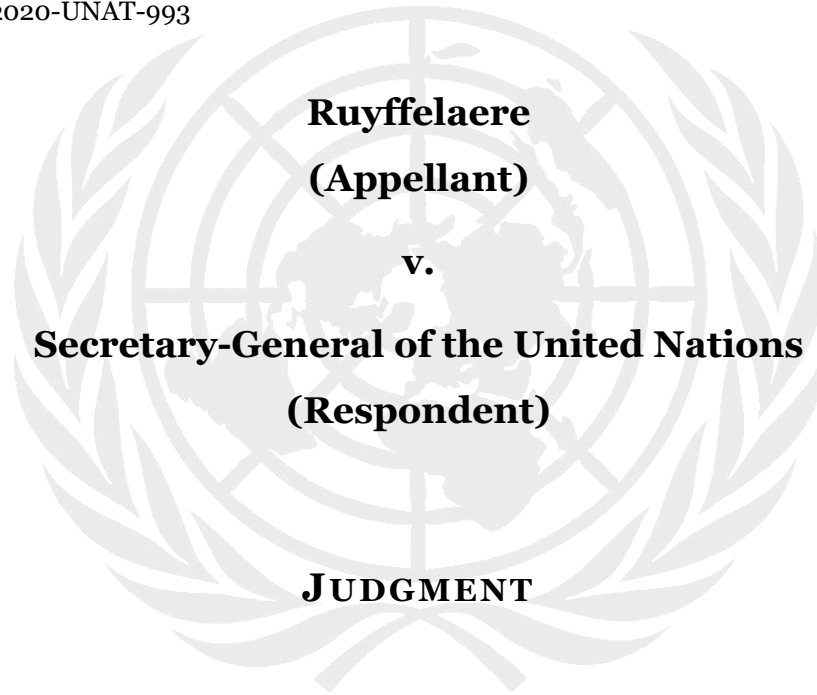




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2020-UNAT-993



**Ruyffelaere  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Dimitrios Raikos, Presiding Judge Martha Halfeld Judge Graeme Colgan
Case No.:	2019-1303
Date:	27 March 2020
Registrar:	Weicheng Lin

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Counsel for Mr. Ruyffelaere: Self-represented

Counsel for Secretary-General: Isavella Vasilogeorgi

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. Mr. Jean Gael Ruyffelaere filed an application before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) contesting the administrative decision not to investigate his complaint of harassment and abuse of authority against his second reporting officer. The UNDT dismissed his application as not receivable on grounds that he had not timely filed a request for management evaluation. Mr. Ruyffelaere appeals to the United Nations Appeals Tribunal (Appeals Tribunal). On appeal, we find the UNDT erred in dismissing the application as not receivable and we therefore remand the case to the UNDT to be determined on its merits.

**Facts and Procedure**

2. On 15 September 2014, Mr. Ruyffelaere, a Senior Medical Officer in the Medical Services Division, Department of Management (DM) in New York, submitted a complaint under Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority) to the Office of Internal Oversight Services (OIOS). Mr. Ruyffelaere alleged harassment and abuse of authority against the Medical Director. OIOS referred the matter to the Under-Secretary-General of DM (USG/DM).

3. On 5 July 2015, Mr. Ruyffelaere had a telephone conversation with the then Director of the Office of the USG/DM (Director of OUSG/DM) and discussed *inter alia* various potential resolutions regarding his complaint. On 19 November 2015, in a meeting in New York, the Director of OUSG/DM verbally informed Mr. Ruyffelaere that he reviewed the complaint and advised the USG/DM that there were insufficient grounds to warrant a fact-finding investigation, and the USG/DM agreed with his advice. The Director of OUSG/DM further clarified that the USG/DM had a busy work schedule and had delegated responsibility for reviewing complaints to him as the Director of OUSG/DM.

4. On 25 April 2017, Mr. Ruyffelaere submitted a request for management evaluation challenging the Administration's excessive delay in taking any action in response to his complaint.

5. On 12 July 2017, Mr. Ruyffelaere received an e-mail from the Director of OUSG/DM, which stated that the incidents Mr. Ruyffelaere had described in his complaint had not provided sufficient grounds to warrant a formal fact-finding investigation.

6. On 20 July 2017, Mr. Ruyffelaere submitted an amended request for management evaluation which included the Director of OUSG/DM's e-mail of 12 July 2017.

7. On 23 August 2017, Mr. Ruyffelaere filed an application before the UNDT.

8. On 14 May 2019, the UNDT issued Judgment on Receivability, Judgment No. UNDT/NY/2019/084 and dismissed Mr. Ruyffelaere's application as not receivable on the grounds that he had not timely submitted a request for management evaluation. The UNDT found that he had not submitted a request within 60 days of receipt of notification of the contested decision or the date on which he first came to know of it. The Dispute Tribunal determined that the Director of OUSG/DM had orally informed Mr. Ruyffelaere on 19 November 2015 that a decision had been taken not to investigate his complaint, but Mr. Ruyffelaere did not accept this as valid notification because he did not receive it from the USG/DM, who was the responsible official seized of his complaint. The Dispute Tribunal further held that the 12 July 2017 decision contained in the e-mail from the Director of OUSG/DM to Mr. Ruyffelaere was materially the same as what he had been told in November 2015 and was therefore just a reiteration of the earlier decision. A staff member's request for a reiteration of an administrative decision does not reset the time limit for contesting the decision. Thus, Mr. Ruyffelaere should have filed a request for management evaluation within 60 days from the Director of OUSG/DM's oral notification, i.e. by 18 January 2016. Instead, Mr. Ruyffelaere submitted a request on 25 April 2017, well beyond this time limit.

9. On 11 July 2019, Mr. Ruyffelaere filed his appeal and on 1 August 2019, the Secretary-General filed his answer.

### **Submissions**

#### **Mr. Ruyffelaere's Appeal**

10. Mr. Ruyffelaere requests that the Appeals Tribunal remand his case to the UNDT so it can be determined on the merits. He argues that the UNDT erred in law as it should have determined the main issue was whether or not the responsible official should have reviewed

his complaint and informed Mr. Ruyffelaere of his decision. The UNDT, thus, should have reviewed whether the responsible official complied with his duty under paragraph 5.18 of ST/SGB/2008/5, which expressly requires the responsible official to “so inform the alleged offender and the aggrieved individual, giving a summary of the findings and conclusions of the investigation”. The UNDT erred also in accepting the sole evidence of the Director of OUSG/DM that he had received the delegated authority from the responsible official to review his complaint. No written procedure or documentation signed by the USG/DM had been submitted to the UNDT to support this assertion. Such a procedure within the DM is not in line with ST/SGB/2008/5. The UNDT confirmed that the USG/DM was the proper responsible official.

11. Mr. Ruyffelaere also argues that the UNDT erred in procedure as the alleged offender, the Medical Director, had been present at a case management discussion but then had not participated as a witness at the hearing. It would have been relevant to hear if the Medical Director, as the alleged offender, had been informed of the outcome also by the Director of OUSG/DM or the USG/DM. The USG/DM was the second reporting officer of the Medical Director. Furthermore, Mr. Ruyffelaere had consented to OIOS referring the complaint to the USG/DM but he had not consented to the complaint being shared with anyone else as it contained sensitive and confidential personal medical information. The Director of OUSG/DM should have never received and reviewed the complaint.

12. The UNDT further erred in finding that the verbal communication from the Director of OUSG/DM had constituted notice of an administrative decision. The information the Director of OUSG/DM had provided in July and November of 2015 represented his own views and was not acceptable as an administrative decision taken by the USG/DM. The Dispute Tribunal also erred in fact because it was the same conversation that Mr. Ruyffelaere had with the Director of OUSG/DM in July 2015 as well as in November 2015. If the UNDT determined the July conversation had not constituted a date for notification it should not have considered the November conversation as notification either. The object of the conversation in November 2015 was to discuss Mr. Ruyffelaere’s agreed separation from the United Nations. In addition, the Director of OUSG/DM acted on behalf of the USG/DM and also as Director over the Management Evaluation Unit (MEU). He should have recused himself as the judge of the complaint as he essentially oversaw the subsequent requests for

management evaluation to review his own decision. The lack of response from the MEU is telling.

### **The Secretary-General's Answer**

13. The Secretary-General requests the Appeals Tribunal to affirm the Judgment and dismiss the appeal in its entirety. In support, the Secretary-General argues that the UNDT correctly dismissed the application as not receivable. The time limit for requesting management evaluation against an administrative decision starts to run once a staff member has been notified of the decision in clear terms. Mr. Ruyffelaere was informed in November 2015 in clear terms. The fact that he refused to accept the decision if not directly communicated to him by the USG/DM does not alter this. The e-mail from the Director of OUSG/DM on 12 July 2017 was a mere reiteration of what he had already told Mr. Ruyffelaere in November 2015. The deadline for submitting a management evaluation request was 18 January 2016. The UNDT correctly determined that his request submitted on 25 April 2017 was out of time.

14. Mr. Ruyffelaere has not established any errors warranting a reversal of the Judgment. He claims that the UNDT erred in not reviewing whether the decision should have been communicated by the USG/DM. This argument however speaks to the merits of the case and not to the issue before the UNDT, which was about receivability. Only if receivable could the UNDT have proceeded to review the merits, namely, the propriety of the decision not to investigate and the propriety of the process. However, as he failed to submit a timely management evaluation request, the UNDT was correct to find the application was not receivable.

15. Should the Appeals Tribunal find that the issue of whether the decision had been communicated by the correct person relates to receivability rather than to the merits, the Secretary-General submits that Mr. Ruyffelaere has not presented any arguments warranting a reversal of the UNDT's conclusions that the application was not receivable. The argument that the UNDT erred in failing to inquire whether the Director of OUSG/DM had the delegated authority to communicate the decision is not relevant as the contested decision was not made by the Director of OUSG/DM but was made by the responsible official, the USG/DM. Thus, the argument that the Director of OUSG/DM lacked authority to make the decision should be dismissed as the USG/DM made the decision and it does not invalidate the decision for purposes of determining the deadline. Lastly, ST/SGB/2008/5 does not

provide any obligation for the responsible official to personally notify the staff member of the outcome of an investigation or of one's complaint.

### Considerations

16. The issue before this Tribunal is whether the Dispute Tribunal correctly concluded that Mr. Ruyffelaere's application was not receivable *ratione materiae* on the ground that he had failed to submit a timely request for management evaluation. This Tribunal determines that the UNDT's conclusion is not correct.

17. 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.

18. 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. 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.<sup>1</sup>

19. In the case at hand, the Dispute Tribunal determined, based on oral testimony, that the 19 November 2015 discussion between Mr. Ruyffelaere and the Director of OUSG/DM constituted clear oral notification of the challenged administrative decision and therefore Mr. Ruyffelaere ought to have submitted a request for management evaluation no later than 18 January 2016. In failing to timely do so, his application was not receivable *ratione materiae*. Alternatively, the UNDT found that "any notion that he had entertained that there was an implied administrative decision would reasonably have crystallized long before his request for management evaluation on 25 April 2017".<sup>2</sup> Further, the UNDT held that "the 12 July 2017 decision contained in the email from [the Director of OUSG/DM] to the Applicant in material respects was no different from what he had been told previously

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<sup>1</sup> *Olowo-Okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 31; *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 36; *Awan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-588, para. 19.

<sup>2</sup> Impugned Judgment, para. 34.

and particularly on or about 19 November 2015. The email was a reiteration of the earlier decision” which “does not reset the time-limits for contesting the decision”.<sup>3</sup>

20. At first, regardless of whether the discussions between Mr. Ruyffelaere and the Director of OUSG/DM on or about 19 November 2015 constituted a proper—serving the principles of certainty and judicial protection of a staff member—notification of the challenged administrative decision not to initiate a formal fact-finding investigation into Mr. Ruyffelaere’s complaint of harassment and abuse of authority on 15 September 2014, the UNDT was correct in making the alternative finding that Mr. Ruyffelaere had failed to timely request management evaluation of the implied administrative decision, in the absence of a response to his complaint. The 60-day time limit to do so had passed long before his request for management evaluation on 25 April 2017, from the point he ought reasonably to have known, in view of the surrounding circumstances and the discussions he had had with the Director of OUSG/DM in July and November 2015, that his request had been refused. Hence, his application in relation to this implied decision was not receivable *ratione materiae*.

21. However, the Director of OUSG/DM did respond at last, *albeit* late, on 12 July 2017. In choosing to do so, the Administration effectively re-set the clock under Staff Rule 11.2(c) for Mr. Ruyffelaere to file his request for management evaluation.<sup>4</sup> The express decision on 12 July 2017, containing the rejection of Mr. Ruyffelaere’s complaint and the reasons thereof, is not a mere confirmation of the previous implied administrative decision, as incorrectly found by the UNDT, but a new appealable decision. In view of the fact that Mr. Ruyffelaere filed his request for management evaluation on 20 July 2017 and then his application with the UNDT on 23 August 2017, the application was receivable *ratione materiae* and *ratione temporis*.

22. For the foregoing reasons, Mr. Ruyffelaere’s appeal must be granted. Since the Judgment under appeal only addresses issues of receivability, the case must be remanded to the UNDT for a consideration on the merits pursuant to Article 2(3) of the Appeals Tribunal’s Statute.

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<sup>3</sup> *Ibid.*, para. 31.

<sup>4</sup> *Faraj v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-331.

**Judgment**

23. The Appeals Tribunal grants the appeal and reverses Judgment No. UNDT/2019/084. The case is remanded to the UNDT for a trial on the merits.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of March 2020.

*(Signed)*

Judge Raikos, Presiding  
Athens, Greece

*(Signed)*

Judge Halfeld  
Bournemouth, United Kingdom

*(Signed)*

Judge Colgan  
Auckland, New Zealand

Entered in the Register on this 19<sup>th</sup> day of June 2020 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar