UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2013-UNAT-299

Gehr

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Luis María Simón Judge Mary Faherty
Case No.:	2012-331
Date:	28 March 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Stéphanie Cartier

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Walter Gehr against Judgment No. UNDT/2012/071, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 10 May 2012 in the case of *Gehr v. Secretary-General of the United Nations*. Mr. Gehr appealed on 6 June 2012, and the Secretary-General answered on 13 August 2012.

Facts and Procedure

2. Mr. Gehr joined the United Nations Office on Drugs and Crime (UNODC) in Vienna in 2002. With effect from 1 November 2007, he was appointed under a fixed-term appointment to the post of Senior Terrorism Prevention Officer at the P-5 level in the Terrorism Prevention Branch (TPB) within the Division of Treaty Affairs (DTA).

3. In the fall of 2009, the Chief of TPB and the Officer-in-Charge of DTA informed Mr. Gehr that, in connection with the reorganization of TPB, his post would be abolished and he would be reassigned to the position of Senior Legal Advisor, which would be created within the Office of the Chief of TPB. From then on, the relation between Mr. Gehr and the UNODC Administration deteriorated.

4. In August 2011, Mr. Gehr filed a rebuttal statement to his 2010-2011 performance appraisal system (ePAS). Exchanges of communication ensued between Mr. Gehr and the Human Resources Management Service (HRMS) in respect of the composition of the rebuttal panel.

5. By e-mail dated 22 December 2011, the Chief of HRMS informed Mr. Gehr that one of the rebuttal panel members that the latter had selected, Mr. D., had declined to serve. He invited Mr. Gehr to select Mr. G. as he was "the only other remaining chairperson of the rebuttal panel who c[ould] be nominated".

6. Mr. Gehr was separated from service effective 31 December 2011 upon expiry of his fixed-term appointment.

7. On 12 February 2012, Mr. Gehr filed an application with the Dispute Tribunal against the alleged decision not to allow a rebuttal process to be carried out in accordance with the applicable norms. He did not request management evaluation before he applied to the UNDT. On

18 April 2012, the UNDT held a directions hearing, which Mr. Gehr and Counsel for the Secretary-General attended by videoconference.

8. In Judgment No. UNDT/2012/071, the Dispute Tribunal rejected Mr. Gehr's application as not receivable, as he had failed to submit the contested decision for management evaluation, prior to applying to the UNDT.

Submissions

Mr. Gehr's Appeal

9. The UNDT erred in law and failed to exercise the jurisdiction vested in it in rejecting his application on the ground that he had not requested management evaluation. Mr. Gehr maintains that, as a former staff member, he was not required to request management evaluation. In his view, Staff Rule 11.2(a) only requires a staff member, but not a former staff member, to submit a request for management evaluation.

10. Mr. Gehr claims that during the directions hearing on 18 April 2012, the UNDT Judge acknowledged that his interpretation of Staff Rule 11.2(a) was "entirely correct".

11. The additional arguments that Mr. Gehr makes in his appeal concern the substance of his allegations of irregularities in the rebuttal process. They are not summarized in this text as they are not relevant to the review of the issue of receivability of Mr. Gehr's application before the Dispute Tribunal.

Secretary-General's Answer

12. The Secretary-General submits that the UNDT's finding of non-receivability of Mr. Gehr's application is consistent with the jurisprudence of the Appeals Tribunal about the mandatory nature of a request for management evaluation, and is moreover consistent with the UNDT Statute. In the view of the Secretary-General, even if there was ambiguity in the wording of Staff Rule 11.2(a) on whether former staff members are required to request management evaluation, the UNDT Statute prevails according to the hierarchy of the Organization's internal legislation.

13. The Secretary-General also submits that it would be logically inconsistent if the Administration could correct its own mistakes through the process of management evaluation with respect to current staff members, but could not do so with respect to former staff members. In the view of the Secretary-General, the expiration of Mr. Gehr's appointment did not extinguish his obligation to file a request for management evaluation as a mandatory first step of his appeal. The Secretary-General notes that the practice of former staff members has been to request management evaluation prior to filing an application with the Dispute Tribunal.

14. The Secretary-General maintains that, contrary to Mr. Gehr's assertions, the UNDT Judge disagreed with Mr. Gehr's literal interpretation of Staff Rule 11.2(a). It is clear from the verbatim statement of the UNDT Judge during the 18 April 2012 directions hearing that he believed that former staff members were required to undergo management evaluation in the same manner as current staff members.

Considerations

15. Mr. Gehr appeals on the grounds of error of law and failure of the UNDT to exercise the jurisdiction vested in it.

16. He submits that the UNDT erred on a question of law by ruling that former staff members are required to request management evaluation prior to filing an application with the UNDT.

17. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process.

18. The Appeals Tribunal considered this issue in another appeal also filed by Mr. Gehr:

> In the first instance we are satisfied that the Dispute Tribunal correctly concluded that the import of Articles 2(1), 3(1) and 8(1)(c) of the UNDT Statute is that applications to the UNDT, be they from serving or former staff members, are only receivable if the applicant "has previously submitted the contested administrative decision for management evaluation".
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> ...
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> With regard to the emphasis Mr Gehr places on the words "where required", as contained in Article 8(1)(c) of the UNDT Statute, and his claim that the parameters of Staff Rule 11.2(a) (where there is reference only to staff members) exempt him from the requirement for management evaluation, we find no merit in this argument. The

> overarching intention of Article 8(1)(c) is that management evaluation is a mandatory first step, prior to invoking the jurisdiction of the Dispute Tribunal to receive an application under its competency.[1]

19. For the same reasoning we do not find any merit in this appeal. The appeal accordingly fails.

Judgment

20. The appeal is dismissed in its entirety. The UNDT Judgment is affirmed.

[1] *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293.

Original and Authoritative Version: English

Dated this 28th day of March 2013 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Adinyira, Presiding	Judge Simón	Judge Faherty

Entered in the Register on this 24th day of May 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar