UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2016-UNAT-620

Seyfollahzadeh

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Luis María Simón Judge Richard Lussick
Case No.:	2015-723
Date:	24 March 2016
Registrar:	Weicheng Lin

Counsel for Ms. Seyfollahzadeh:	Self-represented
Counsel for Secretary-General:	Ernesto Bondikov/Zarqaa Chohan

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2015/037, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 12 May 2015, in the case of *Seyfollahzadeh v. Secretary-General of the United Nations*. Ms. Melina Seyfollahzadeh filed her appeal on 5 June 2015, and the Secretary-General filed his answer on 4 August 2015.

Facts and Procedure

2. The Dispute Tribunal made the following factual findings, which are undisputed:[1]

> ... The Applicant [Ms. Seyfollahzadeh] joined [the United Nations Development Programme (UNDP)] on 1 November 1997, as Secretary (Programme) at the G-4 level, at the UNDP, Country Office, Iran. She was promoted to the G-5 level [...] on 1 July 2000 and to the G-6 level on 1 July 2003. Her fixed[-]term appointment was converted into a permanent one effective 30 June 2009.
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> ... In 2011, the Applicant applied and was selected for a National Officer post ("NOB") as Global Fund Project Manager, and started her new appointment in January 2012. This post was funded through project funds.
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> ... Several emails on file from November 2011 show that the Applicant inquired with Human Resources whether she could keep her Medical Insurance Plan ("MIP") coverage should she accept the project funded NOB post and the latter be abolished after two years. In an email of 28 November 2011, she explicitly referred to the relevant rules, stressing that at the time of separation, "[she would] not be 50 years old" and asked whether she would still be eligible to keep her MIP or whether she would have to meet both criteria, that is age and a minimum of years of contributory service.
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> ... In response, by emails of 25 and 29 November 2011, a Human Resources Specialist, Office of Human Resources ("OHR"), UNDP, advised the Applicant that "in theory, [she] should be fine to keep the MIP as [she] would meet most of the criteria" and that "[a]t that time, if it should happen that there was resistance, [the Office] would explore the option of finding a way forward".
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> ... The [Applicant's] letter of appointment, signed by UNDP management on 18 December 2011 and by the Applicant on 15 January 2012, states that she was "offered a permanent contract" as Global Fund Project Manager (NOB II), TB Component – Services Limited to [Global Fund (GF)] Project, with an assignment for a fixed-term of one year, from 1 January to 31 December 2012. It further noted

[1] Impugned Judgment, paras. 3-17, 19-20.

that as a permanent staff member, she would "carry over [her] 'permanent status' into the project funded position".

... A note for the record dated 18 December 2011 was provided to the Applicant in January 2012, stating that she had been selected for an NBO position, in a donor funded project with available funding until the end of September 2013, that, hence, at that stage, "the project [could] only commit to fund an FT contract from 1 January 2012 till 30 September 2013", and that in view of the Applicant's status as a permanent staff member, "at the time of project closure which [would] result in post abolishment, [she] [would] receive termination indemnity as per the UNDP rules and regulations of 'Agreed Separation'".

... It seems that no new letter of appointment was given to the Applicant beyond December 2012, but she remained in service. Regarding her status and contractual situation, a meeting was held on 14 April 2014 between the Applicant, the Resident Representative, UNDP, Iran, the Deputy Resident Representative, UNDP, Iran, and the Head, H&D Cluster. It was stressed that the Office would not miss any opportunity to retain her in service, and the availability of possible functions on which she could be positioned was discussed. [...] The Deputy Resident Representative explained to the Applicant that there was no post available, and that the Country Office could not make any commitment at that point.

... By letter dated 16 April 2014, the Resident Representative informed the Applicant that the position she was encumbering would be abolished effective 30 September 2014, since it was no longer funded and the functions were no longer needed. She was encouraged to apply for other vacancies, and was told that in view of her status as holder of a permanent appointment she would be given priority consideration over equally qualified candidates who were not permanent or long serving. She was further told that she would be given a three month's job search period to focus on finding other job opportunities, from 17 April to 17 July 2014. Finally, in case she would not secure employment during that period, the Applicant was advised that the following three months from 18 July to 17 October 2014 would count as notice of separation period. Thereafter, should she still not have secured a post, she might either undertake a fully funded temporary assignment or take special leave without pay, or apply for agreed separation. She was asked to inform UNDP about her preferred option two weeks prior to the end of her initial search period; otherwise, the Organization would automatically place her on three months' notice of separation period.

... By email of 1 May 2014 from a Human Resources Associate, Human Resources Unit (HRU), UNDP, Iran, in response to some questions raised by the Applicant by email of 21 April 2014, she was given explanations with respect to her status. Under point "8. MIP", in response to a question with respect to the status of her MIP, the email states that "[the Applicant] will not have medical coverage once separated from the system".

... According to the Respondent, prior to the email of 1 May 2014, on 29 April 2014, the Applicant had a Skype conference call with a Human Resources Specialist, OHR, Headquarters, and with the Human Resources Associate in the Human Resources Unit, UNDP, Iran, during which it was clarified that she would not be eligible for after service health insurance ("ASHI") upon her separation.

... Following her receipt of the above-mentioned email from Human Resources[,] UNDP, of 1 May 2014, by email of the same day, the Applicant requested a meeting, which was held on 4 May 2014, between her, a staff member from the Human Resources Unit, UNDP, Iran, and the Deputy Resident Representative.

... In an email of 22 May 2014 to the Applicant, the Deputy Resident Representative noted that the question on MIP coverage post separation still needed some clarification and that "on the MIP coverage there is lack of clarity in the advice given to [her] by K. [on 29 November 2011]. While extant policies do not allow for what K. has clarified we need to have clarity and we are waiting for the same". The Applicant states that she then wrote to the Human Resources Unit at Headquarters, but did not receive a response.

... On 23 May 2014, the Applicant wrote to the MIP Focal Point, seeking his advice on her MIP status upon agreed termination. The Deputy Resident Representative sent a follow up to the MIP Focal Point on the same day, noting that it was necessary to provide the Applicant with a "clear clarification".

... By email of 27 May 2014, the MIP Focal Point informed the Applicant that he had looked at the emails she had sent him and noted that she would not be eligible for ASHI, which, as per the guidelines for abolition of posts, required that she be "at least 50 years old".

... In subsequent communications, the Applicant requested the Deputy Resident Representative to raise the issue with [Headquarters (HQ)], which he noted he was willing to do to explore other options.

... On 18 July 2014, the Applicant, through [the Office of Staff Legal Assistance (OSLA)], submitted a request for management evaluation of the decision not to provide her with after-service healthcare (ASHI/MIP), referring to a notification of said decision on 27 May 2014. No other issues were included in this request.

... By email of 30 September 2014, the Deputy Resident Representative informed the Applicant that the Country Office had secured additional funding to cover the cost of the post until 31 December 2014, and that UNDP, Headquarters, had advised that the notice separation period, ending 17 October 2014, would be maintained. The temporary assignment would follow the notice period, thus running from 18 October to 31 December 2014, and, in case no further additional funding was found, the Organization would proceed with her separation effective 31 December 2014.

3. On 12 January 2015, "[a]fter failing to reach an informal settlement", Ms. Seyfollahzadeh filed an application with the Dispute Tribunal contesting her separation from service, the decision that she was not eligible for ASHI, and not being allowed the benefits of the United Nations Joint Staff Pension Fund.

4. On 12 May 2015, the Dispute Tribunal rendered its Judgment, concluding Ms. Seyfollahzadeh's application was not receivable. The UNDT found that as Ms. Seyfollahzadeh's request for management evaluation of 18 July 2014 covered only the issue of her eligibility for ASHI/MIP, the remainder of the issues raised in her UNDT application were not receivable *ratione materiae* as they had not been exhausted. As to Ms. Seyfollahzadeh's challenge to the decision that she was not eligible for ASHI/MIP, the UNDT found that issue also was not receivable as her request for management evaluation had not been timely submitted.

Submissions

Ms. Seyfollahzadeh's Appeal

5. The Dispute Tribunal made an error of law and fact, resulting in a manifestly unreasonable decision, when it found that the informal e-mail communication of 1 May 2014 from the UNDP Country Office's Human Resources Unit (UNDP/CO/HRU) was the "administrative decision" which Ms. Seyfollahzadeh should have requested management to review. The 1 May 2014 e-mail was not sent by any of the UNDP Country Office authorities, such as the Deputy Resident Representative (DRR), and it was not accepted as clear and decisive by the parties involved in the matter, including the DRR, the Human Resources Unit, the Local Staff Association and Ms. Seyfollahzadeh. On the other hand, the 27 May 2014 e-mail was a formal and certain administrative decision; thus, this is the decision which Ms. Seyfollahzadeh correctly requested management to evaluate.

6. The UNDT should have addressed the merits of Ms. Seyfollahzadeh's claims in light of the doubts and uncertainties surrounding the information provided to her, and the circumstances that created the confusion. It is unfair for the UNDT not to address the fact that UNDP changed its position, to Ms. Seyfollahzadeh's detriment. UNDP is purposefully ignoring Ms. Seyfollahzadeh's rights, as is demonstrated by

UNDP's refusal to view its 2011 e-mail as creating a legitimate expectation on her part and constituting an administrative decision "towards which UNDP could oblige itself to proceed".

7. Due to the UNDT's error in misidentifying the correct "administrative decision", the Appeals Tribunal should reconsider the UNDT's finding concerning the receivability of Ms. Seyfollahzadeh's UNDT application.

The Secretary-General's Answer

8. The UNDT did not make any errors when it concluded that Ms. Seyfollahzadeh's application was not receivable *ratione materiae* on two grounds. First, the UNDT correctly found that Ms. Seyfollahzadeh had failed to request management evaluation of her ASHI/MIP claims within 60 days of receipt of notification of the contested administrative decision, as required by Staff Rule 11.2(c). Statutory time limits must be strictly enforced and the UNDT cannot waive deadlines for management evaluation. The UNDT also correctly found that the 1 May 2014 e-mail from the Country Office's HRU was a clear and unambiguous administrative decision and that the subsequent e-mails, including the 27 May 2014 e-mail, were merely requests for clarification and responses to such requests, containing no new information or facts.

9. Second, the UNDT correctly found that Ms. Seyfollahzadeh did not request management evaluation of any claims in her UNDT application other than the claim regarding her right to ASHI/MIP after separation from service. In fact, the only relief she requested in her management evaluation request was rescission of the decision not to provide her after-service health care. As claims not subject to management evaluation cannot be raised before the UNDT, pursuant to Article 8(1)(c) of the UNDT Statute, the UNDT had no jurisdiction to receive *ratione materiae* the additional claims challenging her separation from service or pension benefits, neither of which were included in her request for management evaluation.

10. The UNDT did not err on a question of law when it determined that the 1 May 2014 e-mail constituted a final administrative decision. As the UNDT found, the 1 May 2014 e-mail came from a competent authority, i.e., UNDP/CO/HRU, and specifically referenced prior consultations with the UNDP Headquarters. There is no requirement that an administrative decision be in a special form or contain special language. Further, clarification

had been sought of the 1 May 2014 e-mail from the UNDP Administration, which had given advice which was inconsistent with applicable policies. Moreover, the 27 May 2014 e-mail merely confirmed what had been stated in the e-mail of 1 May 2014. Finally, Ms. Seyfollahzadeh's claim that the administrative decision should have been made by the UNDP Country Office senior management is belied by her reliance on the 27 May 2014 e-mail, which came from the MIP Focal Point.

11. Ms. Seyfollahzadeh's argument that she had a "legitimate expectation" of ASHI/MIP coverage, based on the 2011 e-mail, is without merit. The language of the 2011 e-mail reveals that the e-mail was anything but a firm commitment which would give rise to a legitimate expectation.

12. The Secretary-General requests that the Judgment be affirmed and the appeal dismissed.

Considerations

Preliminary matter

13. This Tribunal does not find that an oral hearing is necessary or would "assist in the expeditious and fair disposal of the case" within the meaning of Article 18(1) of the Appeals Tribunal Rules of Procedure. Thus, Ms. Seyfollahzadeh's request is denied.

The appeal

14. Under Article 8(1)(c) of the Dispute Tribunal Statute, the UNDT has jurisdiction to receive applications appealing administrative decisions only if the applicant has "previously submitted the contested administrative decision for managerial evaluation, where required"; management evaluation or review is to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary.[2] Claims or administrative decisions not raised in a request for management evaluation cannot be received and considered by the Dispute Tribunal.[3]

[2] *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 42. See also *Survo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-595, paras. 84-85, and *Luvai v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-417, paras. 28-30.
[3] *Ibid.* See also *Egglesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-402.

15. Staff Rule 11.2(c) sets forth the deadline for requesting management evaluation, stating:

> 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 deadline may be extended by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

16. The Dispute Tribunal determined that Ms. Seyfollahzadeh's application was not receivable *ratione materiae* due to: (i) her request for management evaluation of the administrative decision denying her MIP coverage after separation from service was made "more than two weeks after the expiration of the ... deadline[; thus, it] is to be considered late"; and (ii) "none of the other issues referred to in her application were subject to a request for management evaluation." We will consider each conclusion by the Dispute Tribunal, in turn.

17. Whether Ms. Seyfollahzadeh's request for management evaluation of the administrative decision finding she was ineligible for ASHI/MIP was tardy depends, of course, on when she "received notification of the administrative decision". And that inquiry, in turn, depends on the date of the administrative decision being contested. Accordingly, the parties' dispute before the UNDT focused upon determining the date of the contested administrative decision. On the one hand, Ms. Seyfollahzadeh argued that the date of the administrative decision was 27 May 2014. On the other hand, the Secretary-General asserted that the date was 1 May 2014.

18. The Dispute Tribunal fully understood and acknowledged that "to determine the relevant date from which the 60-day deadline under staff rule 11.2(c) started to run with respect to the administrative decision, namely that [Ms. Seyfollahzadeh] does not qualify for ASHI/MIP after separation, the Tribunal has to assess when a final decision in this matter was taken and notified to [Ms. Seyfollahzadeh]".[4] Considering the evidence before it, the Dispute Tribunal agreed with the Secretary-General, stating:[5]

> The [Dispute] Tribunal finds that the terms of the email of 1 May 2014 were unambiguous with respect to the fact that [Ms. Seyfollahzadeh] would not be granted ASHI coverage upon her separation. Further, said email was sent by the Human

[4] Impugned Judgment, para. 35.
[5] *Ibid*., paras. 35-38.

> Resources Unit, UNDP, Iran, and, as such, clearly emanated from a competent authority; moreover, the email explicitly referred to prior consultations with respect to [Ms. Seyfollahzadeh's] case with UNDP Headquarters. ...
>
> The [Dispute] Tribunal observes that while some mention was made in subsequent communications, including by UNDP, Iran, to the need for further clarification, this was based on "the lack of clarity in the advice given to [Ms. Seyfollahzadeh] by K. [on 29 November 2011]" ... rather than from the decision of 1 may 2014, which was found to be in accordance with the Country Office understanding of the relevant provision of the guidelines.
>
> More importantly, the [Dispute] Tribunal notes that the response email of 27 May 2014 did not refer to any new fact or information ... that was not considered at the time of the email of 1 May 2014. As such, the [Dispute] Tribunal finds that the decision of 27 May 2014 constitutes a mere confirmation of the earlier and unambiguous decision of 1 May 2014, and cannot be qualified as a "new" administrative decision, taken on the basis of new information/facts, unknown at the time of the decision of 1 May 2014.

19. The Appellant argues that this determination was an error of fact and law, resulting in a manifestly unreasonable decision in that the administrative decision was 27 May 2014. There is no merit to the Appellant's claims, as shown by analyses of the e-mail correspondence between the Appellant and the various officers and staff with UNDP/CO/HRU in Iran.

20. When Ms. Seyfollahzadeh was considering a job offer in November 2011, she sent an e-mail to UNDP Headquarters Office of Human Resources (HQ-OHR), advising that she had "found" an "article ... in MIP guidelines" which she wanted "to be clear about," as the article provided:

> Effective 1 January 1995, a former staff member who separates, below age 55, on agreed termination or abolition of post, who is at least 50 years old at the time of separation and, who has at the time of separation, completed a minimum of 15 years of cumulative52 [sic] in-service contributory participation in MIP, its predecessor, MEAP, or, prior to that in a health insurance plan recognized by the UN.

The Appellant further stated in her e-mail:

> At the time of separation, I will complete the minimum of 15 years of cumulative; however I will not be 50 years old.. [sic] am I still eligible to keep my MIP or should I met [sic] both criteria of the age (50 years old) and minimum of 15 years to be able to keep the MIP? I hope keeping one criteria would be enough to keep the MIP after separation! Would appreciate your kind advice again.

21. After being provided with the Appellant's date of birth, entry into duty date, and the information that she held a permanent contract, a Human Resources Specialist with HQ-OHR, responded to the Appellant on 29 November 2011, stating:

> Yes, in theory you should be fine to keep the MIP as you would meet most of the criteria. At that time, if it should happen that there was resistance, we would explore the option of finding a way forward.

22. The Appellant accepted the job offer. A couple of years later, as her separation from service became imminent, the Appellant sent a lengthy e-mail to UNDP/CO/HRU in Iran, raising several issues regarding her separation, including issue No. 8 regarding "the status of [her] MIP upon separation". In response, on 1 May 2014, a Human Resources Associate with UNDP/CO/HRU in Iran sent an e-mail to the Appellant, stating: "You will not have Medical Coverage once separated from the system."

23. The Appellant disliked this response, which she believed did not conform to the November 2011 e-mail, so she contacted various people in UNDP/CO and UNDP/CO/HRU, asking for "clarifications". For example, on 22 May 2014, the Appellant sent an e-mail to the DRR, stating in part: "I understand that you have already seen the answers from HQ-HRO which has kindly been complied ... and sent to me. As you see there are still some ambiguities in the answers for which I need clarifications."[6] The same day, the DRR responded to the Appellant, stating, in part:

> So far, from what I know only one question below – about the currency of the indemnity payment – and the other one on MIP coverage post separation are the ones where some clarification is needed.
>
> ...
>
> On the MIP coverage there is lack of clarity in the advice given to you by [K.] earlier. While extant policies do not allow for what [K.] has clarified we need to have clarity and we are waiting for the same.

The Appellant responded to the DRR on the same date, stating, in part:

> **MIP:** At the time when I was making the decision of accepting the post of GF, [HQ-HRO] clearly said that I should be fine to keep the MIP as I would meet most of the criteria, and if at the time, it should happened [sic] of any resistance, the [HQ-HRO] should explore the option of finding a way forward. I accepted the job

[6] Emphasis omitted.

> based on this affirmative response due to the fact that continuation with MIP was one of the important factor[s] affecting my decision to accept the post. I don't find it appropriate [...] at this stage to receive conflicting messages from HQ. ... I would highly appreciate CO's support to ensure this issue will be solved.

24. On 23 May 2014, the Appellant wrote an e-mail to the MIP Focal Point:

> I am writing to seek your advice on my MIP status upon agreed separation. ...
>
> I had communication with HQ-HRO in December [sic] 2011, prior [to] accepting the job offer to ensure that I can keep my MIP upon separation ... therefore, I accepted the job based on this affirmative response due to the fact that continuation with MIP was one of the important factor[s] affecting my decision to accept the post.
>
> I would highly appreciate to have your advice and confirmation that I can continue with my MIP upon separation.

25. On 27 May 2014, the MIP Focal Point responded to the Appellant, stating: "I have looked at the e-mails below and I am sorry to say that you would not be eligible for ASHI. As per the guidelines for abolition of post you must be **at least 50 years old**."[7]

26. These e-mails show that, as the UNDT correctly found, the administrative decision denying MIP to Ms. Seyfollahzadeh was communicated to her in the e-mail of 1 May 2014. The decision was "unambiguous", "clearly emanated from a competent authority", and "explicitly referred to prior consultations with ... UNDP headquarters", as the UNDT also found. Moreover, all communications from the Appellant after 1 May 2014 were attempts by her to find someone within UNDP who would reconsider (or clarify, using the Appellant's term) the decision denying her MIP, based on her plea that she had relied (to her detriment) on the advice given by HQ-OHR in 2011; and all communications after 1 May 2014 to the Appellant were responses to her requests for reconsideration.

27. As such, the UNDT correctly found that the e-mail of 27 May 2014 "did not refer to any new fact or information" and was "a mere confirmation of the earlier and unambiguous decision of 1 May 2014".[8] It was not a new decision, based on new facts or information. Thus, the Appeals Tribunal concludes that the UNDT did not make an error of law or fact

[7] Emphasis in original.
[8] *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, paras. 24-34 and footnotes 2-3 and 6-8.

resulting in a manifestly unreasonable decision when it determined that the Appellant received the administrative decision denying her MIP on 1 May 2014.

28. In light of the Appellant's receipt on 1 May 2014 of the administrative decision denying her MIP, the Dispute Tribunal also correctly found that the Appellant "should have filed a request for management evaluation by the end of June 2014. However, she did so only on 18 July 2014." As the Appellant's "request for management evaluation ... [was] more than two weeks after the expiration of the ... deadline", the UNDT properly concluded that Ms. Seyfollahzadeh's "application with respect to the decision to deny [her] ASHI coverage after separation [wa]s ... irreceivable *ratione materiae*".[9] In reaching all of these legal conclusions, the Appeals Tribunal determines that the UNDT did not make any errors of law.

29. The Appeals Tribunal also finds that the UNDT did not err in law when it concluded that the other claims in Ms. Seyfollahzadeh's application were not receivable *ratione materiae* as they were not raised in the request for management evaluation.[10] We have addressed this issue although it is not at all clear that Ms. Seyfollahzadeh's appeal raises this claim.

Judgment

30. The appeal is dismissed and Judgment No. UNDT/2015/037 is affirmed.

[9] Impugned Judgment, para. 39.
[10] *Pirnea v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-311, para. 42. See also *Survo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-595, paras. 84-85, and *Luvai v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-417, paras. 28-30.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Chapman, Presiding	Judge Simón	Judge Lussick

Entered in the Register on this 13th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar