



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

Judgment No. 2024-UNAT-1419

**Nicole Wynn
(Respondent/Applicant)**

v.

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

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Gao Xiaoli Judge Leslie F. Forbang
Case No.:	2023-1801
Date of Decision:	22 March 2024
Date of Publication:	29 April 2024
Registrar:	Juliet E. Johnson

Counsel for Ms. Wynn: Self-represented

Counsel for Secretary-General: Patricia C. Aragonés

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. Ms. Nicole Wynn, a staff member at the Administrative Law Division, Office of Human Resources, Department of Management Strategy, Policy and Compliance (DMSPC), contested two decisions made in 2022 by the Department of Operational Support (DOS) relating to her education grant entitlements for the 2021-2022 and 2022-2023 academic years (contested decisions). Ms. Wynn filed a motion on 15 April 2023 seeking an extension of time to file an application to challenge the contested decisions.
2. By Order No. 072 (NBI/2023), the United Nations Dispute Tribunal (UNDT) granted Ms. Wynn's motion for an extension of time to file an application (impugned Order or Order).¹
3. The Secretary-General appeals the impugned Order to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) on the grounds that the Secretary General was not provided with an opportunity to be heard on the motion and the Dispute Tribunal did not consider whether exceptional circumstances existed to warrant the extension of time.
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal.

Facts and Procedure

5. On 5 October 2022, Ms. Wynn submitted a claim for an education grant for the 2021-2022 academic year along with her request for an education grant advance for the 2022-2023 academic year.²
6. On 7 October 2022, she was informed of the first contested decision not to pay her a portion of the requested education grant advance for the 2022-2023 academic year.³ A Human Resources Assistant with DOS (HRA/DOS) advised her that the fees in question were not admissible per Administrative Instruction ST/AI/2018/1 (Education grant and related benefits).
7. On 10 November 2022, Ms. Wynn was informed of the second contested decision to recover a portion of the education grant advance she had received for the 2021-2022 academic

¹ Order on the Applicant's Motion for an extension of time to file an application, dated 17 April 2023, in UNDT's case of *Wynn v. Secretary-General of the United Nations*.

² 18 January 2023 letter from the Under-Secretary-General for Management Strategy, Policy and Compliance, pages 1-2 (Annex 2 to the appeal).

³ *Ibid.*

year.⁴ The HRA/DOS advised her that the Organization would recover USD 1,364.52 of the advance received.

8. On 6 December 2022, Ms. Wynn requested management evaluation of the contested decisions.⁵ On 10 January 2023, following the request of the Management Evaluation Unit (MEU) for further clarification on the disputed fees, she directed the MEU to the school's website providing a description of these fees.⁶

9. On 15 April 2023, Ms. Wynn filed a motion with the Dispute Tribunal, seeking an extension of time to file an application to challenge the contested decisions.⁷

10. The Dispute Tribunal did not request the Secretary-General's response to the motion.

The impugned Order

11. By Order No. 072 (NBI/2023) dated 17 April 2023, the Dispute Tribunal granted Ms. Wynn's motion and ordered her to file an application and supporting documents via the Court Case Management System (CCMS) into the existing record for Case No. UNDT/NBI/2023/037 on or before 3 July 2023.

12. Citing Article 8(3) of its Statute, the Dispute Tribunal noted that Ms. Wynn's reason for requesting an extension of time was that she has been on extended sick leave since she received the MEU's response dated 18 January 2023 and expected to remain on sick leave until the beginning of June 2023.⁸ She averred that due to her ill health, she had neither the physical nor the mental capacity to concentrate on litigating this matter during the 90-day statutory period for filing an application. Consequently, she sought additional time until 3 July 2023 to prepare her application after she returns to work.

13. The Dispute Tribunal granted Ms. Wynn's request for the extension in the interest of fairness and justice.⁹

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*, page 2.

⁷ Impugned Order, para. 1.

⁸ *Ibid.*, paras. 2-3.

⁹ *Ibid.*, para. 4.

Procedure before the Appeals Tribunal

14. On 17 May 2023, the Secretary-General filed an appeal of the impugned Order with the Appeals Tribunal, to which Ms. Wynn filed an answer on 19 June 2023.

Submissions

The Secretary-General's Appeal

15. The Secretary-General argues that the appeal is receivable as the Dispute Tribunal has “clearly exceeded its jurisdiction or competence” because it disregarded the principles of natural justice and due process. Further, the Order contravenes UNAT jurisprudence and relates to the fundamental integrity of the judicial process. Justice to the parties can only be done through intervention by the Appeals Tribunal at this stage of the UNDT’s proceedings. Moreover, the appeal is necessary to reserve the right to appeal a final judgment on that ground if the UNAT distinguishes the impugned Order from the order on anonymity in *AAE*.¹⁰

16. The Secretary-General contends that the UNDT exceeded its competence when it issued the Order without first providing the Secretary-General an opportunity to be heard. Had the UNDT acted in accordance with its Practice Direction No. 5 on filing of motions and responses, and the principles of natural justice and due process, the Secretary-General would have urged the UNDT not to grant the extension until 3 July 2023 and would have advanced various submissions.

17. The Secretary-General adds that those submissions would have included arguments that Ms. Wynn had not shown the existence of exceptional circumstances and that her claim about the request not being prejudicial to the Secretary-General was speculative. For example, she had not provided proof that sick leave had been granted at the time of her motion, nor provided any medical documentation in support of the extent of the extension or any other reason, other than her own assessment, as to why she was precluded from filing the application in time. Not requesting a response to the motion meant that the UNDT might not have had all the information for making its determination on the existence of exceptional circumstances. It based its decision solely on Ms. Wynn’s averments.

18. The Secretary-General argues that the UNDT exceeded its competence and erred in law by granting Ms. Wynn’s motion without considering whether exceptional circumstances existed, or,

¹⁰ *AAE v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332, para. 150.

if such consideration may be inferred, without providing its reasoning. The Appeals Tribunal has held that health problems and illness are not, *per se*, exceptional circumstances. She provided no explanation as to the nature of her illness and its effects. The UNDT could have granted a short extension, if necessary, to enable substantiating her request. It failed to consider whether her stated reasons constituted exceptional circumstances justifying an extension. The UNDT's competence under Article 19(1) of its Rules of Procedure is limited by Article 8(3) of its Statute.

19. The Secretary-General requests the Appeals Tribunal to annul the impugned Order and set a new deadline for filing an application before the Dispute Tribunal and allow expedited consideration of the appeal.¹¹

Ms. Wynn's Answer

20. Ms. Wynn requests that the Appeals Tribunal dismiss the appeal.

21. She argues that the appeal is extraordinary. The Secretary-General is in receipt of several medical certificates reflecting multiple diagnoses supporting the sick leave request and has not disputed her averment or alleged any harm resulting from the impugned Order.

22. Ms. Wynn submits that the appeal is not receivable. The Secretary-General has not shown that the UNDT exceeded its competence. An interlocutory appeal may only be taken against decisions made during the proceedings. The proceedings had not commenced. In any event, the Secretary-General has not shown a jurisdictional breach warranting interlocutory relief. The impugned Order was well within the UNDT's competence and jurisdiction. The suggestion that the principles of fairness and justice do not apply to the UNDT's exercise of discretion under Article 8(3) of its Statute is unfounded.¹²

23. Ms. Wynn states that the Secretary-General does not state on what grounds her motion would have been opposed. The evidentiary burden that the Secretary-General seeks to impose to demonstrate her circumstances would go beyond what is normally required. Requests for

¹¹ Subsequent to the filing of this appeal, Ms. Wynn filed her application with the UNDT in July 2023, to which the Secretary-General filed a reply in August 2023.

¹² Citing UNAT Order No. 374 (2020) in the case of *Zong v. Secretary-General of the United Nations*, Ms. Wynn notes that the Appeals Tribunal has invoked the same principles in granting requests for extension of time to file appeals.

extension of time are to be succinct and not intended to include medical documentation or testimony.

24. Ms. Wynn contends that the duration of the extension of time was also reasonable.¹³ She was ill with multiple diagnoses for the entire 90-day period provided for filing the application. Moreover, the Secretary-General does not allege or demonstrate any harm or articulate any concrete grievance caused by the impugned Order.¹⁴ The Secretary-General does not seek an opportunity to be heard.

25. Ms. Wynn argues that the appeal is vexatious as it only serves to protract the litigation before the UNDT and to waste time and resources, including hers.

Considerations

26. The primary issue is whether the appeal of the interlocutory Order of the Dispute Tribunal is receivable.

27. Article 2(1)(a) of the Appeals Tribunal Statute provides that 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 (...) [e]xceeded its jurisdiction or competence”.¹⁵

28. The Appeals Tribunal has previously and generally held that appeals against interlocutory orders or decisions of the Dispute Tribunal are not receivable as these orders are not “judgements” under Article 2(1)(a) unless the appellant can show that the Dispute Tribunal has “clearly exceeded its jurisdiction or competence”.¹⁶ Further, even if the Dispute Tribunal makes an error of law, if the matter can be properly raised later in the appeal against the final judgment on the merits, the Appeals Tribunal need not allow the appeal against the interlocutory decision.¹⁷

¹³ Citing UNAT Order No. 346 (2019) in the case of *Alkarazoun v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Ms. Wynn submits that the Appeals Tribunal has granted a comparable extension of time to file an appeal.

¹⁴ Citing *Saffir and Ginivan v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-466, paras. 15-18, Ms. Wynn submits that harm is a necessary requirement of any appeal.

¹⁵ Emphasis added.

¹⁶ *Reilly v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-975, para. 29; *Yves P. Nadeau v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1058, para. 27.

¹⁷ *Nadeau* Judgment, *op. cit.*, para. 27 (internal citation omitted).

29. In the present case, the Secretary-General says the Dispute Tribunal “clearly” exceeded its jurisdiction or competence when it issued the Order without first providing him with an opportunity to be heard.

30. Although Article 8(3) of the Dispute Tribunal’s Statute gives the Tribunal permission to “decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases”, the Dispute Tribunal issued the impugned Order without the “adversely-affected party being heard and without authority to do so.”¹⁸

31. Paragraph 6 of the Dispute Tribunal’s Practice Direction No. 5 on filing of motions and responses provides that a party opposing a motion may file a response to the motion. We have previously held that “[t]his implies, necessarily, that the motion will be served on or otherwise brought to the attention of the other party so that this right of response can be acted upon”.¹⁹ Therefore, we accept that the Dispute Tribunal did not technically comply with its own Practice Direction in issuing the Order and may have strictly violated the principles of natural justice and due process by failing to give the Secretary-General adequate notice of the motion and an opportunity to reply. However, we find this is not fatal to the process in this instance.

32. We must also consider whether such Order should still have been made after consideration of the Secretary-General’s potential submissions on the motion. In the motion, Ms. Wynn averred that she had neither the physical nor the mental capacity to litigate the matter during the 90-day statutory deadline. The Dispute Tribunal accepted this in granting the Order and it is difficult to see how the Secretary-General could have provided evidence or submissions to the contrary on this point, given that, on appeal, the Secretary-General did not submit any such evidence. In particular, the Secretary-General on appeal did not provide any evidence to refute Ms. Wynn’s assertion that she was on “an extended sick leave beyond the expiration of [her] home leave on 31 January 2023”, i.e. at the time of filing her motion, nor deny the veracity of her assertion.

33. The Secretary-General says the Dispute Tribunal exceeded its competence when it failed to consider whether “exceptional circumstances” existed before issuing the Order. We note that the learned Judge granted the application “[i]n the interest of fairness and justice”.

¹⁸ *AAE v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1332, para. 151.

¹⁹ *Ibid.*

It is correct that the learned Judge did not make an explicit finding that there were “exceptional circumstances” in this case. However, it is clear from the reading of the reasons provided in the Order that the learned Judge considered Ms. Wynn’s submissions provided to support the extension of time and opined that this amounted to exceptional justification to grant the extension. In other words, it would have been unfair and unjust to not grant the extension of time in these circumstances.

34. Despite a strict lack of procedural fairness and explicit finding on “exceptional circumstances”, the question is whether this amounted to the Dispute Tribunal “clearly” exceeding its jurisdiction and competence. We find that it does not.

35. This is particularly true, given the general authority granted to the Dispute Tribunal pursuant to Article 19(1) of the UNDT’s Rules of Procedure that it “may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”. We find the Dispute Tribunal properly exercised its discretion in this regard and any procedural error was *de minimis* in the sense it is unclear that the UNDT would have come to a different conclusion with the Secretary-General’s submissions on the motion.

36. Therefore, the appeal is dismissed.

Judgment

37. The Secretary-General's appeal is dismissed.

Original and Authoritative Version: English

Dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Gao

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 29th day of April 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar