UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2023-UNAT-1338

Jaime Rodolfo Minzer

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Kanwaldeep Sandhu Judge John Raymond Murphy
Case No.:	2022-1665
Date of Decision:	24 March 2023
Date of Publication:	2 May 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Cristian Gimenez Corte
Counsel for Respondent:	Sylvia Schaefer

JUDGE SABINE KNIERIM, PRESIDING.

1. Mr. Jaime Rodolfo Minzer, a former staff member of the Economic Commission for Latin America and the Caribbean (ECLAC), contested the decision to decline his request to be assigned to a new supervisor (contested Decision).

2. By Judgment No. UNDT/2021/153[1] (impugned Judgment), the United Nations Dispute Tribunal (UNDT) rejected his application as moot.

3. Mr. Minzer lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).

4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. Mr. Minzer served as an Economic Affairs Officer at the P-4 level with ECLAC in Mexico on a continuing appointment.[2]

6. On 20 February 2020, he was placed on certified sick leave (CSL).[3]

7. On 30 September 2020, Mr. Minzer submitted a complaint of prohibited conduct against his First Reporting Officer (FRO) with the Office of Internal Oversight Services (OIOS).[4]

8. By e-mail dated 28 October 2020, Mr. Minzer requested the Director of the Subregional Headquarters of ECLAC Mexico (D/ECLAC) to temporarily transfer him to a different unit, given the work-related issues with his FRO, which he claimed adversely affected him both physically and psychologically.[5]

9. By e-mail dated 29 October 2020, Mr. Minzer was informed of the contested Decision.[6] D/ECLAC informed him of the process following a formal complaint of prohibited conduct pursuant to the Secretary-General's Bulletin ST/SGB/2019/8 (Addressing discrimination,

[1] *Minzer v. Secretary-General of the United Nations*, Judgment dated 14 December 2021.
[2] 2 February 2021 letter from the Management Evaluation Unit (MEU) (Annex 2 to the appeal).
[3] Impugned Judgment, para. 4.
[4] 2 February 2021 letter from the MEU (Annex 2 to the appeal).
[5] *Ibid.*
[6] Impugned Judgment, para. 5.

harassment, including sexual harassment, and abuse of authority) and indicated that the Administration had not been informed by either Human Resources or OIOS of his formal complaint against his FRO. D/ECLAC stated that the Administration did not have an obligation to reassign him to a different unit. D/ECLAC assured him of monitoring the situation, evaluating his arguments, and preventing the possibility of retaliation against him.

10. On 3 November 2020, OIOS informed Mr. Minzer that his complaint fell within the scope of ST/SGB/2019/8 on "prohibited conduct".[7] OIOS requested his consent to refer his complaint of prohibited conduct to the Executive Secretary of ECLAC. He provided the consent to OIOS. On 1 December 2020, ECLAC received the OIOS report.

11. On 22 December 2020, Mr. Minzer requested a management evaluation of the contested Decision.[8] According to his submission, between 3 December 2019 and January 2020, his FRO had sent him numerous e-mails while he was on leave and attending to his convalescent son. He indicated that the e-mails had related to the delay in delivering outputs by two consultants in a project that he had been managing. He stated that he had deemed his FRO's e-mails as "constant pressure, humiliation and workplace harassment". He pointed out that because of this, around the end of January 2020, he had informed the Deputy Director of ECLAC Mexico, who was his Second Reporting Officer (SRO), of his concerns with his FRO and had requested that he be transferred to another unit.

12. By e-mail dated 19 January 2021, the Administration advised Mr. Minzer that it had decided not to initiate an investigation into his allegations of prohibited conduct against his FRO due to the lack of substantiating evidence.[9] The Administration stated that, to the contrary, several informal complaints had been filed against Mr. Minzer by his colleagues.

13. On 2 February 2021, the MEU informed him that it had reviewed his request concerning the decision not to transfer him to a different unit under a different line of supervision, and decided to uphold the contested Decision.

14. On 31 March 2021, Mr. Minzer filed an application before the UNDT, requesting rescission of the contested Decision.[10]

[7] 2 February 2021 letter from the MEU (Annex 2 to the appeal).
[8] *Ibid*.
[9] *Ibid*.
[10] Mr. Minzer's application (Annex 3 to the appeal).

15. In August 2021, he was separated from the Organization on medical grounds.[11]

The Impugned Judgment

16. On 14 December 2021, the UNDT rendered the impugned Judgment, rejecting the application.

17. The UNDT noted that in section IX of the application, under the headline "What remedies are you seeking?", Mr. Minzer had stated that "[he] respectfully requests [of] the Tribunal the rescission of the decision taken by the [Administration] not to transfer him to a different Unit and under a different supervisor".[12] Therefore, the only remedy requested by him is the rescission of the contested Decision not to reassign him.

18. The UNDT found that the Dispute Tribunal may not award remedies that have not been requested.[13] Since Mr. Minzer in this case is separated, he can no longer be reassigned, as he requests. Therefore, the application is moot since the sought remedy would have no concrete effect.

Procedure before the Appeals Tribunal

19. On 10 February 2022, Mr. Minzer filed an appeal of the impugned Judgment, with the Appeals Tribunal, to which the Secretary-General responded on 13 April 2022.

Submissions

Mr. Minzer's Appeal

20. Mr. Minzer requests the Appeals Tribunal to rescind the contested Decision, order payment of all salaries and benefits from the date of termination to the date of the Appeals Tribunal's Judgment, including pension benefits, and award compensation for the material and moral harm inflicted on him, caused by harassment, mistreatment and unlawful termination.

[11] Impugned Judgment, para. 6; appeal, para. 42; ECLAC Internal Memorandum dated 13 May 2021 (Annex 4 and Annex 25 to the appeal).
[12] Impugned Judgment, para. 7.
[13] *Ibid.*, para. 10.

21. He submits that he had originally wanted to be transferred from his Unit to a different Unit or a change in the reporting line because of constant harassment and abuse of authority by his supervisor, his FRO. He contends that the Organization's accountability system has failed. He alleges that his FRO retaliated against him, and addresses the determination of his disability and his disability benefit[14], his additional claims before the OIOS and the Ethics Office[15], the circumstances of the mediation and his termination[16] and Orders issued by the UNDT[17].

22. Mr. Minzer argues that the UNDT committed an error in procedure by not enforcing an order on mediation and an agreement to participate in mediation. The UNDT should have suspended the judicial proceedings or the separation process. Furthermore, the UNDT failed to exercise jurisdiction by rejecting his motion for interim measures for a temporary transfer. The UNDT's rejection of his motion for suspension of action constituted an error in law. He had warned the UNDT several times that the application would become moot.

23. He contends that the UNDT failed to exercise jurisdiction by refusing to hear the merits of the case. His application only became moot due to the Secretary-General's maneuvers and the UNDT's persistent refusal to hear the case.

The Secretary-General's Answer

24. The Secretary-General requests that the Appeals Tribunal dismiss the appeal.

[14] Mr. Minzer explains that on 23 April 2021, he was declared incapacitated and the United Nations Staff Pension Committee granted him a disability benefit, which he objects to.
[15] He points out that on 14 April 2021, he submitted an additional claim to OIOS and to the Ethics Office, reporting retaliation by his FRO, and on 30 April 2021, submitted further claims to OIOS and to the Ethics Office, claiming that he had been retaliated against by the determination of his disability.
[16] Mr. Minzer submits that on 13 May 2021, the Administration issued a notice of termination against him. He advances that this was done in bad faith as it was issued only seven days after the Administration had agreed to try to "attempt in good faith to settle their dispute".
[17] He refers to 10 May 2021 Order No. 46 (NY/2021) on referral for mediation; 21 July 2021 Order No. 67 (NY/2021) on case management, granting the parties' request for an extension of time for mediation; 5 August 2021 Order No. 71 (NY/2021) on case management, reinstating the proceedings and rejecting his motion for interim measures for the purpose of effectuating the mediation process; 11 August 2021 Order No. 73 (NY/2021) on application for suspension of action, rejecting his motion to suspend the implementation of the decision to terminate his contract for health reasons; and 12 August 2021 Order No. 75 (NY/2021) on interim measures, rejecting his motion for interim measures for the purpose of transferring him to a different division and stopping retaliatory actions against him.

25. The Secretary-General submits that the appeal is not receivable *ratione materiae* to the extent that Mr. Minzer challenges the UNDT's interlocutory decisions. Also, as neither the UNDT's decision to grant the motion for an extension of the deadline to file a response nor the decision to request the response by 19 November 2021 clearly exceeded its competence or its jurisdiction, they are not appealable. In addition, the proceedings before the UNDT had been suspended.

26. The Secretary-General contends that it was not the UNDT's failure but Mr. Minzer's own actions that prevented the UNDT from hearing the merits of the case and led to the application becoming moot. Moreover, insofar as he refers to his self-elected separation from service on grounds of disability on 19 August 2021, he may challenge such decisions separately before the UNDT. He has failed to demonstrate any reversible error by the UNDT.

Considerations

27. The only issue of the present case is whether the UNDT committed any errors when it found that Mr. Minzer's application was moot. In *Kallon v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-742, para. 44, we held:

> (...) 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. The mootness doctrine is a logical corollary to the court's refusal to entertain suits for advisory or speculative opinions. 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. The doctrine accordingly recognizes that when a matter is resolved before judgment, judicial economy dictates that the courts abjure decision.

28. The UNDT correctly pointed out that the only remedy requested by Mr. Minzer in his application to the UNDT was the rescission of the 29 October 2020 administrative decision not to transfer him.

29. Only now on appeal does Mr. Minzer raise other claims and additionally requests payment of "all salaries and benefits from the date of termination to the date of the judgment, including pension benefits" and [c]ompensation for the material and moral harm inflicted on him, caused by harassment, mistreatment, and unlawful termination".

30. Due to the two-tier system and according to the constant jurisprudence of the Appeals Tribunal, an appellant cannot bring new claims and arguments before the Appeals Tribunal which were not part of the proceedings before the UNDT. As we held in *Guetgemann*[18]:

> (...) Ms. Guetgemann requests the Appeals Tribunal to vacate the Impugned Judgment in its entirety and award compensation for loss of employment/economic damage and consequential moral damages or, in the alternate, to remand the case back to UNDT for fresh adjudication.
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> ...
>
> (...) Ms. Guetgemann's claim [was] inappropriately raised for the first time on appeal (...).

31. Therefore, Mr. Minzer's above-mentioned new requests on appeal cannot be accepted by the Appeals Tribunal, and we will not review whether the case should not have been considered moot had he raised them before the UNDT.

32. We note that the present case deals only with the 29 October 2020 administrative decision not to transfer Mr. Minzer but not with the 13 May 2021 administrative decision to terminate his appointment. This latter decision was not challenged by Mr. Minzer. Neither did he request management evaluation nor did he file an application to the UNDT in this respect. Instead, on 16 August 2021, he elected to receive the disability benefit from the United Nations Joint Staff Pension Fund, and on 19 August 2021, he was separated from service. Therefore, the lawfulness of the 13 May 2021 termination decision is not an issue for the present appeal.

33. As Mr. Minzer's appointment was terminated and he was separated from service with effect from 19 August 2021, the UNDT correctly found that his application against the prior decision not to transfer him was moot. After Mr. Minzer separated from service on 19 August 2021, it was no longer possible to transfer him to another post and assign him to another supervisor. The issue of the lawfulness of the 29 October 2020 transfer decision had lost all legal relevance once Mr. Minzer was separated from service. It was no longer a live issue but moot, as found correctly by the UNDT. As we held in *Guetgemann*[19]:

> (...) The decision of the UNDT that the application in relation to the non-renewal decision was moot because the non-renewal decision never materialised is correct. The

[18] *Annette Guetgemann v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1201, paras. 18 and 28.
[19] *Op. cit.*, para. 21.

> non-renewal decision was overtaken by Ms. Guetgemann's separation for health reasons on 13 March 2020. (...)

34. Mr. Minzer's submission on appeal, that the UNDT erred by not enforcing the "Order to Mediate" and the "Mediation Agreement" between the parties, by rejecting his "Motion for Interim Measures for a temporary transfer", by rejecting his "Motion for Suspension of Action", and by not reviewing the merits of the case have no merit. His application against the transfer decision became moot because the 13 May 2021 termination decision went into legal force, and it went into legal force because it was not challenged by Mr. Minzer. As stated above and held by the UNDT, Mr. Minzer did not file a request for management evaluation against the termination decision but accepted it. In this situation, the decision not to transfer Mr. Minzer became moot.

35. Accordingly, Mr. Minzer's appeal must fail.

Judgment

36. The appeal is dismissed, and Judgment No. UNDT/2021/153 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24th day of March 2023 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Knierim, Presiding	Judge Sandhu	Judge Murphy

Judgment published and entered in the Register on this 2nd day of May 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar