



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

Judgment No. 2013-UNAT-335

**Christensen
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Luis María Simón, Presiding Judge Inés Weinberg de Roca Judge Richard Lussick
Case No.:	2012-367
Date:	21 June 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Miles Hastie
Counsel for Respondent:	Paul Oertly

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Hanne Moll Christensen against Judgment No. UNDT/2012/094, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 27 June 2012 in the case of *Christensen v. Secretary-General of the United Nations*.

Facts and Procedure

2. The following facts are taken from Judgment No. 2012-UNAT-218, issued by the Appeals Tribunal on 16 March 2012 in another case filed by this Appellant:¹

... Ms. Christensen joined the Organization in 1984. On 14 October 1996, Ms. Christensen joined the International Criminal Tribunal for Rwanda (ICTR) in Arusha, Tanzania as a Training and Staff Welfare Assistant on a fixed-term appointment. In December 1998, Ms. Christensen contracted a rickettsial infection, also known as tick typhus, which resulted in severe medical complications and financial expenses and, ultimately, her retirement from service on medical grounds on 23 June 2003.

... On 16 April 1999, Ms. Christensen filed a claim for compensation in front of the [Advisory Board on Compensation Claims] (ABCC) under Article 2(a) of Appendix D to the Staff Rules for the unreimbursed expenses she had incurred as a result of her illness.

... On 26 July 2004, the ABCC issued its report in which it denied Ms. Christensen's claim on the basis that she had not contracted her illness while in service but rather while visiting Mount Meru near Arusha, Tanzania. On 25 September 2004, Ms. Christensen was informed that on 9 August 2004 the Secretary-General had endorsed the ABCC's findings.

... On 10 October 2005, Ms. Christensen sent a letter to the Secretary-General in which she requested administrative review of the findings of the ABCC. ...

3. On 16 January 2006, Ms. Christensen filed an appeal with the Joint Appeals Board (JAB) (Salary Case) in which she contested a decision of 13 August 2005 taken by the ICTR Administration rejecting her request for payment of salary and compensation under Article 11(1) of Appendix D. The Salary Case is not at issue in this appeal.

¹ *Christensen v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-218, paras. 5 to 8.

4. On 19 June 2006, Ms. Christensen filed a second appeal before the JAB (Entitlements Case), in which she challenged several ICTR decisions not to pay her entitlements relating to her medical evacuation in 2002 and separation from service in June 2003.

5. On 22 June 2006, Ms. Christensen filed an application with the former Administrative Tribunal contesting both the findings of the ABCC and the decisions not to pay her various entitlements, which were also the subjects of the Entitlements case.

6. On 10 July 2007, the JAB issued its report in the Entitlements case. It made no recommendation, noting that the case was before the former Administrative Tribunal. By letter dated 31 October 2007, the Deputy Secretary-General informed Ms. Christensen that the Secretary-General had decided to remand the case to the JAB for an expedited review.

7. In Judgment No. 1427 of 30 January 2009, the former Administrative Tribunal dismissed Ms. Christensen's case as not receivable. With regard to the Entitlements Case, the former Administrative Tribunal held that the application included issues that were currently before the JAB and that the application was therefore not receivable. With regard to the ABCC decision, the former Administrative Tribunal found that the appeal was not receivable *ratione materiae* because Ms. Christensen had failed to ask the Secretary-General to convene a Medical Board to review the ABCC's decision under Article 17 of Appendix D to the Staff Regulations and Rules.

8. With the creation of the new internal justice system, the Entitlements case and the Salary Case were transferred to the UNDT.

... On 27 February 2009, Ms. Christensen wrote to the Secretary-General "requesting him to either reopen (under Article 9 of Appendix D) or reconsider (under Article 17 of Appendix D) [Ms. Christensen's] ABCC case". After not receiving a response, Ms. Christensen sent a follow-up request to the Secretary-General on 5 June 2009. On 8 September 2009, Ms. Christensen wrote an additional letter to the Secretary-General in which she requested that the Management Evaluation Unit (MEU) review the Secretary-General's lack of response to any of her requests.

... On 23 October 2009, the MEU informed Ms. Christensen that her 8 September 2009 request for management evaluation was not receivable. On 29 October 2009, following her 26 October 2009 request that the MEU revisit its decision, Ms. Christensen was informed that after careful consideration the MEU still could not consider her request for management evaluation receivable. ...

...

... On 22 December 2010, Ms. Christensen filed her “Application (Motion) for Consolidation, Waiver of Time Limits”. As part of this motion, Ms. Christensen sought leave to file an application in the ABCC Case and its subsequent consolidation with the Entitlements and Salary Cases. In the ABCC Case’s application, Ms. Christensen stated that she was contesting “the decision [...] of the Secretary-General not to reopen or reconsider the ABCC’s decision of 24 July 2004”. Ms. Christensen’s motion stated that, among other remedies, she was seeking: “1. A declaration that the ABCC Decision was incorrect, unreasonable and reached without due process, and should be rescinded; 2. A declaration that the Secretary-General was under a duty to reconsider or reopen the ABCC Decision.”

... On 18 May 2011, the UNDT in Nairobi issued Order No. 041 (NBI/2011) in which it ordered the consolidation of the Salary Case and the Entitlements Case while finding that the ABCC Case was not receivable ...²

9. On 27 June 2011, the UNDT rendered Judgment No. UNDT/2012/094. As to the Entitlements case, the UNDT found that it was not receivable since Ms. Christensen had failed to request administrative review under former Staff Rule 111.2(a), and the UNDT did not have the power to waive the time limits for administrative review. Accordingly, the UNDT dismissed the application.

10. Ms. Christensen appealed the UNDT Judgment on 27 August 2012. She requests that the Appeals Tribunal overturn the UNDT Judgment with respect to the Entitlements Case and that it remand the case to the UNDT for a determination of the merits. The Secretary-General filed his answer on 1 November 2012, opposing the appeal.

Submissions

Ms. Christensen’s Appeal

11. The UNDT erred in fact in failing to adopt the JAB’s determination and the Secretary-General’s acceptance thereof that the appeal was receivable. The issue of receivability was conclusively determined by the JAB. When the UNDT was created, it replaced the joint appeals bodies. In compliance with the jurisprudence of this Tribunal,

² *Ibid.*, paras. 11, 12, 16, 17.

the issue of receivability does not exist for transferred cases (from the JAB to the UNDT), when the JAB found them to be receivable.

12. The Secretary-General is also estopped from arguing that the claims are not receivable since he had remanded it to the JAB for consideration, and also urged the former Administrative Tribunal to reject these claims because they were under consideration by the JAB. He is therefore precluded from raising the issue of receivability now.

13. Furthermore, in the event that the UNDT was required to review the JAB's determination, the UNDT failed to exercise its jurisdiction in simply assuming, without discussion, that the JAB was incorrect and that administrative review had not been sought in a timely manner. In any event, the JAB's conclusion was correct.

14. Ms. Christensen thus asks that the UNDT Judgment be overturned and remanded for consideration on its merits.

Secretary-General's Answer

15. The UNDT correctly concluded that the case was not receivable, as Ms. Christensen failed to file a timely request for administrative review. The UNDT is not bound by the JAB's findings, but is entitled to exercise its own jurisdiction, regardless of whether the case was transferred to it or not. This is in accordance with the jurisprudence of both this Tribunal and the UNDT. Furthermore, the Secretary-General is not estopped from raising receivability claims.

16. The UNDT's reasoning in making its receivability determination was sufficient.

17. The Secretary-General thus requests this Tribunal to affirm the UNDT Judgment and to dismiss the appeal.

Considerations

18. This Tribunal finds that Ms. Christensen has failed to establish any errors warranting the reversal of the UNDT Judgment concerning some of her entitlements.

19. The impugned Judgment correctly concluded that the claim was not receivable. This Tribunal has consistently held that the UNDT has no jurisdiction to waive the deadlines for management evaluation or administrative review.³

20. On the other hand, the UNDT is competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute. The UNDT committed no error in finding that, in the absence of the required administrative review pursuant to former Staff Rule 111.2(a), the application was not receivable.⁴

21. This competence can be exercised even if the parties or the administrative authorities do not raise the issue, because it constitutes a matter of law and the Statute prevents the UNDT from receiving a case which is actually non-receivable.

22. Hence, in the present case, as Ms. Christensen did not seek administrative review of the denial of payment of certain entitlements, the appeal before the UNDT was not receivable since the case cannot be accepted in the judicial phase without the prior attempt of administrative review and potential partial or total solution. The Statute clearly favours informal and administrative resolution of cases and only authorizes the entrance to judicial resolution after the failure of the previous one.

Judgment

23. The appeal is dismissed and the UNDT Judgment is affirmed.

³ *Trajanovska v. Secretary-General of the United Nations*, Judgment 2010-UNAT-074.

⁴ *O'Neill v. Secretary-General of the United Nations*, Judgment 2011-UNAT-182.

Original and Authoritative Version: English

Done in New York, United States.

(Signed)

Judge Simón, Presiding
28 June 2013

(Signed)

Judge Weinberg de Roca
21 June 2013

(Signed)

Judge Lussick
28 June 2013

Entered in the Register on this 26th day of August 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar