



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

Judgment No. 2022-UNAT-1303

**Dourrho Pierre
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2021-1623
Date of Decision:	28 October 2022
Date of Publication:	27 December 2022
Registrar:	Juliet Johnson

Counsel for Appellant: Self-represented

Counsel for Secretary-General: Sylvia Schaefer

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Mr. Dourrho Pierre, a P-3 Engineer with the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), contested the decision to grant him a six-month extension of his fixed-term contract on the basis that it was a repeat of prior short-term extensions of his appointment forming a pattern of harassment and abuse of authority.

2. In Summary Judgment No. UNDT/2021/123 (the Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) held that the application was not receivable *ratione materiae* as the matter complained of was not an administrative decision for the purposes of Staff Rule 11.2(a) and that in any event, the question of whether the Secretary-General had acted unlawfully by extending the appointment for six months was moot because his appointment was subsequently extended for a year as he requested in his application.

3. Mr. Pierre appeals the Judgment. For the reasons given below, we dismiss his appeal.

Facts and Procedure

4. Mr. Pierre is a P-3 Engineer with MINUSMA and joined the Organization on 15 September 2000.

5. On 8 July 2021, his fixed-term appointment was renewed for six months until 31 December 2021 (the contested decision).

6. On 16 July 2021, Mr. Pierre requested management evaluation of the contested decision. He challenged that it was a repeat of prior short-term extensions of his appointment, forming a pattern of harassment and abuse of authority and sought a twelve-month extension. On 19 August 2021, the Management Evaluation Unit rejected his request as not receivable because he had suffered no adverse consequences by having his appointment extended for six months.

7. On 30 August 2021, Mr. Pierre applied to the UNDT to seek rescission of the contested decision (he felt the extension ought to have been for a full year) and moral damages for the toll the surrounding circumstances had taken on his health.

8. Shortly after the application was filed, the Secretary-General on his own volition granted the relief sought in the application extending his appointment to 30 June 2022, effectively, extending his appointment for a year rather than the six months

9. In the Judgment, the Dispute Tribunal held the application was not receivable *ratione materiae* as the matter complained of was not an administrative decision because the extension of his fixed-term appointment did not have an adverse impact on Mr. Pierre or his rights. In addition, the Dispute Tribunal found that Mr. Pierre failed to submit evidence to support his contention that malice or ill-will motivated the Secretary-General's decision to extend his appointment for six months rather than a year, and that in any event, he had not made a formal complaint of harassment in relation to the six-month extension decision which was a necessary pre-requisite to him advancing the claim of harassment. Finally, the Dispute Tribunal found that the question of whether the Secretary-General had acted unlawfully by extending Mr. Pierre's appointment for six months, was moot given that it was resolved by the renewal of his appointment through to 30 June 2022.

Submissions

Mr. Pierre's Appeal

10. Mr. Pierre claims he is the victim of continuous harassment by individuals in the leadership of MINUSMA/Mission Support starting in 2017. He says they put him in a situation of "insecurity" by arbitrarily extending his appointment only for a short term in 2019.

11. Mr. Pierre challenges the Judgment on two counts. First, the Dispute Tribunal misquoted the precedent provided in his response to the Secretary-General's motion on receivability.¹ Also, no law renders the Dispute Tribunal incompetent to deal with an application pursuant to ST/SGB/2008/5 particularly as the contested decision constituted an act of harassment, discrimination or abuse of authority.

12. Second, Mr. Pierre argues that the Judgment contradicts a previous Dispute Tribunal Judgment, No. UNDT/2020/126 (*Pierre* No. 1), in which Mr. Pierre contested a one-month extension of his fixed-term appointment and the Dispute Tribunal held the application was receivable. Therefore, the Secretary-General's argumentation is deceitful

¹ *Messinger v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-123.

because it presents *Pierre* No. 1 as a precedent but does not mention that his application regarding the same abusive decision was ruled receivable in *Pierre* No. 1.

13. Mr. Pierre questions the Dispute Tribunal Judge's qualifications to discuss mental health issues. As documented by several medical specialists, he has been suffering from depression and depressive relapses resulting from a conflictual environment at work. With respect to his health, he denounces the characterization made in the Judgment as disrespectful and insensitive.

14. Mr. Pierre asks the Appeals Tribunal to find that the contested decision is abusive and part of a pattern of long-standing harassment, and asks that the Secretary-General hold Mr. A (one of his reporting officers) responsible for misconduct.

The Secretary-General's Answer

15. In response, the Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

16. The Secretary-General submits that Mr. Pierre has failed to identify any ground for appealing the Judgment under Article 2(1) of the Statute of the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). Mr. Pierre is mainly rearguing previous arguments before the Dispute Tribunal, in particular his claims that he had been the subject of harassment, that the Dispute Tribunal has the competence to examine allegations of harassment to determine if an impugned administrative decision was improperly motivated, and that the initiation of ST/SGB/2008/5 proceedings is not obligatory in this regard. But the Dispute Tribunal's decisive factor in ruling the case to be non-receivable was not the lack of jurisdiction over harassment-related cases but the lack of an appealable administrative decision.

17. The Secretary-General contends that the Dispute Tribunal rightfully concluded that the decision to extend Mr. Pierre's fixed-term appointment for six months did not have adverse, direct legal consequences on his employment contract or terms of appointment and, thus, was not an appealable administrative decision. In the present case, the contested decision was to Mr. Pierre's advantage as it continued his employment, his fixed-term appointment being extended for six months. The contested matter was superseded by a subsequent extension for an additional six months rendering the contested decision moot

Considerations

18. The issue before this Tribunal is whether the Dispute Tribunal erred in law, fact, procedure, or exceeded, or failed to exercise, its jurisdiction when it concluded that Mr. Pierre's challenge of the decision to extend his fixed-term appointment for six months until 31 December 2021 was not receivable.

19. Article 2(1) of the UNAT Statute requires that an appellant identify a ground of appeal to the Appeals Tribunal of a Dispute Tribunal judgment, either that the Dispute Tribunal 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 question of fact, resulting in a manifestly unreasonable decision. An appellant has the burden of satisfying the Appeals Tribunal that the Dispute Tribunal's judgment is defective based on one or more of these grounds.²

20. Mr. Pierre has failed to discharge this burden. He has not demonstrated that the Dispute Tribunal committed any of the errors outlined in Article 2(1) of the Statute. Instead, he relitigates his arguments before the Dispute Tribunal and expresses his general disagreement with the Judgment. This is contrary to the purpose of an appeal to the Appeals Tribunal.³

21. In any event, we find that, for the reasons set out below, the Dispute Tribunal did not err in its conclusion that Mr. Pierre's application is not receivable but also moot.

22. For purposes of Staff Rule 11.2(a), 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, shall, as a first step, submit a written request for management evaluation of the administrative decision.

23. An "administrative decision" is a "unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order".⁴

² *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

³ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711, para. 22.

⁴ Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003).

24. In the Judgment, the Dispute Tribunal correctly applied this legal test for determining what is an “administrative decision”, namely that a decision must produce adverse consequences to a staff member’s employment contract or terms of appointment.⁵ We agree with the Dispute Tribunal’s conclusion that the contested decision is not receivable because it does not have legal consequences adversely affecting the terms and conditions of Mr. Pierre’s appointment and therefore, there is no appealable administrative decision.

25. According to *Pierre* No. 1, Mr. Pierre’s appointment was extended for periods of one to two months from 1 August 2019 to 30 November 2019, and on 1 December 2019, his appointment was renewed until 30 June 2020 for lawful reasons. The Dispute Tribunal in *Pierre* No. 1 found that, although there was a delay in renewing the appointment in July 2019 which was reasonable in the circumstances, the one-month renewal was lawful, and the decision was not improperly motivated. In *Pierre* No. 1, the Dispute Tribunal considered the application regarding allegations of harassment was receivable, but did not accept the allegations (i.e., renewal decision as part of a pattern of continual harassment).

26. In the present Judgment reviewing the 8 July 2021 renewal decision for six months, the Dispute Tribunal found that decisions that extend a contract, even on a short-term basis, are in the staff member’s favour and do not adversely affect their rights.

27. A similar situation was reviewed in *Appellee*, where the Appeals Tribunal similarly found that the staff member had “suffered no material harm from the series of renewals for short periods of time since her appointments were renewed and at the time of the Judgment she was still working for the Organization”.⁶

28. This is because a fixed-term appointment does not carry any expectancy, legal or otherwise, of renewal or conversion, irrespective of the length of service (Staff Rule 4.13(c)), therefore, decisions that extend a contract, even on a short-term basis, are *prima facie* considered in the staff member’s favour and do not adversely affect their rights.⁷

⁵ Impugned Judgment, para. 17.

⁶ *Appellee v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-341, para. 18.

⁷ *Oummih v. Secretary-General of the United Nations*, Judgment No. UNDT/2013/045, para. 19.

29. In the present case, Mr. Pierre has no expectancy of renewal of his fixed-term appointment so therefore, the short-term renewals are considered *prima facie* in his favour. He has not provided sufficient evidence that the contested decision produced adverse consequences or “material harm” as part of a series of renewals for short periods.

30. Therefore, the Dispute Tribunal correctly concluded that the contested decision to extend Mr. Pierre’s appointment for six months did not have adverse consequences to his employment contract or terms of appointment; as such, it did not amount to an appealable administrative decision.

31. Further, the subsequent renewal of his fixed-term appointment for a year rendered the matter moot. As previously stated by the Appeals Tribunal in *Kallon*:⁸

A judicial decision will be moot if any remedy issued would have no concrete effect because it would be purely academic or events subsequent to joining issue have deprived the proposed resolution of the dispute of practical significance; thus placing the matter beyond the law, there no longer being an actual controversy between the parties or the possibility of any ruling having an actual, real effect. ... Just as a person may not bring a case about an already resolved controversy (*res judicata*) so too he should not be able to continue a case when the controversy is resolved during its pendency.

32. Mr. Pierre challenged the renewal of his appointment for six months arguing it should have been for one year. Subsequently, the Administration did renew the appointment through to June 2022, a term of one year. Therefore, the controversy was resolved in his favour during its pendency.

33. Mr. Pierre says that the Dispute Tribunal in *Pierre* No. 1 came to a different conclusion on receivability. However, in that Judgment, the Dispute Tribunal similarly found Mr. Pierre’s challenge of the decision to extend his appointment for one year was “moot” with a renewal; it ruled that his allegations of a pattern of harassment and improper motive (retaliation) by two officers were receivable and reviewed those allegations but found that they were ultimately not proven and dismissed.

⁸ *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742.

34. In the present case, Mr. Pierre reiterates similar claims of continuous harassment starting in 2017 due to his opposition to his reassignment. He says the short-term renewals without a “clear rationale” amount to “retaliation” which continues to the present day. He refers to conduct that was also raised in *Pierre* No. 1. But the only contested decision before us is the decision to renew his appointment for six months until 31 December 2021. Any alleged conduct prior to the date of this contested decision is not before us. In addition, any complained of conduct raised in the previous appeal has already been adjudicated in *Pierre* No.1, and cannot be brought forward again, a year later, in contesting a different renewal decision.

35. In order for the contested decision before us (i.e., the six-month renewal to 31 December 2021) to be invalidated by an improper purpose (such as harassment and retaliation), it is necessary to first establish that it was an appealable administrative decision. But, as determined above, there is no appealable administrative decision in this case.

36. Mr. Pierre argues that in *Messinger*,⁹ the Appeals Tribunal considered that it is within the competence of the tribunal to examine allegations of harassment for the purpose of determining if the impugned administrative decision was improperly motivated. We agree with the Dispute Tribunal that Mr. Pierre’s reliance on the Appeals Tribunal’s Judgment in *Messinger* is misplaced. While it was underscored in *Messinger* that the Dispute Tribunal can examine harassment allegations if they are relevant background information in determining whether an impugned administrative decision was motivated by ill-will, the important precursor to any such exercise of jurisdiction remains the existence of an “administrative decision”. In the absence of an administrative decision in this case, the UNDT has no jurisdiction to examine the prior complaints of harassment.

37. In any event, Mr. Pierre has failed to provide sufficient evidence that improper purpose or motive motivated the contested decision. As for his allegations of “harassment,” the Dispute Tribunal correctly noted that Mr. Pierre made no formal complaint of harassment as required by Secretary-General’s Bulletin ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) which comprehensively provides a regulatory framework for reporting cases of harassment and abuse of authority.

⁹ *Messinger*, *op. cit.*

38. Finally, as for Mr. Pierre's request that an investigation be commenced against a supervisor, the tribunals have no jurisdiction to compel the Secretary-General to commence an investigation into the misconduct of an individual as requested by Mr. Pierre in his appeal.

39. In conclusion, we find the Dispute Tribunal did not err in finding that the application was not receivable as well as moot.

Judgment

40. The appeal is dismissed, and Summary Judgment No. UNDT/2021/123 is affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Raikos

Judgment published and entered into the Register on this 27th day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar