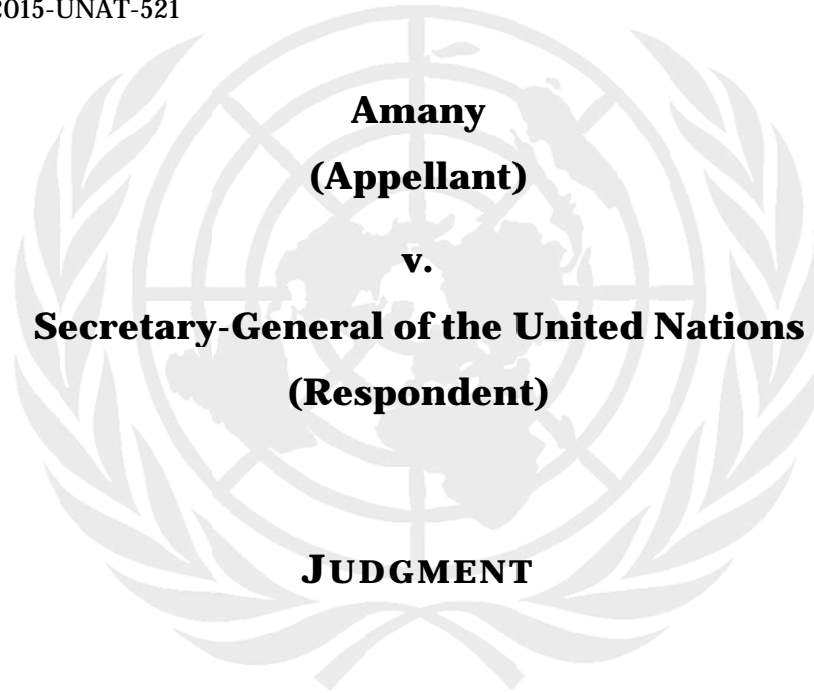




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2015-UNAT-521



**Amany  
(Appellant)**

**v.**

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

**JUDGMENT**

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**Before:** Judge Richard Lussick, Presiding  
Judge Inés Weinberg de Roca  
Judge Mary Faherty

**Case No:** 2014-598

**Date:** 26 February 2015

**Registrar:** Weicheng Lin

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**Counsel for Mr. Amany:** Guizu Bernard Takoré

**Counsel for Secretary-General:** Stéphanie Cartier

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Yves Marcel Amany against Judgment No. UNDT/2014/018, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 7 February 2014 in the case of *Amany v. Secretary-General of the United Nations*. Mr. Amany filed his appeal on 8 April 2014 and the Secretary-General of the United Nations answered on 23 June 2014.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... The Applicant joined the United Nations Children's Fund (UNICEF) in Abidjan, Côte d'Ivoire, on 1 August 1986, as a Supply Officer, grade 2.

...

... On 21 December 2008, the Applicant went on official mission to Guinea Conakry until 15 May 2010 and then he was on official mission to Benin from 1 June to 30 August 2010.

... Upon his return to Abidjan from Benin, a new organizational chart was in place. An international staff member was occupying the post of Supply Officer and the Applicant was his subordinate.

... Although the Applicant was shocked, he continued in service without complaint. As he did not have any challenging and/or supervisory tasks he fell into a depressive state and started seeing the UNICEF Stress Management Consultant (Consultant) on 20 October 2010.

... On 14 December 2011, the Applicant signed a letter of appointment for a fixed-term appointment that would expire on 31 December 2012.

... Through several correspondences between February 2012 and November 2012, the Administration warned the Applicant that he had taken approximately 205 unjustified days of absence from February 2011 to November 2012. He was informed that unless he provided justification, this situation would be viewed as abandonment of post. The Applicant did not provide justification for the days of absence.

... On 13 December 2012, the Consultant produced a medical report stating that the Applicant's psychological state did not justify his 205 days of absence.

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<sup>1</sup> Impugned Judgment, paras. 1, 3-14.

... On 28 December 2012, the Applicant acknowledged receipt of a letter dated 27 December 2012 from the UNICEF Representative informing him of the non-renewal of his contract.

... On 31 January 2013, the Applicant sent a letter to the UNICEF Representative to raise objections against his decision stating that the Administration had not respected Administrative Instruction CF/AI/2010-001 (Separation from service) which requires a 30-day notice period prior to termination of a fixed-term appointment.

... On 25 March 2013, he filed an Application before the UNDT challenging the decision not to renew his fixed-term contract.

... On 28 March 2013, he sent a letter dated 25 March 2013 to the Executive Director requesting management evaluation of the decision not to renew his contract.

... On 1 April 2013, the Chief of the Policy and Administrative Law Section (PALS) within the Division of Human Resources (DHR) replied to the Applicant that his request for management evaluation was not receivable on the ground that it was time-barred.

... On 29 April 2013, the Respondent replied that the Application before the UNDT was not receivable as the Applicant had failed to request management evaluation of the contested decision within the deadline.

3. The UNDT issued its Judgment on 7 February 2014, dismissing Mr. Amany's application. The UNDT found that the application was not receivable on the grounds that he had failed to request management evaluation prior to filing his application with the UNDT and had requested management evaluation one month after the statutory deadline.

### **Submissions**

#### **Mr. Amany's Appeal**

4. Mr. Amany contends that the non-renewal of his appointment constitutes a disguised disciplinary decision to sanction him for not justifying 205 days of absence from work. Pursuant to Section 3.5 of the UNICEF Administrative Instruction CF/AI/2010-008, management evaluation is not required if the contested decision concerns the imposition of a disciplinary or non-disciplinary measure following the completion of a disciplinary process. In such cases, an application may be directly filed with the UNDT. Mr. Amany was therefore exempt from the requirement to request management evaluation of the decision not to renew his appointment and his application to the UNDT was receivable.

5. Mr. Amany further contends that the letter notifying him of his non-renewal should have informed him of the time limit to contest the non-renewal of his appointment. He should have been advised of the proper procedures to follow when he acknowledged receipt of the decision on 31 January 2013 and indicated his intention to contest it. That same day, Mr. Amany also addressed a letter to the Representative of the Office in Abidjan notifying him that he had the intention to contest the non-renewal of his appointment. If the way he proceeded to contest his non-renewal was indeed incorrect, either the Representative or the Director of Human Resources should have informed him accordingly.

6. Mr. Amany requests that the Appeals Tribunal vacate the impugned Judgment and consider the merits of his case.

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

7. The UNDT correctly dismissed Mr. Amany's application as not receivable on the basis that Mr. Amany had failed to request management evaluation of the contested administrative decision as a mandatory first step prior to filing an application with the UNDT.

8. Contrary to Mr. Amany's contention, the administrative decision at issue in the present case is the decision not to renew Mr. Amany's appointment and not a decision to impose a disciplinary measure following the completion of a disciplinary process. Accordingly, Mr. Amany erred in characterizing his separation from UNICEF as a disciplinary matter. Moreover, even assuming, arguendo, that the contested decision was a veiled disciplinary sanction, this would be a matter for the UNDT to determine on the merits and does not affect the requirement of requesting a management evaluation of the contested decision.

9. Turning to Mr. Amany's assertion that he should have been informed of the proper procedures to follow in the present case, the Secretary-General recalls that the Appeals Tribunal has repeatedly affirmed that staff members are presumed to know the regulations and rules applicable to them and that ignorance of the law cannot be invoked as an excuse for not respecting such regulations and rules.

10. The Secretary-General requests that the Appeals Tribunal dismiss the appeal and affirm the UNDT Judgment.

### **Considerations**

11. In his appeal against the UNDT's Judgment that his application was not receivable, Mr. Amany argues that the contested administrative decision not to renew his fixed-term contract was in reality a disciplinary measure, that is, "a disguised dismissal", to sanction him for taking 205 days' absence from work without justification, and that therefore management evaluation was not required.

12. We find this argument to be without merit. Mr. Amany cannot evade the statutory obligation of requesting management evaluation by characterizing the disputed decision as a disciplinary matter. The case which he placed before the UNDT was a challenge to the decision of the UNICEF Representative not to renew his fixed-term contract. There was no evidence that the non-renewal was the result of any disciplinary proceedings against him.

13. Mr. Amany claims that, in any event, he wrote on the acknowledgement form that he was challenging the decision and that, again, on 31 January 2013, he wrote to the Abidjan Representative challenging the decision. This claim does not appear to have been put to the UNDT. In any event, it does not assist Mr. Amany, since it falls well short of establishing that he requested management evaluation.

14. Mr. Amany contends that the letter informing him of the non-renewal of his contract should have indicated that he had a given length of time in which to appeal. He submits that while his way of challenging the non-renewal decision may not have been the correct way, the Abidjan Representative or the Human Resources Director who received the acknowledgement form could have apprised him of the proper procedure.

15. Under Article 8(1)(c) of the UNDT Statute, an application shall be receivable if the applicant has previously submitted the contested decision for management evaluation where required. This obligation upon the applicant is also prescribed in Staff Rule 11.2(a), which provides that a staff member wishing to formally contest an administrative decision shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation. Under Staff Rule 11.2(c), a request for management evaluation is to be submitted to the Secretary-General within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

16. In Mr. Amany's case, his first step was not a request for management evaluation. The UNDT found that Mr. Amany did not request management evaluation until 28 March 2013, which was three days after submitting his UNDT application. Moreover, since Mr. Amany acknowledged receipt of the contested decision on 28 December 2012, his request for management evaluation should have been filed no later than 26 February 2013, which would have been within the 60-calendar day deadline.

17. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process. The Appeals Tribunal has noted many times that the requirement of management evaluation assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.<sup>2</sup>

18. Mr. Amany's argument that he should have been informed of the proper procedure has no merit. Staff members are presumed to know the regulations and rules applicable to them. It is the staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse.<sup>3</sup>

19. We are satisfied that the Dispute Tribunal properly considered the facts and the applicable statutory law and jurisprudence in arriving at its decision that Mr. Amany's application was not receivable.

20. Having failed to demonstrate that the UNDT committed any error of law or fact, Mr. Amany's appeal must fail.

### **Judgment**

21. The appeal is dismissed and the Judgment of the Dispute Tribunal is affirmed.

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<sup>2</sup> *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22, citing to *Neault v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-345 and *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311.

<sup>3</sup> *Kissila v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-470, para. 24, citing to *Christensen v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-218 and *Jennings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-184.

Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of February 2015 in New York, United States.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Faherty

Entered in the Register on this 17<sup>th</sup> day of April 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar