



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

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Judgment No. 2024-UNAT-1420

**Daljeet Singh Bagga**  
**(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge Nassib G. Ziadé Judge Graeme Colgan
Case No.:	2023-1819
Date of Decision:	22 March 2024
Date of Publication:	29 April 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Amanda Stoltz

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Mr. Daljeet Singh Bagga, a staff member of the United Nations Secretariat in New York, filed an application to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting a decision of the United Nations Staff Pension Committee (UNSPC) that determined he was incapacitated for further service and was entitled to a disability benefit (the contested decision).
2. By Judgment No. UNDT/2023/057 (the impugned Judgment), the Dispute Tribunal determined that the application was not receivable as the Tribunal has no jurisdiction to undertake a judicial review of a decision of the UNSPC.<sup>1</sup> Mr. Bagga appeals to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
3. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment. We suggest, however, that the UNSPC, on Mr. Bagga's request, consider whether there is good reason to accept his request for review beyond the deadline set out in Section K.5 of the Regulations, Rules, and Pension Adjustment System of the United Nations Joint Staff Pension Fund<sup>2</sup> (the Regulations) or, if the UNSPC has already taken a decision upon review, that Mr. Bagga consider initiating an appeal of the UNSPC's decision before the Standing Committee which can then consider whether there is good cause to accept the appeal beyond the deadline prescribed in Section K.8(a) of the Regulations.

**Facts and Procedure**

4. Mr. Bagga served 30 years with the Organization, mostly in United Nations peacekeeping field operations.<sup>3</sup> He says from 1993 to 2023, he served in nearly 12 conflict and war-torn peace operations throughout the world.
5. Having reached his normal retirement age, Mr. Bagga intended to retire upon reaching his mandatory retirement age of 65 years on 31 August 2023.<sup>4</sup>

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<sup>1</sup> *Bagga v. Secretary-General of the United Nations*, UNDT's Judgment dated 20 May 2023.

<sup>2</sup> Distr. General JSPB/G.4/Rev.27, applicable in 2023.

<sup>3</sup> Appeal brief, para. 3.

<sup>4</sup> The Secretary-General's answer, paras. 2 and 3.

6. However, on 24 April 2023, Mr. Bagga was informed of the contested decision.<sup>5</sup> The Secretary of the UNSPC advised him as follows:

I wish to inform you that the United Nations Staff Pension Committee (UNSPC), at its 344th meeting held on 12 April 2023, determined that you are incapacitated for further service and consequently entitled to a disability benefit under article 33 of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF [or Pension Fund]). Payment of your disability benefit will take effect following separation from your employing organization.

In view of the fact that you have already reached the normal retirement age applicable in your case, you have the option of a retirement benefit under article 28 of the UNJSPF Regulations, with the possibility of a lump sum and a reduced lifetime monthly pension, instead of the disability benefit under article 33, which is a lifetime monthly pension only. In that regard, we enclose for your information estimates of your disability benefit and retirement benefit. Please note that the estimates are unaudited and based on information provided by your employing organization. An accurate determination of your benefit amount can only be made after your separation from service has actually taken place, at which time all data will be audited.

Please note that your choice of benefit may also affect your separation entitlements and eligibility for After Service Health Insurance (ASHI). In that regard, you should speak with your human resources office regarding your separation entitlements and ASHI eligibility.

...

The UNSPC decided that, in accordance with UNJSPF Administrative Rule H.6(a), your disability benefit will not be subject to further review due to age. However, should you engage in, or anticipate engaging in, paid employment while in receipt of the disability benefit, please inform the [Pension] Fund accordingly.

7. On 11 June 2023, Mr. Bagga filed an application with the UNDT.<sup>6</sup>

### *The impugned Judgment*

8. In the impugned Judgment, the Dispute Tribunal found that the United Nations Secretary-General was not the Chief Administrative Officer of the UNSPC, and the UNSPC had not concluded a special agreement with the Secretary-General accepting the Dispute Tribunal's jurisdiction.<sup>7</sup> The Dispute Tribunal pointed out that "decisions of UNSPC fall under the

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<sup>5</sup> Judgment No. UNDT/2023/065, para. 1 (Annex 2 to the appeal); letter of 24 April 2023 (Annex 5 to the appeal).

<sup>6</sup> Impugned Judgment, para. 1.

<sup>7</sup> *Ibid.*, paras. 3-4.

jurisdiction of the United Nations Appeals Tribunal”.<sup>8</sup> Accordingly, the Dispute Tribunal held it had no jurisdiction to undertake a judicial review of the alleged contested decision.

### **Submissions**

#### **Mr. Bagga’s Appeal**

9. Mr. Bagga requests that the Organization show some compassion and understanding towards his problems and maintain his full pay from September 2022 until 31 August 2023. In the alternative, he requests that, for the period between April 2023 and 31 August 2023, the Organization should consider paying him an indemnity instead of his salary, and increase his pay from half pay to full pay from September 2022 to April 2023.<sup>9</sup> The Organization is required to place him on sick leave with either full pay or half pay pending a decision on his claim under Appendix D of the Staff Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations.

10. Mr. Bagga argues that he had not asked or opted to receive a disability benefit. The Secretariat had taken the contested decision with the Medical Services Division and the Executive Office. In his previous communication with the Human Resources Department, he had informed them that, as a veteran United Nations peacekeeper, he was not interested in the disability benefit. His goal was to recover and return to work. In 2022, while his claim under Appendix D for work-related illnesses was pending, he suffered further health issues. The management of the Human Resources Department and the Medical Services Division were aware of his medical condition but did not approve additional sick leave. He says that his placement on disability has caused him tremendous hardship, stress, and agony.<sup>10</sup>

11. Mr. Bagga contends that having served the Organization for 30 years with distinction, he was treated unfairly just a few months before retirement. The Dispute Tribunal did not bother to provide guidance on his case. The judge failed to consider that he was self-represented. The UNDT was dismissive and arrogant towards his application. Likewise, the Management Evaluation Unit

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<sup>8</sup> *Ibid.*, para. 3.

<sup>9</sup> Mr. Bagga submits that from September 2022 to April 2023, he was on sick leave with half pay.

<sup>10</sup> Mr. Bagga mentions adverse effects on his recovery, visa status, relocation plans, education of his children, home lease arrangements and income. He also provides an overview of his illnesses.

(MEU) did not investigate his case in a rational and fair manner.<sup>11</sup> He does not understand which body is supposed to give him the administrative decision in order for the MEU and the UNDT to act.

12. Mr. Bagga notes that, although the monthly amounts of the disability option and the pension option are the same, the pension option allows for a partial lump sum while the disability benefit is monthly only with no lump-sum portion. Therefore, if he accepts the disability benefit, he will forever lose the lump-sum portion. On the other hand, if he chooses the retirement pension benefit instead, he could be unfairly denied special sick leave for extended illness until 31 August 2023. The Pension Fund should not deprive him of the lump-sum portion which he may require. Instead of explaining the rationale, the Pension Fund has only provided vague and unclear replies.

13. Mr. Bagga argues that the consequence of the contested decision was that he was separated arbitrarily and without due process. It is incomprehensible why the Human Resources Department did not brief him about the disadvantages of filing his disability-related claim or assist him to be placed on special leave with pay, pending the determination on his claim. He was under the assumption that the contested decision would be enforced only after he reaches his mandatory retirement age. The Administration did not take his interests into consideration.

14. He says that he refuses to accept the contested decision and rejects the arbitrary separation, as in his simultaneous claim under Appendix D he should have received the additional sick leave credits and full salary until his date of retirement rather than receiving this disability benefit pursuant to the contested decision.

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

15. The Secretary-General requests that the Appeals Tribunal uphold the impugned Judgment and dismiss the appeal.

16. The Secretary-General contends that the UNDT correctly dismissed the application as not receivable. Decisions of the UNSPC fall under the jurisdiction of the Standing Committee of the United Nations Joint Staff Pension Board. It is incumbent upon the staff member to clearly

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<sup>11</sup> After the issuance of the impugned Judgment, from 23 to 29 June 2023, Mr. Bagga corresponded with the MEU and submitted a request for management evaluation (MER). On 29 June 2023, the MEU noted that as his MER did not relate to a final administrative decision, the MER was not receivable.

identify the administrative decision that is contested. As correctly identified by the UNDT, the contested decision was the 24 April 2023 decision taken by the UNSPC concerning Mr. Bagga's incapacity for further service and entitlement for a disability benefit.

17. The Secretary-General argues that the appeal fails to demonstrate any error warranting intervention by the UNAT. In his appeal, Mr. Bagga largely repeats the submissions presented before the UNDT. His allegations against the MEU and the UNDT are without merit. It is the responsibility of every staff member to be aware of the applicable procedures in the context of the administration of justice at the United Nations. Nevertheless, the Administration had made available comprehensive guidance materials, including the options for both informal and formal dispute resolution. In addition, Mr. Bagga's exchange with the MEU, attached to his appeal as Annex 3, post-dated the issuance of the impugned Judgment and only serves to further demonstrate the non-receivability of his application. In sum, he makes no attempt to identify any error in the impugned Judgment.

### **Considerations**

18. The Appeals Tribunal's jurisdiction to review the decisions of the Pension Fund is set out in Article 2(9) of the Appeals Tribunal's Statute that provides, in part:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal of a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund (...).

In such cases, remands, if any, shall be to the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board.

19. Article 2(9) specifically provides that the Appeals Tribunal can only review a decision of the Standing Committee of the Pension Board. In this present case, Mr. Bagga is contesting a decision of the UNSPC and not the Standing Committee.

20. It is important to note that the Pension Fund is not part of the United Nations Secretariat but was established by the General Assembly as an inter-agency body. It is administered and managed not by the Secretary-General but by the Chief Executive Officer (CEO) of the Pension Fund, who in turn is directly responsible to the United Nations Joint Staff

Pension Board and ultimately to the General Assembly.<sup>12</sup> As the Secretary-General does not have authority over the management of the Pension Fund, the procedures involving management evaluation by the Administration and adjudication of the application before the Dispute Tribunal do not apply to decisions of the Pension Fund or the Board.

21. The Regulations set out the procedure for appealing the decisions of the Pension Fund.

22. Generally, the first step to challenging a decision of the Pension Fund is to request a review of the decision by the UNSPC. The Appeals Tribunal has previously held that this review is similar to management evaluation and the request is a mandatory first step in the appeal process.<sup>13</sup> This requirement assures that there is an opportunity to quickly resolve a person's complaint or dispute without the need for judicial intervention.<sup>14</sup>

23. When the outcome of this review is not satisfactory, the staff member can ordinarily appeal the UNSPC's decision to the Standing Committee acting on behalf of the Board. The Standing Committee plays a role similar to that of the Dispute Tribunal, as first instance to the case. Subsequently, an appeal to the Appeals Tribunal against this decision of the Standing Committee can be filed.<sup>15</sup> There is no authority for management evaluation by the Administration or receiving an application by the Dispute Tribunal.

24. Section K of the Regulations outlines the internal review and appeal procedures for the decisions of the Pension Fund. It establishes that the review shall be initiated by delivery to the Secretary of the UNSPC, or to the Secretary of the Pension Board if the review is by the Standing Committee, of a notice as follows:

K.5. A review shall be initiated by delivery to the secretary of the staff pension committee, or to the Secretary of the Board if the review is by the Standing Committee, within ninety days of receipt of notification of the disputed decision, of a notice in writing stating the points of fact or of law contained in the decision which are disputed, and the grounds upon which the request for the review is founded; the staff pension

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<sup>12</sup> *Terragnolo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-517, para. 27 (internal citation omitted).

<sup>13</sup> *Richards v. United Nations Joint Staff Pension Board*, Judgment No. 2020-UNAT-1010, para. 16, citing *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31, and *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

<sup>14</sup> *Richards* Judgment, *op. cit.*, para. 16, citing *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13, in turn citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, in turn citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and citations therein.

<sup>15</sup> *Richards* Judgment, *op. cit.*, para. 17.

committee, or the Standing Committee as the case may be, may nevertheless, upon good cause shown, accept for review a request notice of which was delivered after the expiry of the period prescribed above.

25. Section K.8(a) provides that the subsequent appeal of the UNSPC's decision taken upon review shall be initiated by delivery to the Secretary of the Board, of a notice as follows:

An appeal to the Standing Committee, acting on behalf of the [Pension] Board, from the decision of a Staff Pension Committee taken upon review shall be initiated by delivery to the Secretary of the [Pension] Board, within sixty days of notification of the decision appealed against, of a notice in writing stating the points of fact or of law contained in the decision which are disputed, and the grounds upon which the appeal is founded; the Standing Committee may nevertheless, upon good cause shown, agree to consider an appeal notice of which was delivered after the expiry of the period prescribed above.

26. In the present case, Mr. Bagga did not request a review by the UNSPC or file an appeal to the Standing Committee, but rather filed a request for management evaluation and then applied to the Dispute Tribunal. As such, he did not follow proper procedure.

27. He contests a decision of the UNSPC that has not been subject to internal review, or appeal to the Standing Committee acting on behalf of the Pension Board. As we have previously held, the Appeals Tribunal is "not ordinarily allowed to intervene in matters that have not previously been subject to internal reassessment by the Pension Fund."<sup>16</sup>

28. Further, Section K.8(b) reiterates the mandatory requirement that an "appeal to the United Nations Appeals Tribunal from the decision of the Standing Committee, acting on behalf of the [Pension] Board, shall be in accordance with the Statute and Rules of the Tribunal".

29. Therefore, the Dispute Tribunal did not err when it held that it did not have jurisdiction to undertake a judicial review of the contested decision in these circumstances and, therefore, that the application was not receivable. As such, this appeal must fail.

30. Further, although the Appeals Tribunal has jurisdiction to receive the present appeal as it is an appeal of a UNDT judgment, the Appeals Tribunal cannot consider the underlying claims of Mr. Bagga because he did not request prior review by the Standing Committee.

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<sup>16</sup> *Richards* Judgment, *op. cit.*, para. 20.



Article 2(9) of the Appeals Tribunal Statute restricts our jurisdiction over individual staff pension matters to reviewing the decisions of the Standing Committee.

31. However, Mr. Bagga may have misinterpreted the Dispute Tribunal when it stated in paragraph 3 of the Judgment: “Instead, decisions of UNSPC (United Nations Staff Pension Committee) fall under the jurisdiction of the United Nations Appeals Tribunal (...)”. He could have understood that his mistake was coming to the Dispute Tribunal instead of the Appeals Tribunal. He could have misinterpreted this statement that he should have filed with the Appeals Tribunal directly, rather than following the internal review process *and then* turning to the Appeals Tribunal.

32. We note that theoretically the UNSPC has the right to waive the 90-day deadline for review under Section K.5 as it “may nevertheless, upon good cause shown, accept for review a request notice of which was delivered after the expiry of the period prescribed above”.

33. Given that Mr. Bagga is self-represented and as such may have misinterpreted his available legal remedies in challenging the contested decision, we suggest that the UNSPC, on Mr. Bagga’s request, consider whether there is good cause to accept his request for review beyond the deadline set out in Section K.5 or, if the UNSPC has already taken a decision upon review, that Mr. Bagga consider initiating an appeal of the UNSPC’s decision to the Standing Committee to allow the Standing Committee to consider whether there is good cause to accept the appeal beyond the deadline set out in Section K.8(a).

**Judgment**

34. Mr. Bagga's appeal is dismissed, and Judgment No. UNDT/2023/057 is hereby affirmed.

Original and Authoritative Version: English

Dated this 22<sup>nd</sup> day of March 2024 in New York, United States.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Ziadé

*(Signed)*

Judge Colgan

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

*(Signed)*

Juliet E. Johnson, Registrar