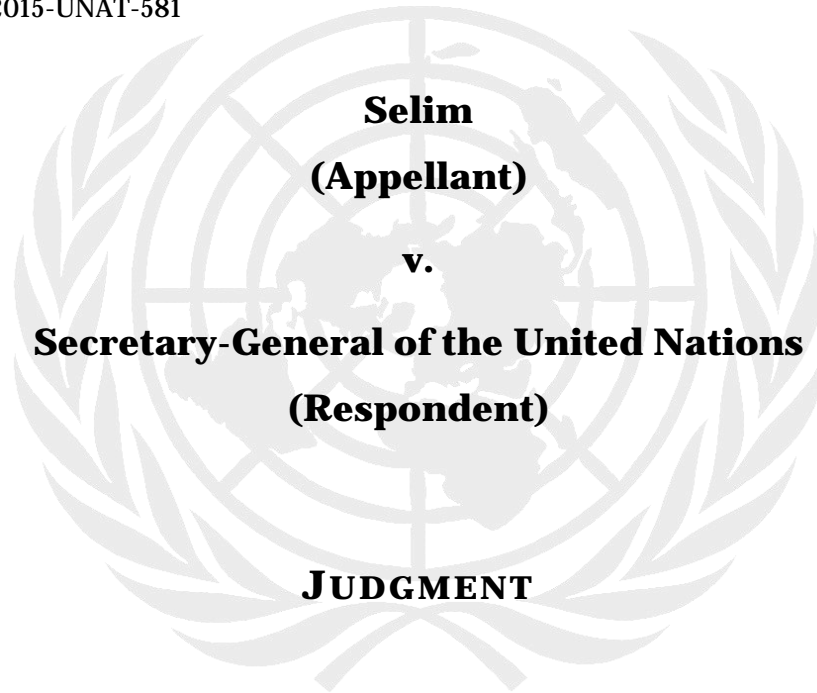




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2015-UNAT-581



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**Before:** Judge Richard Lussick, Presiding  
Judge Sophia Adinyira  
Judge Deborah Thomas-Felix

**Case No.:** 2014-676

**Date:** 30 October 2015

**Registrar:** Weicheng Lin

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**Counsel for Mr. Selim:** Yassin Mohamed Tageldin Yassin

**Counsel for Secretary-General:** Nathalie Defrasne

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Mohamed Hussein Mohamed Ahmed Selim against Judgment No. UNDT/2014/125, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 16 October 2014 in the case of *Selim v. Secretary-General of the United Nations*. Mr. Selim filed his appeal on 13 November 2014, which he subsequently perfected. The Secretary-General answered on 3 February 2015.

**Facts and Procedure**

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

... As of 28 September 2001, [Mr. Selim] was assigned to the (then) United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC). His assignment required travel to the different regions in the Democratic Republic of the Congo (DRC) - namely Kindu, Kisangani, Goma, Béni and Kinshasa.

... [Mr. Selim] submits that he suffered trauma following incidents related to the civil war between the belligerent parties in the DRC and having witnessed the killing of many of his colleagues. The pressures of the work environment and the ambient conditions in the DRC caused him to contract tuberculosis and malaria, for which the Mission did not provide adequate care.

... [Mr. Selim] was transferred from Kindu to Goma in May 2006 for an 18[-]month assignment. He was however moved back to Kindu in August 2006, "in violation of the UN Rules". [Mr. Selim claimed that he was appointed to replace the duty station director in Goma from May to August 2006, without any remuneration for having carried out those duties].

... [Mr. Selim] claims that he was being ill-treated by his superiors; the combination of that and living in "fear of being killed" caused him to suffer from trauma and high blood pressure.

... His physical and psychological health deteriorated. He suffered paralysis resulting in the partial loss of speech and physical mobility. He also developed cardiac and circulatory disorders. In January 2010, [Mr. Selim] fell down resulting in serious injuries of the spine and the neck. He had to undergo surgery followed by physiotherapy.

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<sup>1</sup> Impugned Judgment, paras. 15-19 (footnotes omitted).

3. By an undated letter, Mr. Selim's attorney wrote to the Regional Ombudsman in Kinshasa requesting that the latter "elaborate an adequate proposal for compensation" in light of Mr. Selim's state of health, which resulted from a work place incident, and ensuing financial difficulties. In the interim, the letter requested the Ombudsman to "arrange for [Mr. Selim] to continue, until final settlement, to receive his salaries and to be covered by health insurance".

4. On 21 June 2010, Mr. Selim sent a letter to the Human Resources Policy Service in the Office of Human Resources Management (OHRM), enclosing a copy of two e-mails to the Regional Ombudsman.

5. On 10 April 2011, Mr. Selim filed an application with the UNDT challenging the "decisions/absence of decisions relating to his remuneration, compensation for workplace injury and his desire to be reassigned to a less difficult duty station".<sup>2</sup> Mr. Selim claimed that his transfer from Goma back to Kindu breached the Organization's rules. He requested, inter alia, "compensation for non-promotion [from the FS-3 to FS-4 level] and for non-remuneration for posts he occupied", "[f]air compensation for the harm suffered as a result of illness and [...] workplace injury", as well as assignment to another duty station in light of his state of health.

6. By Order No. 091 (NBI/2011) dated 15 August 2011, the UNDT ordered that Mr. Selim "provide [it with] evidence of his correspondence to the Management Evaluation Unit by Monday, 21 August 2011".

7. On 16 October 2014, the UNDT rendered its Judgment. The UNDT found that Mr. Selim did not identify or explain in his UNDT application what administrative decision was taken that was adverse to him. The UNDT further noted that even if it were able to discern an appealable administrative decision, Mr. Selim had not been able to show that he had requested management evaluation of any administrative decision. In the absence of any evidence that Mr. Selim had previously submitted a claim to the Advisory Board on Compensation Claims (ABCC) pursuant to Appendix D of the Staff Rules, the UNDT also found that it had no jurisdiction to consider his compensation claim for work-related injury. As Mr. Selim did not follow the procedural requirements relating to his purported claims, the UNDT determined that the application was not receivable.

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<sup>2</sup> Impugned Judgment, para. 2.

## **Submissions**

### **Mr. Selim's Appeal**

8. The Appellant submits that the Dispute Tribunal failed to exercise its jurisdiction when it declined to address his three distinct claims relating to the Administration's failure: (a) to "give him the benefit of [a] FS-4 post" although he had been performing the duties of that post since 2004; (b) to apply the rule rotating the duty station of staff members working in hazardous areas every 18 months; and (c) to reassign him to suitable duties or be allowed to take medical retirement after he incurred a work-related injury in 2010 and to grant him "appropriate compensation". In failing to address these three claims, the UNDT "merely hid behind objections of a procedural nature".

9. The UNDT also erred on a question of law by failing to properly characterize the Appellant's claims, the first relating to his status as a staff member and regularization of his post, and the second concerning his workplace injury.

10. The UNDT committed errors in procedure in failing to consider documents which Mr. Selim had submitted after the case management hearing of 22 May 2014. The documents established that the Appellant had identified the decisions being challenged and had requested management evaluation through repeated complaints to management, contrary to the UNDT's findings. The documents further established that the Appellant had been incapable of submitting his compensation claims to the ABCC because of his injury and that he had submitted the issue to Human Resources and the Ombudsman. Thus, both Human Resources and the Ombudsman were apprised of his injury and were responsible for submitting his claims and should have referred his case to the ABCC.

11. The UNDT erred on questions of fact in relation to the facts set out at paragraphs 15, 22 and 26 of the Judgment and these errors resulted in a manifestly unreasonable decision. In relation to paragraph 26, the UNDT erred in placing the burden on him to prove which administrative decisions he challenged, rather than requesting the Administration to produce the Appellant's personnel record to enable the UNDT to take a considered and informed decision on the matter before it.

12. The Appellant requests that his application be found receivable and that the UNDT assess the merits of his claims. He also requests that the Appeals Tribunal:

- (a) order production of his “personnel record containing all the exchanges between the parties and the decisions taken by the Administration”;
- (b) “[u]rgently and on an interim basis” order the Respondent to continue to pay the Appellant’s full salary while he continues treatment for his workplace related injury and provide him with medical coverage;
- (c) assign him to a post with duties he is able to perform given his current medical state or grant him a full pension under the “medical benefits” regime;
- (d) award him compensation for the harm suffered as a result of his injury; and
- (e) adjust his salary to that of a Logistics Assistant, FS-4, with retroactive effect.

**The Secretary-General’s Answer**

13. The UNDT correctly concluded that the Appellant had failed to identify the administrative decision that he was contesting, and the annexes to the appeal, which consist of the Appellant’s correspondence with the Administration expressing discontent at his situation and medical reports describing his health, do not show otherwise. Further, notwithstanding that Mr. Selim had sent letters to various departments, including OHRM, the UNDT correctly concluded that the Appellant had not requested management evaluation of any decision with the Management Evaluation Unit. The Appeals Tribunal has consistently held this is a mandatory first step in the appeal process without which the UNDT has no subject-matter jurisdiction. Lastly, the UNDT correctly found that it did not have jurisdiction to decide on the Appellant’s claim for compensation for a service-incurred injury, particularly where the Appellant had altogether failed to submit a compensation claim to the ABCC. In view of the foregoing, the UNDT correctly determined that the application was not receivable.

14. As the Appellant failed to prove that the UNDT erred, the Respondent requests that the Appeals Tribunal reject the Appellant’s claims and dismiss the appeal in its entirety.

## Considerations

### *Preliminary matters*

15. Firstly, Mr. Selim has requested an oral hearing. The Appeals Tribunal does not consider that there are grounds for an oral hearing in that an oral hearing would not assist in the expeditious and fair disposal of the case.<sup>3</sup> Mr. Selim's request is therefore denied.

16. Secondly, since filing his appeal, Mr. Selim has filed additional documents. In February 2015, he filed an updated medical report and in August 2015 he filed documents concerning an unrelated claim arising from a decision in September 2014 to terminate his employment. Pursuant to Article 10(1) of the Rules, "[a] party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a party." We rule that the above documents are inadmissible in that they are not relevant to the central issue in the present case, which is whether or not the UNDT was correct in finding that Mr. Selim's application was not receivable.

### *The issue of receivability*

17. The UNDT's conclusions on the question of receivability were set out in the following paragraphs of its Judgment:<sup>4</sup>

... The Tribunal has jurisdiction to determine whether an administrative action was properly taken. This presupposes that a staff member who is challenging an administrative decision clearly identifies the decision he is seeking to challenge. The applicant must also comply with the *sine qua non* requirement of requesting management evaluation of the impugned decision within the stipulated timelines. The Tribunal is also "competent to review its own competence or jurisdiction in accordance with Article 2(6) of its Statute".

... In the present claim for compensation, the Applicant merely recites what he should be compensated for. He did not identify or explain what administrative decision was taken that was adverse to him and how that decision was unlawful.

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<sup>3</sup> See Article 18(1) of the Rules of Procedure of the Appeals Tribunal (Rules).

<sup>4</sup> Impugned Judgment, paras. 26-28 and 32 (internal footnotes omitted).

... Even if the Tribunal were to sift through the Applicant's submissions and 'find' the impugned decision, the Applicant has not been able to show that he has requested management evaluation of that or any other administrative decision.

...

... In the absence of any evidence that the Applicant submitted a claim to the ABCC, the Tribunal has no jurisdiction to consider his claim for compensation for work related injury.

18. Mr. Selim argues that the UNDT erred in placing the burden on him to identify the administrative decisions being challenged when it should have requested the Administration to produce his personnel record.

19. Mr. Selim also alleges that the UNDT committed a procedural error in neglecting to consider documents he presented to it after the case management hearing on 22 May 2014. He claims that these documents identified the decisions being challenged and were evidence that he had requested an evaluation from the Administration.

20. Mr. Selim further maintains that the UNDT erred in rejecting his claim as not receivable given that, because of his injuries, Human Resources and the Ombudsman were responsible for submitting his claim and should have referred his case to the ABCC.

21. We find that Mr. Selim's arguments on the issue of receivability are entirely without merit, for the following reasons.

22. Article 2(1)(a) of the Statute of the Dispute Tribunal confers jurisdiction upon the UNDT to hear and pass judgment on an application "[t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms 'contract' and 'terms of appointment' include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance."

23. Thus, a statutory burden is placed upon an applicant to establish that the administrative decision in issue was in non-compliance with the terms of his appointment or his contract of employment. Such a burden cannot be met where the applicant fails to identify an administrative decision capable of being reviewed.<sup>5</sup> Moreover, an

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<sup>5</sup> *Obino v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-405, para. 19; *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, para. 21.

administrative decision must be such that its date is based on objective elements that both parties (Administration and staff member) can accurately determine.<sup>6</sup>

24. What constitutes an administrative decision susceptible to challenge has been defined by the Appeals Tribunal as follows:<sup>7</sup>

... What is an appealable or contestable administrative decision, taking into account the variety and different contexts of administrative decisions? In terms of appointments, promotions, and disciplinary measures, it is straightforward to determine what constitutes a contestable administrative decision as these decisions have a direct impact on the terms of appointment or contract of employment of the individual staff member.

... In other instances, administrative decisions might be of general application seeking to promote the efficient implementation of administrative objectives, policies and goals. Although the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment.

... What constitutes an administrative decision will depend on the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision.

25. Mr. Selim's application to the UNDT claimed compensation for physical and psychological problems related to his work, loss of promotion, and that he should have been transferred to a less stressful post. He also complained that he was being ill-treated by his superiors and that he was suffering from trauma and high blood pressure.

26. However, these complaints were not related to any specific administrative decision. We have perused the record and find that the UNDT was correct in finding that Mr. Selim failed to identify a specific decision which had a direct and adverse impact on his contractual rights and thus did not identify an administrative decision capable of being reviewed.<sup>8</sup> We find that the UNDT was also correct in concluding that there was no evidence of Mr. Selim

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<sup>6</sup> *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28, citing *Rabee v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-296 and *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.

<sup>7</sup> *Obino v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-405, para. 18, citing *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, paras. 17-19.

<sup>8</sup> *Reid v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-419, para. 18.



having requested management evaluation of any administrative decision, nor any evidence of having submitted a claim to the ABCC.

27. We reject Mr. Selim's argument that the UNDT did not consider documents he had filed. The UNDT took particular care in its efforts to identify an administrative decision, but was not able to do so from the evidence available to it. Furthermore, Mr. Selim's appeal does not identify any specific or implied administrative decision which was overlooked or ignored by the UNDT.

28. We note that the UNDT attempted to clarify Mr. Selim's application by ordering him to provide evidence of his correspondence with the Management Evaluation Unit.<sup>9</sup> However, none of the documents filed by Mr. Selim identified a specific administrative decision that had been submitted for management evaluation.

29. The UNDT correctly observed that even if it had been able to find the impugned decision, Mr. Selim had not been able to show that he had requested management evaluation of that or any other administrative decision.

30. Such an omission is of itself fatal to Mr. Selim's application. Article 8 of the Statute of the Dispute Tribunal provides in part:<sup>10</sup>

1. An application shall be receivable if:

(a) The Dispute Tribunal *is competent to hear and pass judgement on the application*, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

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<sup>9</sup> Order No. 091 (NBI/2011).

<sup>10</sup> Emphasis added.

*b.* Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices;

...

4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

31. The Appeals Tribunal has consistently held that a timely request for 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*.<sup>11</sup>

32. Mr. Selim's argument that Human Resources and the Ombudsman were responsible for submitting his claims and should have referred his case to the ABCC has no legal basis. The UNDT considered the applicable law governing the situation, which is set out in Appendix D to the Staff Rules. Appendix D provides that claims for compensation must be submitted within four months of the injury, provided that in exceptional circumstances the Secretary-General may accept for consideration a claim made at a later date. The ABCC then makes recommendations concerning the claim to the Secretary-General, who then decides on the claim. In the present case, there was no evidence that a claim had been made, and thus no determination by the Secretary-General existed. Thus the UNDT did not err in coming to the conclusion that since Mr. Selim had failed to submit a claim to the ABCC as required by the Rules, the UNDT had no jurisdiction to consider his claim for compensation for work-related injuries.

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<sup>11</sup> *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 38, citing *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, and *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-299.

33. The Appeals Tribunal has 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 cannot be invoked as an excuse for missing deadlines.<sup>12</sup>

34. The Appeals Tribunal is satisfied that the UNDT's conclusions were fully consistent with the jurisprudence of the Appeals Tribunal and with the evidence on record. Mr. Selim has failed to establish that the UNDT failed to exercise the jurisdiction vested in it or committed any error of law, fact or procedure.

35. Accordingly, the appeal fails.

### **Judgment**

36. The appeal is dismissed and the Judgment of the UNDT is affirmed.

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<sup>12</sup> *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 35; *Bezzicheri v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-538, para. 40.

Original and Authoritative Version: English

Dated this 30<sup>th</sup> day of October 2015 in New York, United States.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Thomas-Felix

Entered in the Register on this 18<sup>th</sup> day of December 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar