



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

Judgment No. 2019-UNAT-929

**Abdellaoui
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Richard Lussick, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case No.:	2019-1225
Date:	28 June 2019
Registrar:	Weicheng Lin

Counsel for Ms. Abdellaoui:	Self-represented
Counsel for Secretary-General:	Nathalie Defrasne

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2018/114, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 21 November 2018, in the case of *Abdellaoui v. Secretary-General of the United Nations*. Ms. Naima Abdellaoui filed the appeal on 21 January 2019, and the Secretary-General filed his answer on 19 March 2019.

Facts and Procedure

2. At the material time, Ms. Abdellaoui was a Reviser in the Arab Translation Section (ATS), Languages Service (LS), Division of Conference Management (DCM), United Nations Office at Geneva (UNOG).

3. On 22 January 2017, Ms. Abdellaoui filed a harassment complaint under Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) against 18 staff members mainly from the ATS/DCM/UNOG, as well as against the Chief, LS, covering the period from 2009 through 2016. She filed additional information on 16 and 22 February 2017.

4. On 30 March 2017, the Director-General, UNOG, advised Ms. Abdellaoui that he had decided to appoint a fact-finding panel (the Panel) to conduct an investigation into her allegations against two staff members of the ATS, and that she would be informed of the composition of the Panel. He also advised Ms. Abdellaoui that her allegations against the other staff members mentioned in her complaint would not be investigated but that they may, if relevant, be heard as witnesses, because in his opinion, the facts as she described them did not present possible prohibited conduct and/or were single events that did not form a pattern of harassing behaviour. The Director-General further advised Ms. Abdellaoui that her allegations against the Chief, LS, involved issues of management and non-selection and therefore fell outside of the scope of ST/SGB/2008/5. Lastly, the Director-General advised Ms. Abdellaoui that her claims concerning her non-selection for the post of Chief, ATS, would be handled under the management evaluation procedure that she had launched.

5. On 27 November 2017, the Director-General informed Ms. Abdellaoui that the investigation had been completed and that while it had been decided not to initiate disciplinary proceedings, managerial action pursuant to Section 5.18(b) of ST/SGB/2008/5 was warranted with respect to one of the two staff members who were subjects of the investigation.

6. On 24 January 2018, Ms. Abdellaoui requested management evaluation of the Director-General's decision.

7. On 16 April 2018, the Director-General informed Ms. Abdellaoui that following receipt of the comments from one of the two subjects of the investigation, he had decided to close the case against that staff member. He further informed Ms. Abdellaoui of his decision to take managerial action against the other staff member. He encouraged Ms. Abdellaoui to pursue mediation with these two staff members and expressed his hope that all staff members within the ATS would engage in constructive communication and in creating a positive working environment.

8. On 6 June 2018, the Under-Secretary-General for Management informed Ms. Abdellaoui of the outcome of the management evaluation, which was that the Secretary-General had upheld the decision concerning the investigation into her complaint of harassment.

9. On 30 August 2018, Ms. Abdellaoui filed an application with the Dispute Tribunal, contesting the decision embodied in the communication from the UNOG Director-General, dated 27 November 2017, "explaining the disposal of her harassment complaint filed pursuant to ST/SGB/2008/5".

10. In its Judgment now under appeal, the Dispute Tribunal determined that Ms. Abdellaoui was contesting two decisions: (a) the decision not to investigate her complaint of harassment against the Chief, LS, and 15 of her colleagues; and (b) the decision to take managerial action against only one of the staff members about whom she had complained. It found that her claims in respect of decision (a) were not receivable *ratione materiae*, because she had failed to request management evaluation.

11. On the merits, the Dispute Tribunal dismissed Ms. Abdellaoui's application regarding decision (b), finding that the contested decision was lawful, that the Administration had properly followed the procedure outlined in ST/SGB/2008/5, that Ms. Abdellaoui had failed to provide any particulars to support her contentions, and that the UNOG Director-General had diligently reviewed the Panel's report before he decided to close the matter with respect to one subject of the investigation and take managerial action with respect to another subject of the investigation.

12. The Dispute Tribunal rejected Ms. Abdellaoui's request for disclosure of the full report of the Panel and any associated documents, calling it a "fishing expedition".¹

Submissions

Ms. Abdellaoui's Appeal

13. The UNDT lacked impartiality in its support of the biased decision of the Administration not to investigate Ms. Abdellaoui's complaint of abuse of authority against the Chief, LS.

14. There were procedural irregularities. Firstly, the Director-General's memorandum of 30 March 2017 failed to inform Ms. Abdellaoui that she was entitled to request management evaluation of the entirety or part of his decisions with respect to her complaint. That was another instance of breach of the Organization's duty of care and its duty to act in good faith. Secondly, the UNDT decided the case without a hearing despite Ms. Abdellaoui's demand for a fact-finding hearing, thus depriving her of an opportunity to call witnesses and give evidence on some issues and further weakening her already weak position as a self-represented party. Thirdly, the UNDT denied Ms. Abdellaoui of her right to know the basis of the contested decisions in respect of her complaint by rejecting her request for disclosure of the documents that the Secretary-General had submitted on an *ex parte* basis.

15. The Dispute Tribunal erred in finding that the Panel had adopted appropriate and relevant criteria and properly considered the evidence before it. The investigators were appointed by the Human Resources Management Service; they were interested only in the information that would make it possible to further punish Ms. Abdellaoui as a complainant

¹ Impugned Judgment, para. 27.

and in avoiding interviewing her ATS colleagues who were not involved in the conflict between her and those who were bent on subjecting her to a mobbing campaign. If the investigators had been impartial, they would have found that the Chief, LS, had failed in her duty as a manager to ensure a harmonious work environment for Ms. Abdellaoui.

16. It was unreasonable for the Dispute Tribunal to separate the vacancy for P-5 Senior Reviser position and the selection process for the post of Chief, ATS, from the mobbing campaign, because her roster for the P-5 Senior Reviser position in 2014 and for the Chief, ATS, position triggered the mobbing campaign against her and resulted in the cancellation of the vacancy for the P-5 Senior Reviser position and her exclusion from the selection process for the Chief, ATS, position. The UNDT should have joined the present case with her other two pending cases, because “each of them sets the context for the other”.

17. In a total lack of impartiality, the Dispute Tribunal failed to consider or even mention the instances of grave harassment that Ms. Abdellaoui detailed in her UNDT application (break-in into her office and refusal to allow her to use dictation software).

18. Ms. Abdellaoui requests that the Appeals Tribunal order the UNOG Administration to take immediate action to secure a safe working environment for her, and to engage an outside firm to investigate complaints of prohibited conduct to prevent a conflict of interests. She also requests that the Appeals Tribunal award her unspecified compensation for the Administration’s failure to conduct a proper investigation and her legal fees, and, moreover, two years’ net base salary as moral damages and two years’ net base salary for damage to her health.

The Secretary-General’s Answer

19. The Dispute Tribunal correctly found that Ms. Abdellaoui’s claims regarding the decision not to investigate her complaint against the Chief, LS, and 15 other staff members were not receivable *ratione materiae*. That decision was clearly spelled out in the UNOG Director-General’s memorandum of 30 March 2017. It was her responsibility to ensure that she was aware of the applicable procedures in the context of the administration of justice. Her argument that she was not made aware of the possibility for her to request management evaluation is thus unavailing.

20. The Dispute Tribunal correctly concluded that the contested decision (b) was lawful, and that Ms. Abdellaoui has failed to show any reversible error by the UNDT in reaching that conclusion. The UNDT noted that Ms. Abdellaoui had failed to substantiate her claims of investigative irregularities, bias and other improper motivations with any particulars, and it correctly concluded that the ST/SGB/2008/5 procedure had been followed in the present case. Ms. Abdellaoui has neither specified a statutory ground of appeal nor articulated whether and how the Dispute Tribunal may have erred. In her appeal, she merely repeats her claims and assertions made before the Dispute Tribunal.

21. Ms. Abdellaoui has failed to establish that the Dispute Tribunal erred in not holding a hearing. The UNDT based its decision on the fact that she did not identify witnesses or indicate the issues on which they would give evidence and how they related to the merits of her application, well within its discretionary power in case management. It was not the role of the Dispute Tribunal to conduct a fact-finding hearing on her complaint or to hear witnesses whom the Panel had not heard.

22. Ms. Abdellaoui has failed to establish that the UNDT erred in denying her request for disclosure of the Panel report and any associated documents. The Dispute Tribunal properly exercised its discretion by balancing the prejudicial effects of such a disclosure and its limited probative value, and correctly concluded that Ms. Abdellaoui did not have the right to receive the Panel's full report and the associated documents.

23. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety and affirm the impugned Judgment.

Considerations

24. The Appeals Tribunal has consistently emphasized that the appeals procedure is of a corrective nature and, thus, is not an opportunity for a dissatisfied party to reargue his or her case.² A party cannot merely repeat on appeal arguments that did not succeed before the lower court. An appellant must bring the appeal within the jurisdiction of the Appeals Tribunal by basing the appeal on any of the grounds prescribed by Article 2(1) of the

² *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-711; *Masytkanova v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-662; *Achkar v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-579; *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540.

Statute of the Appeals Tribunal. Pursuant to that provision, the Appeals Tribunal has jurisdiction to hear and pass judgment on an appeal which asserts that the UNDT has (a) exceeded its jurisdiction or competence; (b) failed to exercise jurisdiction vested in it; (c) erred on a question of law; (d) committed an error in procedure, such as to affect the decision of the case; or (e) erred on a question of fact, resulting in a manifestly unreasonable decision.

25. The appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective.

26. Ms. Abdellaoui has not done this. She has failed to base her appeal on one or more of the five grounds of appeal prescribed by Article 2(1) of our Statute. The arguments that she raises on appeal are essentially a repetition of her arguments that did not succeed before the UNDT.

27. Her argument challenging the Administration's decision not to investigate her complaint of abuse of authority against the Chief, LS, was held as not receivable by the UNDT on the ground that she had not requested management evaluation. It is well-established law that management evaluation is a mandatory first step in the appeal process.³ The UNDT found that she had been clearly notified on 30 March 2017 of the decision not to investigate her complaint against the Chief, LS, and 15 other staff members. It rejected her claim that it was necessary for her to await the completion of the investigation of the other two staff members before she could request management evaluation. Under Article 8(1) of the UNDT Statute, an application challenging an administrative decision is not receivable unless the applicant has requested management evaluation within the deadline provided. The UNDT was correct in law in holding that her application was not receivable.

28. Nevertheless, she claims on appeal that the Organization breached its duty of care and failed to act in good faith by not advising her in the Director-General's memorandum of 30 March 2017 that a management evaluation of that decision had to be filed within a specific deadline. This argument has no merit. Staff members are presumed to know the Staff Regulations and Rules applicable to them. It is the staff member's responsibility to

³ *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521.

ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse.⁴

29. Ms. Abdellaoui further argues that the UNDT erred in deciding her case without a hearing. The UNDT, in rejecting her request for a hearing, noted that she did not identify witnesses, nor did she indicate the evidence they would give and how it related to the merits of her application. The UNDT's decision not to hold a hearing was within its discretion under Article 16(1) of the Rules of Procedure of the UNDT.⁵

30. Ms. Abdellaoui alleges that the UNDT erred in rejecting her request for disclosure of the documents submitted by the Secretary-General on an *ex parte* basis. The UNDT found that:⁶

... no useful purpose will be served by disclosing the report of the investigation panel and any associated documents given that the absence of particulars provided by [Ms. Abdellaoui] suggested that she was on a fishing expedition wishing to trawl through the documents on the off chance that there was material that may be of marginal relevance to her belief that several of her colleagues were complicit in a concerted campaign to harm her interests in the workplace. In the circumstances of this case, the Tribunal considered that the highly probable prejudicial effect of disclosure will outweigh the limited probative value, if any, to the issues in this case. Further the Tribunal considered that a hearing on the merits was not necessary and that the case be decided on the papers.

31. This decision falls well within the broad discretion of the UNDT in matters of case management. Article 19 of the Rules of Procedure of the UNDT provides that "The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties".

32. Ms. Abdellaoui also maintains that the UNDT erred in finding that no bias had been proven in the Administration's decision to close the case against one staff member and take managerial action against the other. The UNDT found that Ms. Abdellaoui had failed to provide the names of specific witnesses and how the failure to interview them had an impact

⁴ *Vukasovic v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 14; *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 18.

⁵ Article 16(1) of the UNDT Rules of Procedure provides: "The judge hearing a case may hold oral hearings".

⁶ Impugned Judgment, para. 27.

on the outcome of the investigation. Further, although she stated that the interview conclusions were “biased”, she did not provide further particulars to support that contention. Also, she did not substantiate her claim that the Panel had “brushed aside” the e-mails presented as evidence, nor did she identify the impact that it had on the outcome of the investigation. In the light of those omissions, the UNDT was correct to find that the proper procedure had been followed.

33. We have reviewed the Judgment and find that Ms. Abdellaoui’s case was fully and fairly considered by the UNDT and that there was no alleged error that would have changed the outcome of her case.

34. Accordingly, Ms. Abdellaoui has failed to demonstrate on appeal any error by the UNDT that would justify the reversal of its Judgment.

Judgment

35. The appeal is dismissed and Judgment No. UNDT/2018/114 is affirmed.

Original and Authoritative Version: English

Dated this 28th day of June 2019 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Halfeld

(Signed)

Judge Murphy

Entered in the Register on this 19th day of August 2019 in New York, United States.

(Signed)

Weicheng Lin, Registrar