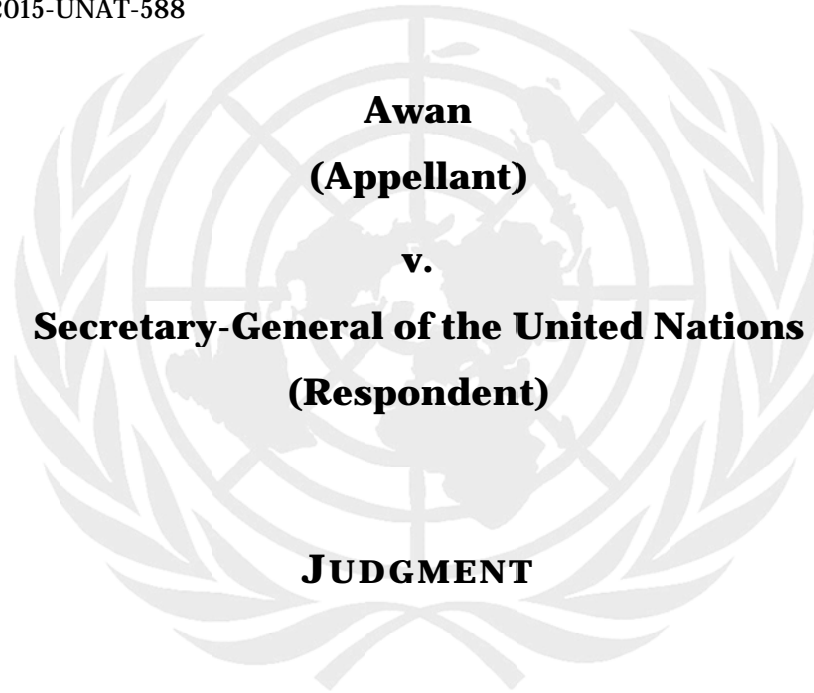




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-588



**Awan
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Luis María Simón Judge Mary Faherty
Case No.:	2014-685
Date:	30 October 2015
Registrar:	Weicheng Lin

Counsel for Mr. Awan:	Salim U. Shaikh
Counsel for Secretary-General:	Zarqaa Chohan

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2014/126, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 20 October 2014, in the case of *Awan v. Secretary-General of the United Nations*. Mr. Muhammad Sarfraz Awan filed his appeal on 19 December 2014, and the Secretary-General filed his answer on 17 February 2015.

Facts and Procedure

2. The Dispute Tribunal made the following undisputed findings of facts relevant to Mr. Awan's application before the UNDT:¹

... [Mr. Awan] entered into the service of [the United Nations Children's Fund (UNICEF)] as a Construction Specialist, at the National Officer Level, on 26 November 2007. He retired on 30 April 2012.

... During 2008, after a competitive bidding process, UNICEF contracted [with] a construction company called Michigan Climax Builders ("MCB") for the construction of 430 transitional shelter schools in the earthquake affected areas of Pakistan. [Mr. Awan] was charged with overseeing and monitoring the MCB contract on behalf of UNICEF.

... Since MCB did not comply with the terms and conditions of its contract, the UNICEF Representative, Pakistan, informed the Chief Executive Officer ("CEO"), MCB, by memorandum of 3 May 2010 that in view of MCB[']s failure to perform, UNICEF had decided to terminate the contract with a 14-day written notice[.] In a later memorandum, the UNICEF Deputy Representative, Pakistan, requested the CEO, MCB, to pay back monies he owed to UNICEF.

... On 18 February 2011, [Mr. Awan] was arrested by the local police while on his way to the Office and despite having showed his identity [card] as a United Nations staff member. The arrest seems to have been triggered by what appeared to be a fraudulent complaint filed against [Mr. Awan] upon the instruction of the CEO, MCB, who blamed [Mr. Awan] for the termination of the contract by UNICEF[.] It also seems that with the assistance of colleagues and legal aid, [Mr. Awan] was granted bail by the court.

... On the same day, the Pakistan Country Office ("PCO"), UNICEF sent a *Note Verbale* to the Pakistan Ministry of Foreign Affairs ("MOFA"), requesting it to advise [sic] the police to approach the staff member through the MOFA instead of taking him directly into custody[.]

¹ Impugned Judgment, paras. 2-12.

... According to the Respondent, the PCO sent another *Note Verbale* to the MOFA on 9 March 2011, stressing that as a United Nations staff member, [Mr. Awan] was immune from legal proceedings and requesting it, *inter alia*, to inform the relevant law enforcement authorities to respect the privileges and immunities of the Organization and of its officials.

... [Mr. Awan] was nevertheless subjected to criminal and civil proceedings in national court[.] On 2 June 2011 and 6 April 2012, [Mr. Awan] sent notes to UNICEF, requesting reimbursement of the expenses incurred in view of these legal proceedings. UNICEF subsequently reimbursed [Mr. Awan] the fees he had incurred[.]

... According to the Respondent, [Mr. Awan] informed the PCO, UNICEF, by emails of 12 and 28 July 2012 that he had been acquitted from all criminal charges and that the civil complaint against him had been withdrawn.

... In an email of 4 December 2013, and in response to a communication from [Mr. Awan], the Chief of Operations, UNICEF, Pakistan, thanked [Mr. Awan] “for sharing the good news” and noted for the record that all court cases against him had now been completely closed [as of 20 November 2013].

... On 24 March 2014, [Mr. Awan] filed a request for management evaluation against [the] “administrative decision related to vicarious liability on UNICEF”, referring, *inter alia*, to UNICEF[’s] alleged lack of protecting him and ensuring that he enjoy[ed] immunity as a United Nations staff member, and the failure to report the matter to the Secretary-General.

... By email of 7 May 2014, the Chief, Policy and Administrative Law Unit, Division of Human Resources, UNICEF, responded to [Mr. Awan’s] request for management evaluation, noting that he had failed to identify an administrative decision hence, that his request could not be entertained. Moreover, he stressed that if UNICEF[’s] actions were considered to be one or more implied administrative decisions, [Mr. Awan] had failed to respect the statutory 60-day deadline to request management evaluation.

3. On 20 July 2014, Mr. Awan, represented by counsel, filed an application before the UNDT contesting “UNICEF’s failure in its obligations as enshrined in the policy guidelines ST/AI/299 read with ST/SGB/198 to provide safety and protection to functional immunity of Staff Members, and as given under the 1946 Geneva Convention”.² The application also challenged UNICEF’s failure to “invoke the provision of Staff Rule 1.1 (f) [...] to report the whole matter to the Secretary-General”. Additionally, Mr. Awan claimed that UNICEF “should have applied *Quo-Warranto* writ jurisdiction of the High Court”. Mr. Awan requested: reimbursement of legal expenses not previously reimbursed; damages equivalent to at least

² Original emphasis.

two years' net base salary for professional, physical and emotional suffering; compensation for the period of 1 May to 20 November 2013, during which time he was unemployed and engaged in criminal and civil litigation; moral and material damages totaling USD 150,000 for defamation, harassment and discrimination; and assistance in seeking asylum in any European country, especially the United Kingdom, due to ongoing threats against him and his family.

4. On 20 October 2014, the UNDT issued Judgment No. UNDT/2014/126, rejecting Mr. Awan's application as non-receivable *ratione materiae*.

5. On 19 December 2014, Mr. Awan, represented by counsel, filed his appeal and the Secretary-General filed his answer on 17 February 2015.

Submissions

Mr. Awan's Appeal

6. The Appellant disagrees with the UNDT limiting itself to receivability, which is a "technical aspect/requirement" that amounts to a "denial of justice [that is] averse to the contractual rights of the Appellant". Further, the Appellant contends that UNICEF's decision to deploy him to a "hardship and risky environment" was an administrative decision.

7. The Appellant asserts that since his management evaluation request was accepted and acted upon on 7 May 2014, and his application to the Dispute Tribunal was timely filed within 90 days of that date, his UNDT application was timely.

8. The Appellant claims that his UNDT application contests the failure of UNICEF to make a decision, which in itself is an implied administrative decision that may be subject to judicial review under the Appeals Tribunal's jurisprudence. Under Staff Regulation 1.2(c), it was incumbent on UNICEF to ensure his safety and protection.³ UNICEF failed to do this

³ Staff Regulation 1.2(c) of ST/SGB/2011/1, in effect at the time of Mr. Awan's arrest, provided:

Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them.

insofar as Mr. Awan was subjected to harassment by MCB's CEO, and UNICEF failed to strongly protest the Appellant's arrest with the Inspector General of Police, Islamabad.

9. Moreover, as UNICEF failed to invoke Staff Rule 1.1(f),⁴ pursuant to which it was required to report the Appellant's situation to the Secretary-General, it thus also failed to protect the Organization's interests, as well as the Appellant's interests. Lastly, UNICEF failed to respect the provisions of Administrative Instruction ST/AI/299 (Reporting of Arrest or Detention of Staff Members, Other Agents of the United Nations and Members of Their Families) by not following its procedures.

The Secretary-General's Answer

10. The UNDT correctly concluded that the Appellant's application failed to identify the specific administrative decision that he was contesting. Rather, the application alleged that UNICEF failed to implement the policy guidelines of Administrative Instruction ST/AI/299 and the Secretary-General's Bulletin ST/SGB/198 (Security, Safety and Independence of the International Civil Service) and to protect his functional immunity. This does not identify a specific administrative decision, as is required to engage the Dispute Tribunal's jurisdiction.

11. There is no merit to the Appellant's claim that dismissing his application as non-receivable is a "technical" requirement that amounts to denying him justice and impacting on his contractual rights. Under Article 8 of the UNDT Statute, the UNDT has the authority to reject an application on receivability grounds without considering the merits of the case.

12. The Appellant must identify an error by the UNDT when appealing a judgment; it is not sufficient for the Appellant to merely disagree with the UNDT, as the Appellant does. An appeal is not an opportunity for the parties to reargue their case.

⁴ As there is no Staff Rule 1.1(f), the Appeals Tribunal assumes that Mr. Awan is referring to Staff Regulation 1.1(f), which reads:

The privileges and immunities enjoyed by the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who are covered by them to fail to observe laws and police regulations of the State in which they are located, nor do they furnish an excuse for non-performance of their private obligations. In any case where an issue arises regarding the application of these privileges and immunities, the staff member shall immediately report the matter to the Secretary-General, who alone may decide whether such privileges and immunities exist and whether they shall be waived in accordance with the relevant instruments.

13. The Appellant fails to distinguish between the filing of his request for management evaluation under the Staff Rules and the filing of his application before the Dispute Tribunal. Pursuant to the UNDT Statute, the UNDT must examine the receivability of an application and its claims, which is separate and distinct from the Administration's examination of the receivability of a management evaluation request. Thus, there is no merit to the Appellant's claim that the UNDT was bound to receive the application because the request for management evaluation had been received.

14. The UNDT correctly found that the Appellant had failed to file a timely request for management evaluation, i.e., within 60 calendar days from the date he was notified of the administrative decision as required by Staff Rule 11.2(c). Assuming the various legal proceedings initiated against and on behalf of the Appellant had come to a close by 20 November 2013, the Appellant's request for management evaluation of 24 March 2014 was clearly made more than 60 days after the expiration of the relevant deadline, and was thus untimely.

15. The Appellant is also precluded from claiming on appeal that he is contesting UNICEF's administrative decision to deploy him to a "hardship and risky environment" as he cannot raise a claim on appeal that he did not present for review in his management evaluation request.

Considerations

16. The Dispute Tribunal concluded that Mr. Awan's application was not receivable *ratione materiae* for two alternative reasons. First, the UNDT found that the application failed to identify in clear and precise terms a specific administrative decision that was being challenged.⁵ Second, the UNDT found the Appellant had failed to submit a timely request for management evaluation.⁶

17. The Appeals Tribunal will address only the latter reason since, even assuming *arguendo* that Mr. Awan's application could be said to challenge a specific implied administrative decision on the part of UNICEF, Mr. Awan's request for management evaluation was clearly untimely.

⁵ Impugned Judgment, paras. 19-20.

⁶ *Ibid.*, para. 21.

18. Staff Rule 11.2(c) provides that “[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”. This applies to both explicit and implied administrative decisions.

19. With an implied administrative decision, the Dispute Tribunal must determine the date on which the staff member knew or reasonably should have known of the decision he or she contests.⁷ Stated another way, the Dispute Tribunal must determine the date of the implied decision based “on objective elements that both parties (Administration and staff member) can accurately determine”.⁸ The Dispute Tribunal determined that to the extent that Mr. Awan challenged a failure to act by UNICEF, the latest date of any administrative decision contested by Mr. Awan was the last date his criminal and civil cases were pending, or the date his ordeal ended, which according to Mr. Awan was 20 November 2013.⁹ In making this finding of fact or conclusion of law, the UNDT correctly applied our jurisprudence and did not err in fact or law. On appeal, Mr. Awan does not challenge this determination by the UNDT.

20. Having correctly determined that 20 November 2013 was the latest date from which time began to run for the purpose of contesting any implied decision, the UNDT then concluded that Mr. Awan had not requested management evaluation within 60 calendar days of that date; thus, the UNDT was precluded from receiving *ratione materiae* Mr. Awan’s application and considering its merits:¹⁰

... [I]t is clear that in submitting his request for management evaluation only on 24 March 2014 relating to issues which, at the very latest, came to an end in November 2013, [Mr. Awan] failed to respect the 60-day statutory time-limit to request management evaluation under staff rule 11[.].2(c)[.] The failure to file a timely request for management evaluation renders the application equally irreceivable, *ratione materiae*[.]

⁷ Cf. *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273. See also *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, para. 22.

⁸ *Terragnolo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-566, para. 36; *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 25. See also *Collas v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-473, para. 40.

⁹ Impugned Judgment, para. 21.

¹⁰ *Ibid.*

21. The Appeals Tribunal can find no fault with this conclusion by the Dispute Tribunal, which accords with our jurisprudence.¹¹ Since this ground is sufficient to affirm the UNDT Judgment and to dismiss the appeal, there is no need for us to determine whether Mr. Awan's application before the UNDT challenged a specific implied administrative decision on the part of UNICEF or whether Mr. Awan was merely making general complaints about UNICEF's failure to protect him.

Judgment

22. The appeal is dismissed and Judgment No. UNDT/2014/126 is affirmed.

¹¹ *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-568, para. 68; *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 38.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

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

(Signed)

Weicheng Lin, Registrar