



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

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Judgment No. 2022-UNAT-1229

**Jolanta Wozniak**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**JUDGMENT**

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Before:	Judge Dimitrios Raikos, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Case No.:	2021-1549
Date:	18 March 2022
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-represented

Counsel for Respondent: André Luiz Pereira de Oliveira

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. Ms. Jolanta Wozniak has filed an appeal before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) against Judgment on Receivability No. UNDT/2021/019 dated 5 March 2021 in which the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed as not receivable *ratione materiae* her application contesting the decision to separate her from service on 30 April 2019 by retirement upon her reaching the age of 62.

2. For the reasons set out below, this Tribunal determines that the Dispute Tribunal's conclusions are correct.

**Facts and Procedure**

3. Ms. Wozniak was born on 9 April 1957. On 14 July 2008, she joined the United Nations Children's Fund (UNICEF). At the time of the contested decision, she was a staff member of the Supply Division at UNICEF.

4. Under UNICEF's Executive Directive on Staff Mobility and Rotation (CF/EXD/2015-002), UNICEF staff members are expected to move to new duty stations periodically; however, those who are within two years of mandatory retirement may request deferment of rotation.

5. On 9 June 2017, Ms. Wozniak requested a deferment of rotation on the grounds of her impending retirement at the age of 62 years. By e-mail dated 6 July 2017, the Mobility Project Team within UNICEF's Division of Human Resources (DHR) informed Ms. Wozniak that in accordance with the revised rules on mandatory age of separation coming into force on 1 January 2018, her retirement date was 9 April 2022 (65 years). It further emphasized that if Ms. Wozniak still wished to be considered for deferment of rotation, she would have to agree not to seek a postponement of her retirement age.

6. On 17 July 2017, Ms. Wozniak replied by e-mail stating that she did not wish to seek a postponement of her retirement age. By e-mail dated 25 July 2017, the Chief of the Mobility and Staffing Section, DHR, UNICEF, informed Ms. Wozniak that her request for deferment of rotation had been granted on the basis that she would retire on 30 April 2019. On 26 July 2017, Ms. Wozniak replied by e-mail, confirming her understanding of the basis on which her deferment had been granted.

7. By e-mail dated 25 April 2018, the UNICEF Supply Division informed Ms. Wozniak, *inter alia*, that they had received a notification from DHR regarding her deferred rotation on grounds of retirement on 30 April 2019.
8. On 29 May 2018, Ms. Wozniak wrote to DHR to inquire about conditions under which she could remain in service until the age of 65 while confirming her understanding that her deferment from rotation had been granted based on her retirement at the age of 62.
9. By e-mail dated 16 August 2018, the Chief of the Mobility and Staffing Section of DHR replied to Ms. Wozniak that it would not be possible to change her retirement date considering that she had been fully informed of the change in retirement policy when making and reconfirming her request for deferment of rotation on grounds of retirement at the age of 62.
10. By letter dated 17 October 2018, UNICEF informed Ms. Wozniak of the administrative formalities regarding her separation from service on 30 April 2019 in view of her retirement.
11. On 7 November 2018, Ms. Wozniak wrote to DHR to inquire again about the conditions for changing her retirement age to 65. That same day, the Director of DHR replied that it would not be possible to change the retirement date given that she had confirmed in writing that she would retire in April 2019 to obtain her rotation deferral.
12. In December 2018, Ms. Wozniak contacted the Ombudsperson at UNICEF for assistance. In February 2019, the Ombudsperson advised her to ask for legal assistance from the Office of Staff Legal Assistance (OSLA). In March 2019, Ms. Wozniak contacted OSLA for legal advice.
13. On 30 April 2019, Ms. Wozniak was separated from the Organization.
14. On 24 July 2019, Ms. Wozniak requested management evaluation of the 25 July 2017 Separation from Service Notification.
15. By letter of 6 September 2019, the Deputy Executive Director, Management, UNICEF, found that Ms. Wozniak's request was not receivable because it had been filed outside the time limit provided for in Staff Rule 11.2(c).

16. By an application filed on 3 December 2019, Ms. Wozniak contested the decision to separate her from service on 30 April 2019 by retirement upon her reaching the age of 62 years.

17. By Order No. 51 (GVA/2021) of 17 February 2021, the UNDT informed the parties of its finding that the matter could be determined on the papers without holding a hearing and ordered them to file closing submissions by 25 February 2021.

18. On 5 March 2021, the UNDT issued Judgment No. UNDT/2021/019 dismissing the application as not receivable *ratione materiae*. The UNDT considered that Ms. Wozniak had requested management evaluation of the 25 July 2017 Separation from Service Notification on 24 July 2019, i.e., around two years later. Even if the UNDT were to consider that the date of Ms. Wozniak's effective separation from service was the relevant date, her claims would still be not receivable, since in that case the deadline for Ms. Wozniak to request management evaluation would have been 1 July 2019, i.e., 60 calendar days after 30 April 2019, the date she separated from service. However, she only filed her request on 24 July 2019. Finally, the UNDT held that Ms. Wozniak's attempts to resolve the matter informally through the Ombudsman or discussing the case with OSLA could not have had any impact on her obligation to request management evaluation of the contested decision by 25 September 2017. Accordingly, her request for management evaluation was untimely.

19. Ms. Wozniak appealed the UNDT Judgment on 22 April 2021.<sup>1</sup> On 6 July 2021, the Secretary-General filed his answer.

## **Submissions**

### **Ms. Wozniak's Appeal**

20. Ms. Wozniak submits that the rotation process linked to the retirement process was not performed correctly. During the rotation process performed by UNICEF in 2017, her post was wrongly qualified as rotational. Ms. Wozniak asked that her post be qualified as nonrotational, following criteria provided by Human Resources (HR). Her post satisfied all the criteria to be nonrotational. Her supervisor responded, orally, without any justification or reference to the criteria, that the post was qualified rotational. Moreover, the qualification process was not

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<sup>1</sup> The UNAT Registry transmitted the appeal on 4 May 2021 and advised that the Secretary-General had 60 days from that date to file his answer.

recorded by the Organization. When Ms. Wozniak asked for the records, she was told they did not exist.

21. The deferment applicable to Ms. Wozniak's case was a two-year deferment linked to the retirement. At that time, in 2017, the retirement age was 62 years. Starting 1 January 2018, the retirement age was changed to age 65 for all employees. Ms. Wozniak was urged by DHR to declare (in 2017) that she would retire at age 62 (after a two-year deferment period) in April 2019. As the new rules were not in force at the time, it was not clear to her what the procedural background of such a proposal was. When she asked HR, she was advised that the background to make such request (to retire at 62) was linked to the new rules (which would be in force from the beginning of 2018). While she responded that she understood, she did not declare in writing that she would retire at 62. Based on her e-mail that she understood the HR approach, the deferment was granted. When the new rules came into force, effective 1 January 2018, she expected the rotation process to be updated following the new rules with respect to the aspects linked to the retirement age, but this did not happen.

22. The reason for her belated request for management evaluation was the fact that at UNICEF employees were not informed of the option and requirement to request management evaluation within a specific time frame. In 2018, when she was still working, Ms. Wozniak asked the Ombudsperson and later OSLA for help. She was still hoping for a "successful communication and negotiation with the Management in terms of [her] retirement age as well as ... the aspect of updating [the] rotational process (in the middle of [her] deferment period, in 2018) to reflect the new rules of retirement". Ms. Wozniak expected that as result of the new rules her retirement would be postponed to age 65 (by April 2022). As a result of the failure by the Organization, the Ombudsperson, and OSLA to properly inform her, she missed the time limit to request management evaluation.

### **The Secretary-General's Answer**

23. The UNDT correctly concluded that the application was not receivable. Staff Rule 11.2(a) establishes that "[a] staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1(a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision". Staff Rule 11.2(c) further provides that "[a] request for a management evaluation shall

not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.”

24. In her application, Ms. Wozniak confirmed that she was indeed contesting the 25 July 2017 Separation from Service Notification. She further conceded that she had been made aware of this notification in July 2017. Certainly, by the 25 July 2017 Separation from Service Notification, the Chief, UNICEF Mobility and Staffing Section had informed Ms. Wozniak in unequivocal terms that her request for deferment for the 2017 rotation exercise had been approved on retirement ground, on the understanding that she would retire on 30 April 2019. The next day, i.e., on 26 July 2017, Ms. Wozniak responded and confirmed her understanding of the basis on which her deferment was being granted. Therefore, on 26 July 2017, Ms. Wozniak confirmed that she was aware that her separation from service on retirement would occur on 30 April 2019. Consequently, under Staff Rule 11.2(c), she should have requested management evaluation within 60 calendar days from 26 July 2017, when she conceded that she was made aware of the 25 July 2017 Separation from Service Notification. Instead, she waited until 24 July 2019, i.e., almost two years later, to do so.

25. Even if the communication of 25 July 2017 did not amount to a notification of the contested decision, Ms. Wozniak was aware of it by the date of her separation, on 30 April 2019. In those circumstances, she ought to have requested management evaluation within 60 days of 30 April 2019. She did not. In the appeal, Ms. Wozniak conceded that her request for management evaluation was out of time. She, however, alleges that she missed the deadline since the UNICEF Administration, as well as the Office of the Ombudsman for the Funds and Programmes and OSLA, had not adequately informed her that she was required to request management evaluation of the contested decision within a specific time frame. However, staff members are presumed to know the Regulations and Rules applicable to them and ignorance cannot be invoked as an excuse. Therefore, Ms. Wozniak’s alleged ignorance of the applicable rules is not an excuse for her failure to timely request management evaluation of the July 2017 Separation from Service Notification. The UNDT further correctly noted that Ms. Wozniak’s efforts to resolve the matter informally through the Ombudsman or discussing the case with OSLA could not have had any impact on her obligation to request management evaluation of the contested decision by 25 September 2017. Accordingly, her claims that she was not aware of these basic rules are not plausible and should be

rejected by UNAT. Accordingly, the UNDT correctly found that Ms. Wozniak had failed to timely request management evaluation of the 25 July 2017 Separation from Service Notification.

26. Ms. Wozniak's other claims are outside the scope of the case. As the UNDT correctly found the case not receivable, it did not address the merits of the claims set out in the application. All arguments presented by Ms. Wozniak relating to the merits of the case are outside of the scope of the Tribunal's jurisdiction. Ms. Wozniak has not identified any error of the UNDT Judgment on questions of fact or law warranting the reversal of the Judgment. Accordingly, UNAT should dismiss the appeal and uphold the Judgment in its entirety.

### Considerations

27. Under Article 8(1)(c) of the UNDT Statute, an application shall be receivable if the applicant has previously submitted the contested decision for management evaluation where required. This obligation upon the applicant is also prescribed in Staff Rule 11.2(a), which provides that a staff member wishing to formally contest an administrative decision shall, as a first step, submit to the Secretary-General in writing a request for management evaluation. Pursuant to Staff Rule 11.2(c), a request for management evaluation is to be submitted to the Secretary-General within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

28. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process.<sup>2</sup> The Appeals Tribunal has noted many times that the requirement of management evaluation assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.<sup>3</sup>

29. 25 July 2017 was the relevant date triggering the time limit under Staff Rule 11.2(c). On that date, Ms. Wozniak was informed in unequivocal terms by the Administration that her request for deferment for the 2017 Rotation Exercise had been approved on retirement ground, on the understanding that she would retire on 30 April 2019. Thus, her request for management

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<sup>2</sup> *Barri v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1005, para. 11; *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13; *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

<sup>3</sup> *Barri op. cit.*, para. 11; *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and cites therein.

evaluation dated 24 July 2019 was filed outside the 60-day statutory time limit. In any case, as the UNDT also correctly held: “Even if the Tribunal were to entertain that the communication of 25 July 2017 did not amount to a notification of the contested decision, the Applicant was clearly aware of the contested decision by the date of her separation [on 30 April 2019] and should have requested management evaluation of the decision that led to her separation from service within 60 days of that date, i.e., by Monday, 1 July 2019.”<sup>4</sup>

30. The Appellant concedes that she was aware of the Separation from Service Notification in July 2017 and that her request for management evaluation was out of time. However, she alleges that she missed the deadline since the UNICEF Administration, as well as the Office of the Ombudsman for the Funds and Programmes and OSLA, had not adequately informed her that she was required to request management evaluation of the contested decision within a specific time frame.

31. The Appellant’s arguments are devoid of merit. The Appeals Tribunal has repeatedly and consistently strictly enforced the time limits for filing applications and appeals. Strict adherence to filing deadlines assures one of the goals of our new system of administration of justice: the timely hearing of cases and rendering of judgments.<sup>5</sup> UNAT has also consistently held that staff members are presumed to know the Regulations and Rules applicable to them. It is the staff member’s responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse.<sup>6</sup>

32. We are satisfied that the Dispute Tribunal properly considered the facts and the applicable statutory law and jurisprudence in arriving at its decision that Ms. Wozniak’s application was not receivable.

33. Having failed to demonstrate that the UNDT committed any error of law or fact, Ms. Wozniak’s appeal must fail.

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<sup>4</sup> Impugned Judgment, para. 29.

<sup>5</sup> *Diab v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-495, para. 25; *Kissila v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-470, para. 23.

<sup>6</sup> *Vukasović, op. cit.*, para. 14; *Amany, op. cit.*, para. 18, citing *Kissila, op. cit.*, para. 24, and cites therein.



**Judgment**

34. The appeal is dismissed and Judgment No. UNDT/2021/019 is affirmed.

Original and Authoritative Version: English

Dated this 18<sup>th</sup> day of March 2022.

*(Signed)*

Judge Raikos, Presiding  
Athens, Greece

*(Signed)*

Judge Murphy  
Cape Town, South Africa

*(Signed)*

Judge Halfeld  
Juiz de Fora, Brazil

Entered in the Register on this 18<sup>th</sup> day of May 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar