



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

Judgment No. 2015-UNAT-558

Kouadio
(Respondent/Appellant on Cross-Appeal)
v.
Secretary-General of the United Nations
(Appellant/Respondent on Cross-Appeal)

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Sophia Adinyira
Judge Luis María Simón

Case No.: 2014-644

Date: 2 July 2015

Registrar: Weicheng Lin

Counsel for Mr. Kouadio: Ben Vamissa Cisse

Counsel for Secretary-General: Stéphanie Cartier/Amy Wood

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2014/085, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 26 June 2014 in the case of *Kouadio v. Secretary-General of the United Nations*. The Secretary-General filed his appeal on 25 August 2014, and Mr. Kouassi Kouadio filed his answer and a cross-appeal on 22 October 2014. On 24 December 2014, the Secretary-General filed his answer to the cross-appeal.

Facts and Procedure

2. The following facts are uncontested:¹

... [Mr. Kouadio's] post was funded under the Global Environment Facility (GEF) Small Grants Programme. During 2011, GEF effected budget cuts that entailed the abolition of a number of posts, including that of [Mr. Kouadio].

... On 1 April 2011, the GEF Manager sent an e-mail to the [United Nations Development Programme (UNDP)] National Coordinator for the Programme asking him to inform [Mr. Kouadio] that his post would not be renewed beyond June 2011 and would be eliminated.

... On 26 April 2011, the National Coordinator for the Programme replied to the GEF Manager by e-mail, indicating that he had informed [Mr. Kouadio].

... On 10 June 2011, the [United Nations Office for Project Services (UNOPS)] Human Resources Director sent a letter to the UNDP Resident Representative in Côte d'Ivoire confirming that [Mr. Kouadio's] contract would not be renewed beyond 30 June 2011 and that his post would be abolished as of 1 July 2011.

... On 16 June 2011, [Mr. Kouadio] sent a letter to the UNDP Resident Representative in Côte d'Ivoire [acknowledging that he had received a copy of an e-mail sent to the UNDP Resident Representative concerning the abolition of his post as of 1 July 2011 and] requesting a termination indemnity.

... On 29 July 2011 and 2 September 2011, the UNOPS Administration [asked] the UNDP National Coordinator for the Programme [...] to negotiate a special service agreement with [Mr. Kouadio] for employment as a part-time driver to carry out ad hoc missions outside Abidjan.

... On 3 February 2012, [...] [Mr. Kouadio] rejected the offer of such a post and reiterated his request for a termination indemnity.

¹ Judgment No. UNDT/2014/085, paras. 3-14.

... On 16 February 2012, [Mr. Kouadio] sent a letter to the UNDP Deputy Country Director (Operations) requesting an indemnity.

... On 19 April 2012, [Mr. Kouadio] sent another letter to the UNDP Resident Representative in Côte d'Ivoire, again with a view to obtaining an indemnity.

... On 31 May 2012, [Mr. Kouadio] filed a request for informal settlement with the Ombudsman.

... On 6 February 2013, [Mr. Kouadio] filed an application with the [Dispute] Tribunal contesting the decision, communicated to him orally on 9 May 2011, not to renew his fixed-term appointment beyond 30 June 2011 and to abolish his post.

... The Respondent [...] submitted a reply on 9 August 2013 stating that the application was not receivable because no request for a management evaluation of the contested decision had been submitted to the Secretary-General or the UNDP Administrator, as required under rule 11.2(a) of the Staff Rules. In addition, the application was not receivable *ratione temporis* and was unfounded in fact and in law.

3. On 26 June 2014, the UNDT issued the Judgment currently under appeal. The UNDT found that Mr. Kouadio had never received written notice of the non-renewal of his contract and had only been so informed orally. As such, citing jurisprudence of the Appeals Tribunal, the UNDT considered that it was “unable to take a decision on the receivability of the application in the absence of a written notification of the contested administrative decision, in accordance with the jurisprudence”. Citing Articles 19 and 36(1) of its Rules of Procedure (UNDT Rules), the UNDT ordered the Administration to notify Mr. Kouadio in writing of the decisions to abolish his post and not to renew his appointment beyond 30 June 2011.

Submissions

The Secretary-General's Appeal

4. The UNDT erred in law in not rejecting Mr. Kouadio's application. Firstly, the UNDT erred in finding that it was “impossible” to review the receivability of Mr. Kouadio's application given that Mr. Kouadio had patently failed to request management evaluation of the decisions he sought to contest before the UNDT given that the Appeals Tribunal's jurisprudence has clearly established that requesting management evaluation is a mandatory first step in the appeal process.² None of Mr. Kouadio's requests for a termination indemnity were tantamount

² *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-299, para. 17; *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22. See also *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, paras. 25-27; *Planas v.*

to a request for management evaluation. Further, the Appeals Tribunal in *Rosana* held that the time limit for filing a request for a management evaluation runs from the date that the staff member had *actual knowledge* of a contested decision, even absent written notification of such decision.³ Mr. Kouadio acknowledged that he had been informed of the decision not to renew his appointment and to abolish his post at the latest on 16 June 2011 when he requested a termination indemnity, yet only filed his application with the UNDT 19 months later, in February 2013, and then without having first sought management evaluation. As the UNDT does not have the authority to waive the deadline for management evaluation or to waive the requirement of requesting management evaluation as a mandatory first step, Mr. Kouadio's application was clearly not receivable and the UNDT erred in not so finding.

5. The UNDT erred on a question of law in relying on the Appeals Tribunal's Judgments in *Schook*, *Manco* and *Bernadel* where each of the staff members concerned had requested management evaluation.⁴ While these judgments concern the calculation of deadlines in the absence of written notification to staff members, they are not authority for the proposition that an application may be receivable even in the absence of a request for management evaluation.

6. The UNDT exceeded its competence and erred on a question of law in ordering a remedy in respect of an application that was not receivable, citing Articles 19 and 36 of the UNDT Rules. Firstly, as the application was not properly before the UNDT, the UNDT did not have the competence to order any remedies in respect of his case.⁵ Second, as Mr. Kouadio did not request the issuance of written notification as a remedy in the present case, the UNDT acted *ex officio* in so ordering.⁶ Further, the effect of the UNDT's order would be to reset the filing deadlines beyond the three-year time limit set out in Article 8(4) of the UNDT Statute, and circumvent the intent behind Article 8(4) of the UNDT Statute, which was to prevent the UNDT from reviewing administrative decisions made more than three years earlier.

Secretary-General of the United Nations, Judgment No. 2010-UNAT-049, para. 23; *Crichlow v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-035, para. 31.

³ *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 21.

⁴ *Schook v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-013; *Manco v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-342; *Bernadel v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-180.

⁵ *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, paras. 25 and 43.

⁶ *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-400, para. 63; *James v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-009, para. 46.

Mr. Kouadio's Answer

7. The Dispute Tribunal did not err in considering his application receivable since management evaluation was not required in his case. Staff Rule 11.2(c) and Article 8(1)(c) of the UNDT Statute do not apply to his case as he never received written notification of the decisions he contests. Well-established Appeals Tribunal jurisprudence requires that “notification” as referred to in Staff Rule 11.2(c) must be in written form and addressed to the concerned staff member. This rules out the possibility of oral notification or notification to any other person than the concerned staff member, as occurred in his case. Further, the facts of *Rosana* upon which the Secretary-General seeks to rely are distinguishable as it concerned silence by the Administration in the face of a request for management evaluation by a staff member.

8. The UNDT did not err in law in relying on *Schook*, *Manco* and *Bernadel*. These cases were directly applicable to the facts of his case and held that time only begins to run from the date of a written notification.

9. The UNDT did not err in law in exercising its power pursuant to Articles 19 and 36 of the UNDT Rules to order the Administration to notify him in writing of the contested decisions. As his UNDT application referred to the lack of written notice from his employer, the UNDT did not exceed its jurisdiction in ordering this remedy.

Mr. Kouadio's Cross-Appeal

10. The UNDT erred by failing to render a decision on his requests for a termination indemnity and compensation. Given that the UNDT held that he had not been properly notified of the non-renewal of his contract and abolishment of his post, it logically followed that his fixed-term contract had not been validly terminated on 30 June 2011, and was therefore still in effect. Consequently, the UNDT should have determined that he was entitled to back-pay and other indemnities due to him since 31 July 2010, amounting to approximately 22,821,396 Central African Francs (CFA) and “at least 150,000 CFA” for moral damages and interest.⁷

The Secretary-General's Answer to the Cross-Appeal

11. Mr. Kouadio improperly seeks to re-litigate the issue of compensation before the Appeals Tribunal, although this is inconsistent with the Appeals Tribunal's jurisprudence, which

⁷ The approximate equivalent of USD 37,950 and USD 250, respectively.

has held that it does not have the power to conduct *de novo* hearings on appeal. Further, it is not enough for Mr. Kouadio to merely complain on appeal that he should have been awarded compensation. The UNDT did not err in failing to award compensation as the UNDT did not make any findings that the Administration had breached a procedural right of a fundamental nature, or that Mr. Kouadio had suffered direct harm as a result. As such, there was no legal basis for the UNDT to award damages and Mr. Kouadio has not established any error on the part of the UNDT. Lastly, other than bare assertions, Mr. Kouadio has not proffered any evidence to support his claims for compensable pecuniary and non-pecuniary harm; his claims merely repeat his submissions before the UNDT and reflect his own opinion. As such, his cross-appeal must fail.

12. The Secretary-General requests that the Appeals Tribunal vacate the Judgment and dismiss the cross-appeal in its entirety.

Considerations

13. Staff Rule 11.2(a) states, in relevant part, that: “[a] staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, [...] shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision”.

14. Staff Rule 11.2(c) reads, in part: “A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.”

15. Moreover, Article 8(1)(c) of the Statute of the UNDT establishes as a prerequisite that an application shall be receivable if: “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”.

16. Article 8(3) of the UNDT Statute provides:

The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. *The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.*⁸

⁸ Emphasis added.

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.⁹

18. In the current matter, little turns on the actual date that Mr. Kouadio may consider to have been properly notified of the abolition of his post. Regardless of whether time may be considered to have begun to run as of 9 May 2011, the date on which he acknowledged in his UNDT application that he had been informed, 16 June 2011, the date on which he wrote to the UNDP Resident Representative in Côte d'Ivoire requesting a termination indemnity, and therein acknowledging that he had been informed his post would be abolished, or even 30 June 2011, the date on which he separated and thus surely knew that an administrative decision had been taken to his detriment, the fact remains that at no point can it be said that he had requested management evaluation.

19. Furthermore, Article 8(4) of the UNDT Statute prohibits that Tribunal from considering any application brought to it three years after the issuance of the administrative decision that a potential applicant is seeking to challenge. In this regard, we agree with the Secretary-General that insofar as the UNDT purported to act pursuant to Article 36 of the UNDT Rules, Article 36 of the UNDT Rules does not allow the Dispute Tribunal to violate a provision of its Statute.¹⁰

20. In view of the statutory framework and our consistent jurisprudence set out above, the UNDT erred on a question of law in finding that it could not determine the receivability of Mr. Kouadio's application.

Judgment

21. The appeal is upheld and the UNDT Judgment is vacated. Mr. Kouadio's cross-appeal is dismissed.

⁹ *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, and cites therein; *Mosha v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-446, para. 17; *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22, and cites therein; see also *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335, paras. 20 and 22.

¹⁰ See *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011, para. 9.

Original and Authoritative Version: English

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

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Simón

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

(Signed)

Weicheng Lin, Registrar