



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

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Judgment No. 2024-UNAT-1432

**Fernando Miguel Salon**  
**(Appellant)**

v.

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

**JUDGEMENT**

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Before:	Judge Graeme Colgan, Presiding Judge Gao Xiaoli Judge Kanwaldeep Sandhu
Case No.:	2023-1814
Date of Decision:	22 March 2024
Date of Publication:	6 May 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Patricia C. Aragonés

**JUDGE GRAEME COLGAN, PRESIDING.**

1. Fernando Salon, a former United Nations' staff member, appeals against Summary Judgment No. UNDT/2023/029 of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissing as not receivable his claims of sustained and serious mistreatment in his employment (impugned Judgment). That decision was made on two grounds. First, the UNDT concluded that Mr. Salon had not established the making of an administrative decision by the Secretary-General because Mr. Salon had not proven the making of a formal complaint about the treatment he alleged he had suffered. Second, and in any event, Mr. Salon had not ever sought management evaluation of an administrative decision, a necessary statutory prerequisite to having his complaint adjudicated by the Dispute Tribunal.<sup>1</sup>

2. For the reasons set out below, we dismiss Mr. Salon's appeal.

*Relevant Events*

3. On 27 June 2022, three days before the conclusion of his employment by expiry of his fixed-term appointment with the Internal Audit Division, Office of Internal Oversight Services (OIOS) on 30 June 2022, Mr. Salon lodged with the Organization a formal complaint of harassment and abuse of authority alleging long-term and serious misconduct towards him by various members of his supervisory and managerial staff. In addition to the details of these alleged events, Mr. Salon attached to his complaint some 62 separate documents which he said corroborated his allegations.<sup>2</sup>

4. The following day, on 28 June 2022, Mr. Salon filed a similar but not completely identical document with the UNDT in the form of an application to adjudicate upon his complaints and to grant him remedies.<sup>3</sup> In his UNDT application he asserted that he had sought management evaluation regarding his complaints on several dates which coincided with the dates on which he contended in his formal complaint to the Organization that he had

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<sup>1</sup> Management evaluation is the referral to the Organization's Management Evaluation Unit (MEU) (in 2024, the MEU was renamed to "Management Advice and Evaluation Section") of the staff member's complaint(s) for re-consideration of the impugned administrative decision(s) said to have been in non-compliance with a staff member's terms of appointment or contract of employment.

<sup>2</sup> Annex 2 to the Appeal.

<sup>3</sup> Annex 3 to the Appeal.

attempted previously to bring to notice and to have stopped the alleged harassment and abuse of authority.

5. As may be seen by this analysis of events in late June 2022, Mr. Salon did not await an administrative decision by his employer of his formal complaints to it before filing his claims with the UNDT. Nor did he, therefore, seek management evaluation of any negative administrative decision affecting him and made by the Organization before filing with the UNDT. As will be seen, this attempt to short-circuit the deliberative and required process in such cases has misfired.

6. On 24 May 2023, Mr. Salon received an assurance by e-mail that his complaints submitted on 27 June 2022 were being assessed, that progress was being made in this exercise in accordance with the applicable legal framework, and that the Critical Incident Response Section of the Administrative Law Division of the Office of Human Resources of the Department of Management Strategy, Policy and Compliance (DMSPC) would contact him again “as soon as possible”.<sup>4</sup>

7. By letter dated 23 January 2024, Mr. Salon was eventually informed that following a preliminary assessment of his complaint it had been decided that an investigation into his complaint was not warranted and that therefore the matter was closed.<sup>5</sup>

#### *UNDT Judgment*

8. After Mr. Salon filed his application with the UNDT on 28 June 2022, on 12 July 2022 the Secretary-General moved for summary judgment against him without being required to plead substantively to Mr. Salon’s claims. The motion for summary judgment was based on the contention that the proceeding was not receivable by the UNDT as a matter of law. This was dealt with by the UNDT on 18 May 2023 when the Secretary-General’s motion for summary judgment was granted and Mr. Salon’s case was dismissed by the UNDT. This Judgment preceded by about a week the Administration’s confirmation that Mr. Salon’s complaints were still under consideration by it.

9. In dismissing the proceeding summarily, the UNDT referred to Article 9 of its Rules of Procedure. This permits a party to move for summary judgment of a proceeding “where there

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<sup>4</sup> Annex 4 to the Appeal.

<sup>5</sup> Annex 1 to Motion for Additional Evidence dated 31 January 2024 (Second Motion).

is no dispute as to the material facts of the case and the party is entitled to judgment as a matter of law". The UNDT relied on Article 9 in summarily dismissing Mr. Salon's proceedings concluding that there had been neither an administrative decision of his complaints about his treatment, nor a request by him for management evaluation of such a decision.

*Appeal*

10. On 14 June 2023, Mr. Salon filed an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). On 14 August 2023, the Secretary-General filed his answer, submitting, among other things, that Mr. Salon had included documents in the appeal which, contrary to Article 2(5) of the UNAT Statute, were not properly before the Appeals Tribunal.

11. On 17 August 2023, Mr. Salon filed a motion for additional pleadings (First Motion), requesting that the documents in question, eight annexures to the original appeal, be admitted due to exceptional circumstances. By Order No. 532 dated 8 September 2023, the UNAT granted the First Motion.

12. On 31 January 2024, Mr. Salon filed his Second Motion asking that the UNAT admit additional documents. These were: the preliminary assessment by DMSPC of Mr. Salon's complaint; a letter by Mr. Salon to DMSPC in response; and a list, compiled by Mr. Salon, of documents presented before the UNDT.<sup>6</sup>

13. The Appeals Tribunal granted this Second Motion, in part. It admitted evidence of the fact and date of the Organization's decision declining to address Mr. Salon's allegations as requested by him on grounds that this was relevant to his appeal; that it had arisen in exceptional circumstances since the impugned Judgment; that it had been unknown until then; and that it was in the interests of justice and the efficient and expeditious resolution of the proceedings to receive these.<sup>7</sup>

14. Because of the way in which we have decided Mr. Salon's substantive appeal in this Judgment, it would not be proper for us to comment on the merits of any claims he might now bring first to management evaluation or subsequently to the UNDT based on that decision of DMSPC. If Mr. Salon now brings a timeous request for management evaluation and, if

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<sup>6</sup> *Fernando Salon v. Secretary-General of the United Nations*, Order No. 553 (2024), para. 4.

<sup>7</sup> *Ibid.*, para. 8.

dissatisfied with the result of this, a timeous application against the decision, these issues may be for consideration by the UNDT at first instance. In these circumstances we address only the impugned Judgment.

### **Submissions**

#### **Mr. Salon's Appeal**

15. Mr. Salon asks the Appeals Tribunal to set aside the impugned Judgment on non-receivability of his application, and that his full case be analysed substantively.

16. He asserts that the UNDT has erred on a question of fact resulting in a manifestly unreasonable decision. He contests the UNDT's determination that his case was not receivable due to the lack of a management evaluation request. He argues that the real and actual reason was the lack of response from DMSPC, the Chef de Cabinet (CdC) and the Executive Office of the Secretary-General (EOSG) to his "case/complaint presented on 27 June 2022".

17. Mr. Salon submits that his case is about "long-term harassment, abuse of authority, humiliation and retaliation suffered during the last four years of my career, never responded nor resolved by OIOS top management in its role of Management Evaluators to avoid the condition requested by the UNDT Statute on administrative decisions to allow judgment". He also emphasises that the title of his UNDT application was "Complaint of Harassment and Abuse of Authority".

18. Mr. Salon submits that a response to his management evaluation is mandated under applicable law, that management (DMSPC, the CdC and the EOSG) failed to respond and that he should not have to bear the consequences of their omissions.

19. Mr. Salon says that he reminded DMSPC, the CdC, and the EOSG by e-mails on both 19 and 23 May 2023 of his complaint and received acknowledgements of receipt of these reminders.

20. He submits that he has made many requests, claims and complaints to OIOS management, including on 15 June 2018, 10 May 2020, 27 August 2020 and 27 July 2021. Evidence of these requests was provided in his annexures to his application to the UNDT. Mr. Salon submits that he provided 62 pieces of evidence to the UNDT regarding his case. He

contends that this evidence was ignored by the UNDT when it stated at paragraph 17 of its Judgment that “[t]here is no evidence that he ever filed a complaint of harassment and abuse of authority against his supervisors”.

21. Mr. Salon submits that the UNDT’s two grounds for finding his application non-receivable were not valid in his case because there was evidence that he had made complaints in writing about harassment, abuse of authority, humiliation and retaliation both to OIOS “top management” and to DMSPC, the CdC, and the EOSG. He explains that he did not submit to the UNDT the “original complaint” that he sent on 27 June 2022 because there had been no response to it.

22. He argues that the UNDT erred in holding that there was no administrative decision in his case. He submits that this (a written administrative decision) is not applicable to his case because a perpetrator of serious misconduct like harassment and humiliation “does not document such things in writing”.

23. Mr. Salon submits that he has completed all administrative efforts required in order to pursue his case. He states that he did his part entirely by requesting management evaluation “to all authorities”. He argues that the Administration’s failure to respond to his “complaints/case and [his] request of Management Evaluation” must not impede justice.

24. He summarises his case by saying that OIOS senior management, DMSPC, the CdC, and the EOSG, all in their roles of “Management Evaluators”, never responded to him in order to avoid the precondition required by the UNDT Statute on administrative decisions. He submits that this is an “administrative trick to avoid justice”.

25. As relief, Mr. Salon requests certain disciplinary measures be taken. Specifically, he requests that the OIOS Deputy Director receive exemplary disciplinary measures for his long-term prohibited conduct; the former OIOS Director should be notified about her inadmissible tolerance of harassment, humiliation, abuse of authority and retaliation; and the Under-Secretary-General for OIOS should be notified that a case like his should not be ignored and that proper corrective actions are expected of her.

26. Mr. Salon seeks compensation equivalent to “4.8 salaries by calculating ten percent of approximately 48 months of pain [and] suffering” that he says he experienced.

**The Secretary-General's Answer**

27. The Secretary-General submits that the UNDT correctly held that Mr. Salon's application was not receivable *ratione materiae* because he had failed to timeously request management evaluation as required by Staff Rule 11.2(a). The Secretary-General notes that the UNDT had no jurisdiction to consider the application, given that Article 8(1)(c) of the UNDT Statute predicates consideration of an application on the staff member previously submitting the impugned administrative decision for management evaluation.

28. The Secretary-General submits that the Appeals Tribunal's jurisprudence is well-settled that "the filing of a request for management evaluation is the *sine qua non* for the jurisdiction of the UNDT" and, where the applicant has not done so, "the UNDT lacks jurisdiction *ratione materiae* over the case".

29. The Secretary-General submits that it is undisputed that Mr. Salon had never requested management evaluation from the MEU in DMSPC, and it is the MEU that has the delegated authority to conduct management evaluations under Staff Rule 11.2. The Secretary-General points out that Mr. Salon does not dispute that he did not file a request for management evaluation with the MEU.

30. The Secretary-General points out that Mr. Salon says that he sought management evaluation from "OIOS top management in its role of management evaluators" but asserts that OIOS has no such authority.

31. The Secretary-General submits that as a former staff member, Mr. Salon was responsible for knowing the applicable Staff Regulations and Rules and ensuring compliance with them.

32. The Secretary-General contends that Mr. Salon is misguided when he claims that he completed all required administrative efforts by requesting management evaluation from all authorities. There is no legal basis to support the view that his various communications with "top management" constituted a management evaluation request for the purposes of Staff Rule 11.2(c).

33. The Secretary-General submits that the UNDT was correct to find, based on the record before it, that Mr. Salon had not filed a complaint of harassment and abuse of authority against his supervisors in accordance with the framework of ST/SGB/2008/5 or ST/SGB/2019/8. His complaint that he filed on 27 June 2022, one day before he filed his application with the UNDT,

was not included in his submissions before the UNDT.

34. The Secretary-General submits that even if one were to construe Mr. Salon's complaint of 27 June 2022 as constituting a formal complaint under ST/SGB/2008/5 or ST/SGB/2019/8, he still did not follow the established procedures set forth therein, which refer to Chapter XI of the Staff Rules.

35. The Secretary-General submits that the UNDT did not make a formal finding that Mr. Salon did not identify a contested administrative decision, and thus his arguments on this point cannot undermine the correctness of its Judgment.

36. The Secretary-General submits that there is no basis to grant any of the remedies requested because the UNDT correctly rejected the application as not receivable *ratione materiae*. The Secretary-General notes that the UNAT is not empowered to impose disciplinary measures. Moreover, there is no basis for an award of compensation given that there has been no illegality on the part of the Administration.

37. The Secretary-General submits that there is no merit to Mr. Salon's contention that his "complaint of harassment and abuse of authority" amounts to a request for management evaluation. This was a complaint of prohibited conduct. By contrast, a management evaluation request presupposes an identified pre-existing administrative decision. Mr. Salon did not identify such a decision in his complaint.

38. The Secretary-General claims that Mr. Salon has erroneously identified the Assistant Secretary-General for Human Resources (ASG/HR) as the Head of the MEU/DMSPC. The Secretary-General advises that the MEU does not report to the ASG/HR. Rather, the MEU reports directly to the Under-Secretary-General for DMSPC through the Director of Office. The e-mail of 27 June 2022 was thus not directed to the right authority for management evaluation.

39. The Secretary-General submits that even if the 27 June 2022 complaint was construed as a request for management evaluation, Mr. Salon's application would still be unreceivable because he filed his application with the UNDT on 28 June 2022, just one day later, and before the Administration was allowed thirty days to answer pursuant to Staff Rule 11.2(d). The Administration had until 27 July 2022 to respond, and Mr. Salon should have waited until 28 July 2022 to file his UNDT application. Accordingly, even under this scenario, his UNDT application was premature and not receivable.



40. The Secretary-General submits that admitting an application without allowing the Administration the opportunity to carry out management evaluation would render the requirement to seek management evaluation meaningless.

41. The Secretary-General concludes that the additional evidence adduced by Mr. Salon in his appeal confirms that there was no error in the UNDT's dismissal of his application as not receivable. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety. Should the Appeals Tribunal find that the application was receivable, the Secretary-General requests that the case be remanded to the UNDT for a consideration on the merits.

### **Considerations**

42. Mr. Salon's case suffers from a fundamental lack, or a comprehensive series of lacks, of appreciation and application of the applicable legal framework concerning such cases, including those of the UNDT and the UNAT. While the substantive justice of cases is important as he submits, so too must the procedural legal provisions be followed allowing such substantive decisions to be made. These are in place, and compliance with them essential, to ensure procedural justice to both parties, the staff member and the Administration. They cannot be ignored or avoided *ad hoc* or arbitrarily by the Tribunals as it seems Mr. Salon would have us do in this case. While Mr. Salon is clearly very frustrated by the long delays in having his complaints dealt with, that is not a ground for avoiding or short-circuiting the processes that must be undertaken before the Tribunals are accessible. We will explain why that is so.

43. These are gateway tests which, if their existence is challenged by the Organization as it was here, must be established by staff members to open the door to a substantive consideration by the UNDT of their complaints. These gateway qualifications exist to attempt to ensure that such complaints and disputes are dealt with first at the most immediate and prompt level of dispute resolution.

44. The statutory power to issue a summary judgment addressed in paragraph 9 above is based statutorily on the absence of any dispute about the material facts of a case. That has been interpreted and applied to mean a manifest absence of contested jurisdictional or foundational facts including, pertinently in this case, whether there was an administrative decision disadvantaging a staff member and whether management evaluation was sought within the time

prescribed for doing so. So, while there may or may not be dispute about Mr. Salon's treatment by his management, there is real doubt whether this was ever the subject of an adverse administrative decision. And there really can be no doubt that Mr. Salon failed to seek management evaluation by the MEU before purporting to issue these proceedings in the UNDT. By seeking summary judgment, the Secretary-General asserted this failure, and Mr. Salon was given an opportunity to establish that he had done so properly. He could not and, therefore, the UNDT held that there was no viable dispute about this material, indeed an essential, jurisdictional fact.<sup>8</sup>

45. Management evaluation of an impugned administrative decision is, as past judgments have confirmed, a process of internal review by the United Nations although independent of the decision-maker and the department in which the complainant staff member was engaged. The MEU was established separately for this purpose and to ensure this degree of independence from administrative decision-makers.

46. Submission of a request for management evaluation to the MEU is a mandatory step in a case such as this. Without such a request and either a decision thereon or a failure to decide the request within the statutory period for doing so, a complaint such as Mr. Salon's cannot be taken to the UNDT. Those are the clear rules of United Nations employment and neither the UNDT nor the UNAT can avoid or override them. Those rules are well-established and well-publicised in the Organization's Staff Regulations and Rules which a person in Mr. Salon's position is reasonably expected, if not to know, then at least to check.

47. Mr. Salon's failure to request management evaluation and to await either a decision thereof or a failure to decide that request as sometimes happens during the statutory period that the MEU has for doing so, meant that the UNDT correctly decided that it was without jurisdiction to consider the merits of Mr. Salon's then case.

48. Whatever Mr. Salon may consider should have been done by the Secretary-General about his alleged mistreatment, there was no reference to the MEU. Mr. Salon appears to say that he complained to senior management of his department about his treatment and that these complaints somehow substituted for MEU consideration of them.

49. The foregoing conclusion is enough to dispose of the appeal. We will, however, consider

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<sup>8</sup> Impugned Judgment, para. 18.

also the separate ground of appeal seeking to challenge the UNDT's conclusion that Mr. Salon did not establish the making of an administrative decision which, assuming a lawful reference to management evaluation, would have given the UNDT jurisdiction to examine the merits of Mr. Salon's claims.

50. Given the sequence of events outlined at the start of this Judgment, we can detect no error on the part of the UNDT in its conclusion that Mr. Salon did not establish an administrative decision by the Organization that "[was] alleged to be in non-compliance with [his] terms of appointment or [his] contract of employment".<sup>9</sup> That decision was based not on any conclusion about Mr. Salon's allegations of mistreatment but upon the absence of any administrative decision made in response to a formal complaint by Mr. Salon about this.

51. While Mr. Salon did make a complaint to the Organization about his alleged mistreatment, he did so one day before he filed his UNDT proceedings, but even then he did not bring this contemporaneous complaint to the Dispute Tribunal's attention. So, while Mr. Salon may, at best, have made a complaint, albeit only hours before filing in the UNDT, there was no administrative decision made in response to it that could have been the basis for his proceedings.

52. Put colloquially, if Mr. Salon did not put the complaint cart properly before the tribunal horse, then he put them side-by-side in which situation the UNDT proceedings could not progress or even get started. Also in these circumstances, Mr. Salon's lack of appreciation of the rules and the need to engage them sequentially, has proven to be a forensic roadblock for him. The UNDT concluded correctly that there was no administrative decision available to challenge in the proceedings when the latter had been issued before the former could have been made.

53. Although Mr. Salon has been unrepresented in these matters, that alone does not excuse his non-compliance with the Organization's Regulations and Rules and the UNDT's statutory Articles including the jurisdictional requirements for challenging allegations of mistreatment of staff. As the Secretary-General points out, it is a fundamental obligation of staff to be familiar with, or we would add at least familiar with how to access, relevant rules and procedures dealing with such matters. Nor can, as he appears to, a staff member simply propose that the relevant Regulations and Rules do not apply to him because of his particular circumstances or apply an untenable interpretation of those Regulations and Rules to justify his non-compliance with their

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<sup>9</sup> See Article 2(1)(a) of the UNDT Statute.

plain meaning.

54. The UNDT was correct to conclude that it was without jurisdiction to decide Mr. Salon's case on its merits because his complaints had not been evaluated managerially. However, the evidence is that, at least in late May 2023 and after the delivery of the impugned Judgment, the Secretary-General was still considering Mr. Salon's same serious complaints and no decision had been made about them by the Organization. As has now been recently revealed, that decision was apparently made on 23 January 2024, some 19 months after Mr. Salon's complaint was formally made. This administrative decision might now form the basis of a justiciable claim to be referred to management evaluation if regulatory time limits have been or are complied with.

55. Mr. Salon may (we put it no more strongly than this) yet have statutory rights to challenge this administrative decision with which he disagrees strongly by referring it for timely management evaluation in the first instance. If he is still dissatisfied with the outcome of requested management evaluation of his complaints, he has time-limited rights to bring his complaints to the UNDT for decision. Because these are live issues still apparently without resolution, we make no comment on the merits of Mr. Salon's claims and confine ourselves to the foregoing evaluation of the current position for the benefit of Mr. Salon as an unrepresented litigant.

56. Perhaps because of his lack of knowledgeable representation in a regulated and technical process, Mr. Salon's current proceedings before the UNDT were non-receivable but, as events have transpired, are at least potentially not the final word on them. We note the time, energy and expense to all concerned that has been wasted by what we suspect was a combination of Mr. Salon's lack of knowledge of procedures and may also have been his failure or refusal to seek and follow professional advice.

**Judgment**

57. Mr. Salon's appeal is dismissed, and Judgment No. UNDT/2023/029 is hereby affirmed.

Original and Authoritative Version: English

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

*(Signed)*

Judge Colgan Presiding

*(Signed)*

Judge Gao

*(Signed)*

Judge Sandhu

Judgment published and entered into the Register on this 6<sup>th</sup> day of May 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar