* because Mr. De Bondt had failed to request management evaluation and it was further not receivable *ratione temporis* because the application was filed more than three years after receipt of the contested decisions.

14. Article 2(1) of the Statute of the Appeals Tribunal provides:

1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

15. Mr. De Bondt's appeal is defective in that it fails to identify any of the five grounds of appeal set out in Article 2(1) as forming the legal basis of his appeal. The immaterial matters that he submits in his brief appeal are that the UNDT misconstrued his application and failed to address his submissions on receivability. He also contends that he had communicated the discrepancy between his letters of appointment and payslips to the officer who had signed the letters of appointment. Mr. De Bondt is obviously not happy with the UNDT Judgment, but it is not sufficient for him merely to indicate that he disagrees with it. He has not complied with his statutory obligation as an appellant, in that nothing that he has pleaded is capable of demonstrating that the UNDT has committed an error of fact or law warranting the intervention by the Appeals Tribunal. For this reason alone, his appeal must fail.

³ *Afawubo v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-863, para. 18, citing *Fayek v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-739, para. 7.

16. Further, we agree with the UNDT that Mr. De Bondt's application is not receivable *ratione materiae*. Mr. De Bondt claims on appeal that he was paid at steps 1 and 2, in 2009-2010 and 2010-2011, respectively, instead of at steps 10 and 7, as provided in his contracts. A payment to a staff member which is not in accordance with the terms of his or her appointment constitutes an administrative decision under Articles 2(1)(a) and 8(1)(c) and (d) of the UNDT Statute. Mr. De Bondt's contention (that he raised the discrepancy between his letters of appointment and his payslips with the officer who had signed his contracts for the 2009-2010 and 2010-2011 financial years on behalf of the Secretary-General) does not put the UNDT's finding into doubt. Article 8(1)(c) of the UNDT Statute and Staff Rule 11.2, subparagraphs (a) and (c) require staff members to seek management evaluation of the contested decision as a mandatory first step. The fact that Mr. De Bondt raised the issue with the officer who had signed his letters of appointment does not exempt Mr. De Bondt from having to request management evaluation of the contested decision. As Mr. De Bondt did not present any documents to the UNDT showing that he had filed a request for management evaluation, the UNDT did not err in dismissing his application as not receivable *ratione materiae*.

17. Finally, we also agree with the UNDT that Mr. De Bondt's application is not receivable *ratione temporis*. Pursuant to Article 8(4) of the UNDT Statute and Article 7(6) of the UNDT Rules of Procedure, an application shall not be receivable, if it is filed more than three years after the applicant's receipt of the contested administrative decision. In the present case, Mr. De Bondt became aware of the contested decisions when he received his payslips between 2009 and 2010/2011. He, however, filed his application with the UNDT only in 2018, more than seven years later. The UNDT therefore made no error in rejecting his application as not receivable *ratione temporis*.

Judgment

18. The appeal is dismissed and Judgment No. UNDT/2018/042 is affirmed.

Original and Authoritative Version: English

Dated this 26th day of October 2018 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Halfeld

Entered in the Register on this 20th day of December 2018 in New York, United States.

(Signed)

Weicheng Lin, Registrar