



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

Judgment No. 2021-UNAT-1101

Testargachew Zewdie Kebede

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Kanwaldeep Sandhu Judge Dimitrios Raikos
Case No.:	2020-1420
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: André Luiz Perreira de Oliveira

JUDGE SABINE KNIERIM, PRESIDING.

1. The Appeals Tribunal has before it an appeal by Mr. Tsetargachew Kebede against Judgment on Receivability No. UNDT/2020/078 issued on 28 May 2020, in which the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed his application as not receivable. For reasons set out below, we partly grant the appeal and remand the case to the UNDT.

Facts and Procedure

2. On 8 October 2007, Mr. Kebede joined the Office of the Staff Union of the United Nations Economic Commission for Africa (ECA) as a Team Assistant at the G-3 level. He was subsequently promoted to the G-4 level.

3. As Mr. Kebede felt he had to undertake financial duties and tasks exceeding the scope of his functions as a Team Assistant, in the following years, he several times suggested a reclassification of his post or a promotion. However, no such reclassification took place nor was he promoted.

4. By e-mail to the Staff Union dated 29 July 2017, Mr. Kebede i) requested to be compensated for the financial tasks undertaken during the period from October 2007 until February 2017, ii) made claims for half-pay during his annual leave in the same period, as he had to work from home, iii) requested compensation for moral damages suffered due to unwarranted e-mails dated 11 April 2017 and 4 July 2017, and iv) requested a transfer to another division or section within ECA.

5. On 11 December 2017, the Office of the Staff Union informed Mr. Kebede that it was unable to accommodate his requests except for the potential transfer, this would be reviewed by Human Resource Services Section (HRSS), ECA, and the Staff Union stood ready and committed to support this request.

6. On 4 February 2019, the Appellant requested management evaluation of the decision of 11 December 2017.

7. On 14 February 2019, the Management Evaluation Unit (MEU) determined that the Mr. Kebede's request was not receivable because the MEU did not have the authority to review management evaluation requests regarding matters of the Office of the Staff Union.

8. On 21 June 2019, Mr. Kebede referred the matter to ECA's Chief/HRSS, requesting the ECA Administration to consider the four claims he had laid before the Staff Union in July 2017.

9. On 21 August 2019, the Chief/HRSS responded to the Appellant, informing him that his case had been discussed in detail, that he had been provided responses by his supervisors regarding his grievances, and that there was nothing further to add.

10. On 2 September 2019, Mr. Kebede requested management evaluation of the ECA's decision not to intervene in his case.

11. On 19 September 2019, the MEU determined that Mr. Kebede's request for management evaluation was not receivable because it was a restatement of his 4 February 2019 request for management evaluation.

12. On 20 December 2019, Mr. Kebede filed an application with the UNDT contesting what he described as ECA's decision of 21 August 2019 not to intervene in his case for compensation for additional financial tasks undertaken from 2007 to 2017 as part of his functions as Team Assistant with the Office of the Staff Union, and other demands. He requested (1) compensation for additional financial tasks undertaken between 2007 and 2017; (2) compensation for moral damage for the "long suffering"; and (3) transfer from the Office of the Staff Union to another division or section of ECA.

13. In Judgment on Receivability No. UNDT/2020/078 dated 28 May 2020, the Dispute Tribunal held that it had no jurisdiction over Mr. Kebede's application and rejected it. The UNDT considered the main issue to be whether the Secretary-General's decision not to intervene in Mr. Kebede's case constituted an administrative decision. With reference to *Hassanin*,¹ the UNDT considered that the administrative decision was not based on direct organisational authority and concerned an area protected from employer interference, namely, the internal affairs of a staff union. The UNDT held that the contested decision did

¹ *Hassanin v. Secretary-General of the United Nations*, Order No. 139 (NY/2011) issued by the Dispute Tribunal.

not produce a “sufficiently direct legal consequence to the legal order of the Applicant as a staff member”.² The UNDT concluded that the application for compensation and transfer from the Office of the Staff Union failed for being internal affairs of the ECA Staff Union.

14. Mr. Kebede filed his appeal on 21 July 2020, and the Secretary-General filed his answer on 28 September 2020.

15. By Order No. 399 (2021) dated 12 February 2021, the Appeals Tribunal directed the Secretary-General to explain the situation, legal status and conditions of service of United Nations staff members working for the Staff Union, to clarify which entity pays the salary of Mr. Kebede and processes his monthly pay slips, and to provide a copy of Mr. Kebede’s pay slip or salary statement from February 2017. On 22 February 2021, the Secretary-General provided the requested documents and information, and on 4 March 2021, Mr. Kebede filed comments on the Secretary-General’s submission.

Submissions

Mr. Kebede’s Appeal

16. Mr. Kebede contends that, as an employee of the ECA assigned to the Office of the Staff Union, his “dealings” with the Staff Union should not be seen as an internal matter of the Staff Union. He distinguishes his status as an employee of ECA as being different from that of being an employee of the Staff Union. He explains that the Staff Union has its own employees financed and administered by its own budget and administrative rules, which belong to the category of staff of the Staff Union.

17. Mr. Kebede submits that the UNDT erred in its assumption that he was requesting ECA to intervene on his behalf with the Staff Union and clarifies that he was requesting ECA to compensate him for the services he rendered to the Staff Union.

18. Further, he submits that although there was no reference in his job description to undertake financial tasks, he was asked to do so and agreed. He thought it was a temporary arrangement, but it lasted for 10 years. He received assurances from the Staff Union/Administration that he would be adequately compensated for the additional tasks, creating a legitimate expectation. He continued to raise the matter with his new

² Impugned Judgment, para. 17.

supervisor and claims that this is supported by the latter's testimony that, in 2011, a study was conducted to assess the cost benefit of hiring a full-time accountant. He argues that this supports his claim that his position of Team Assistant did not entail any financial tasks. He claims that he was convinced to continue to do the financial tasks for the Staff Union based on the assurances that they would "take up" a case to upgrade his post to the G-5 level and give him the position. When a reclassification was eventually sought in 2013, no such reclassification took place. In 2013, a contractor/consultant was appointed to undertake the financial tasks of the Staff Union. Mr. Kebede considers that the appointment reinforces his claim that financial tasks were not part of his Team Assistant post. He continued to assist the contractor/consultant in the financial tasks until 2017. In 2017, he raised the matter with the President of the Staff Union, which included a request for a transfer based on burn-out and difficulties he faced in the office for which he was undergoing psychological counselling. When a finance position was posted to the Staff Union at the G-5 level, he was ignored for the promotion. In 2017, he approached the Ombudsman, but despite the latter's intervention, there was no satisfactory solution to his problem.

19. Mr. Kebede contends that ECA, as his employing entity, was duty bound to look into the matter, including the request for transfer, which was the "prerogative" of human resources.

The Secretary-General's Answer

20. The Secretary-General requests the Appeals Tribunal to uphold the UNDT Judgment and to dismiss the appeal in its entirety.

21. He contends that the UNDT correctly held that it had no jurisdiction over the application, that the case concerned an area protected from employer interference, namely, the internal affairs of a Staff Union, and that the impugned decision did not produce a sufficiently direct legal consequence to the legal order of the Appellant as a staff member.

22. With reference to the UNDT Judgment in *Saffir*,³ the Secretary-General emphasises that there is no general jurisdiction for the UNDT to review internal union affairs and that an aggrieved person, under the terms of the Staff Union Statute, may approach the Arbitration Committee, which was established to "review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted" (Staff Union Regulation 8.1) as well as

³ *Saffir v. Secretary-General of the United Nations*, Judgment No. UNDT/2013/109.

deal with issues of “interpretation of the Statute, its Regulations or any policy”. (Staff Union Statute, Article 17.2)

23. The Secretary-General argues that the ECA Staff Union is an entirely independent unit and does not fall under the authority of the ECA Administration in the conduct of its affairs, highlighting that the case records show that the ECA Administration has offered the ECA Staff Union two support staff, who, though being United Nations staff members, worked under the ECA Staff Union Office’s direct supervision. He contends that when Mr. Kebede joined ECA on 8 October 2007 to perform his functions as Team Assistant, he was not subject to the Secretary-General’s authority, but rather to “general guidance and supervision of the President of the [ECA] Staff Union” (as per the vacancy announcement for his post).

24. Mr. Kebede failed to demonstrate any error of law or fact by the UNDT warranting the reversal of the Judgment. The Secretary-General notes that Mr. Kebede’s various claims, including that the ECA Administration should compensate him for services to the Staff Union because he is an ECA staff member, are misleading. These claims relate to decisions taken by the ECA Staff Union. The Secretary-General further submits that, although Mr. Kebede was hired by the Administration, he was not under the authority of any decision taken by the Secretary-General, since the ECA Staff Union is entirely independent of the Organization. It follows that none of the alleged action or inaction by the ECA Administration produced any direct legal consequences generally or with respect to Mr. Kebede’s terms of appointment. The Secretary-General contends that Mr. Kebede has not shown any reasonable legal basis that would allow for his conclusion that the Secretary-General has the authority to review the decision taken by the President of the ECA Staff Union. It would not be appropriate for the Administration to do so, which would include the Administration giving an opinion on the legality of the decision denying the Appellant compensation for additional tasks, citing the principle of non-interference by management in union affairs.

25. All other submissions in the appeal brief are repetitions of arguments and fail to satisfy the requirements of Article 2(1) of the UNAT Statute. Relying on *Ilic* and *Krioutchkov*,⁴ the Respondent emphasises the importance of an appellant satisfying the Appeals Tribunal that the judgment of UNDT is defective, and that it is insufficient for an appellant simply to state that he or she disagrees with the outcome of the case or to repeat his

⁴ *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051; *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-707.

or her arguments. The Respondent submits that the Appellant fails to discharge his burden that the UNDT Judgment is defective or identify any error by UNDT or demonstrate any of the grounds for appeal listed in Article 2(1) of the UNAT Statute. Except for the arguments dealt with above, the Respondent considers the Appellant's submissions to be repetitive of his submissions before UNDT and simply an attempt to reargue his case.

Considerations

Mr. Kebede's claim for compensation for additional tasks undertaken between 2007 and 2017 and compensation for moral damage for the "long suffering"

26. The UNDT committed an error of law in stating that it had no jurisdiction as Mr. Kebede's claim concerned the internal affairs of the staff union and, therefore, an area protected from employer interference.

27. For its finding, the UNDT relied on its order in *Hassanin*, where it held:⁵

... Under principles of international law, the issue of electronic voting in UNSU elections is beyond the reach of the Secretary-General, and the Secretary-General made the correct decision not to intervene in the issue of electronic voting for the upcoming UNSU elections [...]

... Although the decision may be one that touches upon matters affecting a staff member's right to freedom of association and may also affect the rights of staff members other than the Applicant [...] the Tribunal agrees with the Respondent that the Secretary-General's decision does not produce a sufficiently direct legal consequence to the legal order of the Applicant as a staff member. This particularly is true, considering the fact that the Applicant presents his application for suspension of action while simultaneously asserting the independent status of UNSU and the protection it enjoys from intervention by the Secretariat in its internal affairs. Both circumstances cannot exist simultaneously—either the Secretary-General may intervene (and UNSU loses its status as an independent body) or the Secretary-General cannot be criticised for *not* intervening, in which event UNSU preserves its quasi-independent status.

... The Applicant's request to suspend the non-intervention decision of the Secretary-General is not based on direct organisational authority and concerns an area protected from employer interference.

⁵ *Hassanin*, *supra*, paras. 46-49 (Italic in original). "UNSU" in the quoted text stands for "United Nations Staff Union".

... If the application for suspension of action is evaluated against the Applicant's capacity as a staff member and a member of UNSU, the Tribunal finds that the Applicant's application for suspension of action fails; the circumstances of the specific case are of "general application" and do not constitute a unilateral decision taken by the administration in a precise individual case which produces direct legal consequences to the legal order.

28. The Dispute Tribunal also relied on its Judgment in *Saffir*:⁶

... Article 2.1(a) of the Tribunal's Statute states that the Tribunal is competent to "hear and pass judgement on an application ... against the Secretary-General as the Chief Administrative Officer of the United Nations ... [t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". Thus, in the UN context, this Tribunal is empowered to deal with administrative decisions including alleged action or inaction by the Secretary-General but there appears to be no jurisdiction on the part of this Tribunal to entertain any disputes arising from the holding of, or a challenge to, union elections. Further, there is certainly no general jurisdiction to review or supervise internal union affairs. An aggrieved person, under the terms of the UNSU Statute, may approach the Arbitration Committee, which was established to "review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted" (UNSU regulation 8.1) as well as to deal with issues of "interpretation of the Statute, its Regulations or any policy" (UNSU Statute, art. 17.2). In terms of UNSU regulation 8.2.3, "[t]he Arbitration Committee shall receive, consider and rule upon matters related to violations of the Statute and Regulations". Furthermore, if any member of the Staff Union is of the view that an act of the Staff Council, Executive Board or any of its officers is in violation of the Statute and Regulations, a complaint may be submitted to the Arbitration Committee (see UNSU regulation 8.3.1). The rulings of the Arbitration Committee are binding on all bodies of the Staff Union (see UNSU regulation 8.1).

...

... There is no evidence that the Secretary-General hindered the electoral process or frustrated organizational rights in any manner. The Secretary-General's responsibility is to facilitate organizational rights and not to interfere in those. To actively direct the conduct and manner of elections [...] would not be in conformity with the independent status of the Staff Union and the applicable law. The Secretary-General may not intervene in the format or conduct of elections by virtue of the Staff Union's Statute. It is conceivable that there may be situations that may constitute misconduct under the Organization's regulations and rules, which may give rise to the initiation of appropriate procedures against individual members engaged in

⁶ *Saffir*, *supra*, paras. 36 & 53.

misconduct. However, the Applicant did not pursue the matter as a matter of individual misconduct. Rather, as was correctly assessed by the Secretary-General, the issues raised were internal Staff Union matters.

29. Both cases deal with issues related to Staff Union elections (in *Hassanin*, electronic voting in Staff Union elections; in *Saffir*, alleged irregularities surrounding the United Nations Staff Union elections), which are clearly internal Staff Union matters which do not at all concern the Secretary-General, and in which he may not interfere. Moreover, both decisions point out that the matters in those cases were pursued “generally” and not with regard to a specific individualized situation.

30. Mr. Kebede’s situation is distinguishable from these cases. Although allocated to the ECA Staff Union and performing his functions “under the general guidance and supervision of the President of the Staff Union”,⁷ he remains a staff member of the United Nations (ECA). His monthly payslips show that his salary is paid by the Secretary-General and not by the Staff Union. As such, the request for compensation which he raises in his application to the UNDT does relate to his position as a staff member of ECA and not to internal Staff Union matters in which the Secretary-General may not interfere.

31. Mr. Kebede first approached the Staff Union and requested to be compensated for having exercised, from October 2007 to February 2017, what he calls additional financial tasks exceeding his position as a Teams Assistant. However, on 11 December 2017, the Staff Union denied this request stating it had neither the mandate or responsibility, nor was it able, to grant such compensation, and advised Mr. Kebede to contact HRSS/ECA. When, on 21 June 2019, Mr. Kebede approached HRSS/ECA, he did not ask the Secretary-General to order the Staff Union to pay him compensation (such a claim would indeed affect the Staff Union’s budget and autonomy, and therefore internal Staff Union matters in which the Secretary-General may not interfere). Instead, he requested “the Administration to look into [his] grievance and provide [him] the following reliefs: 1. Compensate [him] for the financial tasks undertaken while recruited as a Team Assistant during the period Oct 2007-Feb 2017 ...” It is obvious that Mr. Kebede no longer wanted the Staff Union to pay such compensation (on its own behalf or that of ECA); he wanted ECA, his employing agency, to do so. In his application filed with the UNDT on 20 December 2019, Mr. Kebede reiterated that he requested the Secretary-General “to intervene in the matter and provide him compensation”.

⁷ Vacancy Announcement —Team Assistant—G-3 (22 May 2007).

32. When a staff member, who is allocated to a staff union, requests the Secretary-General to pay compensation because he or she has carried out additional tasks exceeding his or her job description, this is a matter between the staff member and the Secretary-General, which is no internal matter of the Staff Union. It is the Secretary-General's budget, and not the ECA Staff Union's budget, from which such compensation would be paid. The protection afforded to Staff Union internal matters is designed to protect the Union from interference, but not to create a category of staff members who are prevented from accessing the review mechanism of the Organisation for personal employment-related matters. While the Secretary-General, when examining the claim, will most probably ask for information and the Staff Union's opinion on the matter, the request itself does not touch internal Staff Union affairs.

33. However, the UNDT's error is without consequence, because Mr. Kebede's application remains without success for a different reason.

34. Under our jurisprudence, the Appeals Tribunal can address the issue of receivability *proprio motu*.⁸ We find Mr. Kebede's application was clearly without any success because his administrative claim was time-barred.

35. Mr. Kebede approached the HRSS/ECA on 21 June 2019 and requested compensation for the financial tasks he had undertaken from October 2007 until February 2017. In other words, Mr. Kebede is of the opinion that in addition to the salary he received from 2007 until 2017, during that time period, he was entitled to a special post allowance or a similar additional payment from the Secretary-General to compensate him for the additional duties performed by him.

36. However, with regard to retroactive payments, Staff Rule 3.17(ii) provides that a staff member who has not been receiving an allowance, grant or other payment to which he or she is entitled shall not receive retroactively such allowance, grant or payment unless the staff member has made a written claim:

- (i) In the case of the cancellation or modification of the staff rule governing eligibility, within three months following the date of such cancellation or modification;

⁸ *Gebremariam v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-584.

(ii) In every other case, within one year following the date on which the staff member would have been entitled to the initial payment.

To this effect, in *Fitsum*, where the UNDT had dismissed the application as not receivable, the Appeals Tribunal held:⁹

... we note that there is a clerical mistake in paragraph 22 of the impugned Judgment. Ms. Fitsum made her claim for SPA for the period in question, namely 1 December 2009 to 10 May 2011, for the first time on 5 September 2011. *In accordance with Staff Rule 3.17(ii), her written claim was due within one year following the date on which she would have been entitled to the initial payment, which means her claim was due by 1 December 2010.* Paragraph 22 of the impugned Judgment erroneously indicates that Ms. Fitsum filed her claim more than 20 months after the date “when she ought to have requested for SPA as per the provisions of [S]taff [R]ule 3.17(ii)”. Ms. Fitsum’s claim was actually filed nine months, not 20 months, after the deadline. This clerical slip, however, does not have any bearing on the outcome, *insofar as the initial administrative claim was time-barred in any event.*

37. Mr. Kebede’s claim for compensation was time-barred because he did not raise it within one year following the date on which he would have (allegedly) been entitled to the initial payment. As Mr. Kebede requested payment starting from October 2007, the time limit ran out in October 2008, but Mr. Kebede only brought his claim before the Secretary-General on 21 June 2019.

38. Mr. Kebede’s claim for compensation for moral damage for the “long suffering” is connected to his claim for compensation for having exercised additional tasks, and must remain without success for the same reasons.

Transfer to another section or unit of ECA

39. The UNDT also erred in its finding that Mr. Kebede’s application for a transfer was not receivable for lack of jurisdiction of the UNDT. Mr. Kebede’s claim does not relate to internal Staff Union matters in which the Secretary-General may not interfere. In his 21 June 2019 request and his application to the UNDT, Mr. Kebede did not ask the Secretary-General to order the Staff Union to transfer him; instead, he expressly requested

⁹ *Fitsum v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-804, para. 18 (emphases added).

the Secretary-General to transfer him from the Staff Union to another unit or division of ECA. The transfer is not and cannot be an internal matter of the Staff Union because the Staff Union has no authority to laterally transfer Mr. Kebede to another unit or division of ECA. In addition, there is no danger that, in transferring Mr. Kebede, the Secretary-General would interfere with the interests of the Staff Union, as the latter clearly supported Mr. Kebede's wish for a transfer.

40. With regard to the request for a transfer, we cannot detect any legal or administrative provision or prior administrative decision which would preclude Mr. Kebede from filing an application. The 21 August 2019 communication of the HRSS/ECA must be regarded as an implicit rejection of Mr. Kebede's 21 June 2019 claim on behalf of the Secretary-General. As Mr. Kebede requested a management evaluation, and filed his application within the time limits of Article 8(1)(d) of the UNDT Statute, we do not see any reason why Mr. Kebede's application should be dismissed on grounds of receivability.

41. The UNDT will have to review Mr. Kebede's request for a transfer on the merits.

Judgment

42. The appeal is granted in part. With regard to Mr. Kebede's request that the Secretary-General transfer him from the Staff Union to another unit or division of ECA, the case is remanded to the UNDT for a decision on the merits. With regard to his claim for compensation for additional tasks between October 2007 and February 2017 and his associated claim for compensation for moral damages, Mr. Kebede's appeal is dismissed.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Raikos
Athens, Greece

Entered in the Register on this 27th day of April 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar