UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2015-UNAT-557

Kazazi

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Sophia Adinyira, Presiding Judge Mary Faherty Judge Luis María Simón
Case No.:	2014-643
Date:	2 July 2015
Registrar:	Weicheng Lin

Counsel for Mr. Kazazi:	Self-represented
Counsel for Secretary-General:	Nathalie Defrasne

JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2014/071, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 24 June 2014 in the case of *Kazazi v. Secretary-General of the United Nations*. Mr. Mojtaba Kazazi appealed on 25 August 2014 and the Secretary-General answered on 27 October 2014.

Facts and Procedure

2. On 31 October 2012, the Appellant separated from the United Nations Compensation Commission (UNCC) after 21 years in their service. His wife also worked at the UNCC from 1 September 1999 until her separation on 30 June 2005.

3. On 24 June 2013, the Appellant wrote to a Senior Human Resources Officer with the Human Resources Management Service (HRMS), United Nations Office at Geneva (UNOG), stating that he was deprived of his entitlement to full repatriation grant at the dependency rate, and reiterating his previous request for the payment of full repatriation grant at the dependency rate for the length of his service.

4. On 30 July 2013, the Appellant again contacted the Senior Human Resources Officer with HRMS/UNOG claiming the payment of full repatriation grant at the dependency rate.

5. On 23 August 2013, the Senior Human Resources Officer e-mailed the Appellant and informed him that her delay in responding was due to the fact that his case required internal consultations. She informed the Appellant that since both he and his wife had been staff members with the Organization, under the applicable regulations and rules they were both entitled *only* to repatriation grants at the single rate.

6. On 22 September 2013, the Appellant e-mailed the Chief of HRMS/UNOG, again requesting payment of the full repatriation grant at the dependency rate.

7. On 25 November 2013, the Appellant sent another e-mail to the Chief of HRMS/UNOG, and the Director of UNOG's Division of Administration, referencing his e-mail of 22 September 2013. He expressed his hope that the Chief of HRMS could correct the

"misreading of the staff rules" and otherwise requested that the Chief of HRMS provide formal confirmation of HRMS' position so that the Appellant could appeal it.

8. On 25 November 2013, the Chief of HRMS responded to the Appellant and advised him that his case was not standard and straightforward and that he would soon be informed of the decision of HRMS on the matter.

9. On 17 December 2013, the Director of UNOG's Division of Administration informed the Appellant that after careful reconsideration of the Appellant's request by HRMS staff, the Appellant was nevertheless not entitled to payment of a repatriation grant at the dependency rate, for the same reasons that had correctly been explained to him on 23 August 2013. The letter advised the Appellant that in the event he disagreed with the administrative decision, he may formally file a request for management evaluation to the Management Evaluation Unit (MEU) pursuant to Staff Rule 11.2, and that such request must be sent within 60 calendar days from the date on which the staff member received notification of the contested administrative decision.

10. On 16 February 2014, the MEU received the Appellant's request for management evaluation of 12 February 2014.

11. On 20 March 2014, the MEU advised the Appellant that his request was not receivable as it was time-barred. Being unable to discern when the Appellant was first notified that he was not entitled to payment of a repatriation grant at the dependency rate, the MEU considered the timeline to request management evaluation began to run from 24 June 2013, when he again e-mailed HRMS to reiterate his prior request. Accordingly, pursuant to Staff Rule 11.2(c), the Appellant should have submitted a request within 60 days, being by 23 August 2013. The MEU noted that the Appellant's choice to resort to consultations with the Administration did not absolve him of his responsibility to respect the prescribed deadlines. In any event, the MEU considered that his claim on the merits was unfounded.

12. On 18 June 2014, the Appellant filed an application with the UNDT contesting the decision that he was not entitled to repatriation grant at the dependency rate upon his separation from the Organization.

13. On 24 June 2014, the UNDT issued the Summary Judgment currently under appeal and dismissed the application. The UNDT found that the Appellant had failed to file a timely request for management evaluation in accordance with the strict timelines prescribed by Staff Rule 11.2(c). It noted the jurisprudence of the Appeals Tribunal establishing that the UNDT has no discretion to waive deadlines for management evaluation or decision review, and holding that reiteration of a request does not reset the clock for the running of statutory timelines. The UNDT noted that even if it considered that time began to run as of 23 August 2013 when HRMS notified him for the second time of the outcome of his request, the Appellant did not submit his request for management evaluation within the ensuing 60 days. The UNDT further held that the Director's response of 17 December 2013 merely constituted a confirmation of the earlier decision of 23 August 2013 and did not reset the 60-day time-limit set forth under Staff Rule 11.2(c); despite its unfortunate wording advising the Appellant that he could still request management evaluation, the letter had no impact on the deadline to file a request for management evaluation. Consequently, in the absence of a timely request for management evaluation, the UNDT found his UNDT application was not receivable *ratione materiae*.

Submissions

Mr. Kazazi's Appeal

14. The Appellant contests the UNDT Judgment and the MEU's decision which found that his request for management evaluation was time-barred.

15. The UNDT erred in "rewriting the facts of the case" and in criticizing the actions of the Chief of HRMS and the Director of Administration who should know that they had already issued "an administrative decision" prior to December 2013. The UNDT erred in failing to consider whether the HRMS officials were properly authorized to make the contested decision given that they act under the authority of the Director of Administration. He submits that the Director of Administration's letter of 17 December 2013 constitutes the key administrative decision and therefore his request for management evaluation of 16 February 2014 was made in good faith and was timely.

16. The Summary Judgment also has a number of factual and legal errors and confuses questions of fact and law. The UNDT found that it had no jurisdiction *ratione materiae* when it should have considered its jurisdiction *ratione temporis*, which in this case turned on a

question of fact which the UNDT had to establish. However, while his UNDT application was filed on 18 June 2014, the UNDT issued its Summary Judgment on 24 June 2014. The Appellant claims that "by rushing into this decision the [UNDT] deprived itself of the explanations and assistance of the parties to the case and has deprived [him] particularly of a full opportunity to present [his] case and to be heard properly". The UNDT also erred in applying a seemingly higher standard for lawyers and experienced staff members, by holding that he should have requested management evaluation earlier. The effect of the Summary Judgment is also detrimental to the internal justice system as it compels staff members to request management evaluation after each interaction with HRMS, rather than seeking to resolve an issue. This results in an unnecessary burden on the resources of the Administration and the UNDT.

17. The Appellant requests that this Tribunal rescind the Summary Judgment and remand the case to the UNDT to allow for review of the merits of the case. He also requests "any other relief that the Tribunal deems necessary or fit".

The Secretary-General's Answer

18. The Dispute Tribunal correctly concluded that the Appellant's application was not receivable. The Dispute Tribunal correctly established that the contested administrative decision was made on 23 August 2013, that his subsequent request for management evaluation was not timely filed, and that continued e-mails by the Appellant did not reset the clock on statutory timelines, in accordance with the jurisprudence of the Appeals Tribunal.

19. In addition, the UNDT correctly relied on Article 9 of the UNDT Rules of Procedure when it decided to dismiss the application *proprio motu*. Further, the UNDT was correct to find that it did not have jurisdiction *ratione materiae* rather than jurisdiction *ratione temporis* as it is established jurisprudence that a timely request for management evaluation is a mandatory first step in the appeal process and, in the absence of administrative review, an application is not receivable in substance.

20. The Secretary-General requests that this Tribunal dismiss the Appellant's appeal in its entirety and affirm the UNDT Judgment.

Considerations

Preliminary issue – Request for confidentiality

21. As a preliminary matter, citing the "private and personal nature of the case", the Appellant requests that this Tribunal order the deletion of his name and particulars from the Summary Judgment, as well maintain the privacy of his name in any judgment issued by this Tribunal. Article 10(9) of the Appeals Tribunal Statute provides that "[t]he judgements of the Appeals Tribunal shall be published, while protecting personal data, and made generally available by the Registry of the Tribunal". Our jurisprudence shows that the names of litigants are routinely included in judgments of the internal justice system of the United Nations in the interests of transparency and accountability, and personal embarrassment and discomfort are not sufficient grounds to grant confidentiality.[1] The application for confidentiality is denied.

Appeal on its merits

22. Mr. Kazazi contends that in finding that HRMS' decision of 23 August 2013 was an "administrative decision", the UNDT erred in failing to consider whether HRMS officials were properly authorized to make that decision given that they act under the authority of the Director of Administration.

23. The Secretary-General submits that the Dispute Tribunal correctly established that the contested administrative decision was made on 23 August 2013, and that Mr. Kazazi's subsequent request for management evaluation was not timely filed as his continuous e-mails did not reset the clock for the purpose of calculating statutory time limits, in accordance with the jurisprudence of the Appeals Tribunal.

Was the Senior Human Resources Officer authorized to make the contested decision of 23 August 2013?

24. At the outset, we reject Mr. Kazazi's contention that the UNDT erred by failing to consider whether the Senior Human Resources Officer was authorized to make the contested decision

[1] *Fedorchenko v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2015-UNAT-499; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, citing *Servas v. Secretary-General of the United Nations*, Order No. 127 (2013); *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-456.

of 23 August 2013, as there is no evidence that the Appellant raised this before the UNDT. Nonetheless, there is no merit in this submission.

25. We find nothing in the e-mail of 23 August 2013 suggesting that it was issued by an individual not properly vested with authority to make the decision that is now contested. The e-mail set out the provisions relevant to Mr. Kazazi's matter, and the manner in which Mr. Kazazi and his wife's repatriation grant entitlements were calculated in some detail, before concluding "I hope this clarifies our position". It was signed by a Senior Human Resources Officer with HRMS/UNOG.

26. Normally in the sphere of the workings of any office, it is the members of that office, under the guidance of a supervisor or chief, who deal with the day-to-day matters of the office. Not every decision can personally be taken or addressed by the head of an office. In this regard we note that the Director of Administration stated in his December 2013 letter that he had asked his staff at HRMS to reconsider Mr. Kazazi's request.

27. Accordingly, we reject the Appellant's contention that the Senior Human Resources Officer did not have the appropriate authority to take the "administrative decision" that is now contested and that such power lay only with the Director of Administration. We would also note that the letter shows the decision was not the unilateral and capricious act of the Senior Human Resources Officer but was taken after further "internal consultations".

Was HRMS' decision of 23 August 2013 an "administrative decision"?

28. We recall that "the key characteristic of an administrative decision subject to judicial review is that the decision must 'produce[] direct legal consequences' affecting a staff member's terms and conditions of appointment".[2] Further, "[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine".[3]

[2] *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, citing former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V, and *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 17.
[3] *Rabee v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-296, citing *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.

29. In discerning when the contested decision was made, the Dispute Tribunal noted it was "not clear from the case file when exactly the Applicant was originally informed that his repatriation grant would be calculated at single rate".[4] Nonetheless, it found that:[5]

> ... [...] the terms of the email from the Senior Human Resources Officer to the Applicant on 23 August 2013 [...] are unambiguous in that they clearly convey to him confirmation of the decision that, upon his separation, he was only entitled to repatriation grant at the single rate, not at the dependency rate. That email, which also contains a comprehensive explanation of the decision's rationale, including an analysis of the relevant legal provisions, clearly contains all the elements of an administrative decision, by which then Applicant was informed by a competent authority that his entitlement under ST/AI/20000/5 [sic] (Repatriation grant) was limited to a repatriation grant at the single rate. Therefore, the 60 day statutory time-limit to request management evaluation of that decision started to run on 23 August 2013 at the latest.

30. Having reviewed the relevant communication, we agree with the UNDT that the e-mail communication of 23 August 2013 from the Senior Human Resources Officer conveyed a clear and definite administrative decision – namely, that he was only entitled to a repatriation grant at the single rate – with direct legal consequences for Mr. Kazazi. As such, the time limit began to run as of 23 August 2013 for Mr. Kazazi to contest the decision within the timeline established by the Staff Rules.

31. Although Mr. Kazazi submits that the Director of Administration's 17 December 2013 letter constitutes the key administrative decision from which time ran to request management evaluation, the Appeals Tribunal has consistently held that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines; rather the time starts to run from the date on which the original decision was made.[6] For this reason, a staff member cannot reset the time for management review by asking for a confirmation of an administration decision that has

[4] Impugned Judgment, para. 19.
[5] *Ibid*., para. 20.
[6] *Samuel Thambiah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-385; *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275; *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079, citing former Administrative Tribunal's Judgment No. 1211, *Muigai* (2004) and Judgment No. 1311, *Burbridge et al.* (2006).

been communicated to him earlier. Neither can a staff member unilaterally determine the date of an administrative decision.[7]

32. For Mr. Kazazi to do nothing until he had confirmation of the administrative decision of 23 August 2013 from the Director of Administration personally was unreasonable. A staff member's preference to resort to repeating his or her demands through ongoing consultation or negotiations with the Administration does not absolve him or her of the obligation to comply with the deadline stipulated in the Staff Rules.[8]

33. The UNDT correctly considered whether it could be said that in December 2013 the Administration was considering whether to revisit its decision of August 2013.[9] However, there was no indication in any of the subsequent correspondence that the Administration agreed to overturn or suspend the initial contested decision. Further, we note that Mr. Kazazi did not raise any fresh arguments in his subsequent e-mails but merely repeated the same arguments that were considered before he received the 23 August 2013 decision.

34. In the circumstances, we agree with the UNDT that the ensuing response from the Director of Administration of 17 December 2013 to Mr. Kazazi's request for "formal confirmation" did not reset the deadline for challenging the contested administrative decision insofar as it merely confirmed the earlier decision that had been communicated in August 2013.

Did the erroneous instructions in the Director of Administration's 17 December 2013 letter reset the timelines?

35. We have consistently held that staff members have to ensure that they are aware of Staff Regulations and Rules and the applicable procedures in the context of the administration of justice in the United Nations' internal justice system and that ignorance of the law is no excuse for missing deadlines.[10] Similarly, the Administration must be conversant with the

[7] *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, citing *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.
[8] *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079.
[9] Cf. *Fiala v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-516.
[10] *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, citing *Kissila v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-470, *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; *Nianda-Lusakueno v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2014-UNAT-472; *Azzouz v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in*

Staff Regulations and Rules and, in particular, with time lines and applicable procedures in the context of the internal justice system in the United Nations to avoid misadvising staff members. Incorrect advice by the head of one department cannot bind the hands of another department, like the MEU, or another legal entity, such as the UNDT which has no authority or discretion to extend the time limits for management evaluation pursuant to its Statute.[11]

36. While in *Faraj* we held that similar instructions reset the clock for a staff member to request decision review for a second time,[12] that case can be distinguished from the case before us. In *Faraj*, it was the very authority that was to conduct the decision review, in that case the Director of Operations for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), who informed the staff member that he could request a further decision review with the same office pursuant to Area Staff Rule 111.3. Consequently, we held that the staff member rightfully acted pursuant to the instructions of the Director when he filed a second request for decision review.

37. For the reasons already discussed, Mr. Kazazi was not similarly entitled to rely on the erroneous instructions of UNOG's Director of Administration in this instance. Accordingly, we also affirm the UNDT's finding that the "unfortunate" wording of the Director of Administration's letter of 17 December 2013 had no impact on the deadline to timely file a request for management evaluation.

38. The UNDT ultimately determined that Mr. Kazazi's application was not receivable *ratione materiae* under Article 8(1)(c) of the UNDT Statute. In reaching this determination, the UNDT noted that Mr. Kazazi had not requested management evaluation within the time limits prescribed by Staff Rule 11.2 (c). Our jurisprudence has clearly and consistently held that time limits in the context of the administration of justice in the United Nations' internal justice system must be observed and strictly enforced.[13] We have also consistently held that a timely request for

the Near East, Judgment No. 2014-UNAT-432; *Diagne v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-067.

[11] Article 8(3) of the Dispute Tribunal Statute states: "The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation." This Tribunal has also repeatedly and "consistently held that the UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review". See *Egglesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-402, and citations therein.

[12] *Faraj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-331.

[13] *Diab v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-495; *Kissila v. Secretary-General of the United Nations*,

management evaluation is a mandatory first step in the appeal process and in the absence of this administrative review, an application to the Dispute Tribunal is not receivable *ratione materiae*.[14] In the circumstances, we find that the UNDT correctly found that Mr. Kazazi's application was not receivable *ratione materiae*.

Summary Judgment

39. Mr. Kazazi also contests the decision of the Dispute Tribunal to hear the matter summarily, arguing that the UNDT deprived itself of the explanations and assistance of the parties to the case and deprived him of an opportunity to present his case and be heard.

40. Mr. Kazazi has no legal or factual basis for advancing this proposition since his application was given due consideration by the Dispute Tribunal within the legal parameters of the application, as determined by that Tribunal.

41. Regarding the Dispute Tribunal's decision to proceed by way of summary judgment, summary judgment is an appropriate tool to deal with issues of receivability in the United Nations internal system of administration of justice. Article 9 of the UNDT's Rules of Procedure provides:

> A party may move for summary judgement when there is no dispute as to the material facts of the case and a party is entitled to judgement as a matter of law. The Dispute Tribunal may determine, on its own initiative, that summary judgement is appropriate.

42. The only issue to be addressed by the UNDT was that of the application's receivability, which, contrary to the contention of Mr. Kazazi, is a matter of law and not a matter of fact.[15] As such, in assessing its own competence, the Dispute Tribunal can choose to proceed by way

Judgment No. 2014-UNAT-470; *Christensen v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-218; *Abu-Hawaila v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-118.

[14] *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521; *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-299.

[15] *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-313; *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304.

of summary judgment without taking any argument or evidence from the parties because the Dispute Tribunal Statute prevents the UNDT from receiving a case which is not receivable.[16]

43. In Mr. Kazazi's case, the application was not receivable in the absence of a timely request for management evaluation. Accordingly, the UNDT correctly applied Article 9 of its Rules of Procedure when it elected to issue a summary judgment.

Judgment

44. The appeal is dismissed. The UNDT Judgment is affirmed.

[16] *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, citing *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, and *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335.

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

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

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar