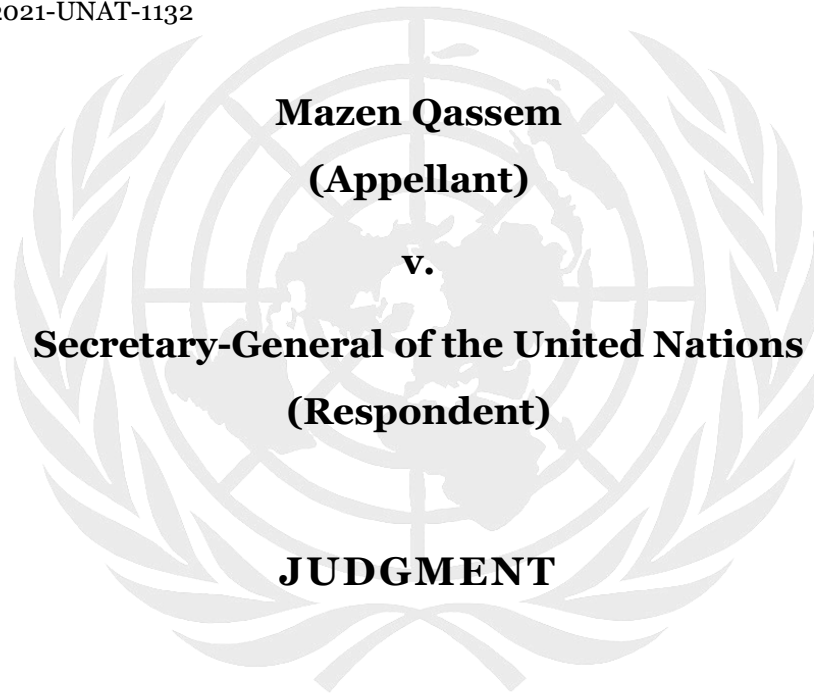




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1132



**Mazen Qassem
(Appellant)**

v.

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

JUDGMENT

Before: Judge John Raymond Murphy, Presiding
Judge Martha Halfeld
Judge Kanwaldeep Sandhu

Case Nos.: 2020-1436

Date: 25 June 2021

Registrar: Weicheng Lin

Counsel for Appellant: Omar Yousef Shehabi, OSLA

Counsel for Respondent: Francisca Lagos Pola

JUDGE JOHN RAYMOND MURPHY, PRESIDING

1. Mazen Qassem (Mr. Qassem) contested the decision of the United Nations Development Programme (UNDP) for *inter alia* changing his job functions and for moving him to a different duty station. On 29 June 2020, the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) dismissed his application on receivability grounds given that he did not timeously file a request for management evaluation.¹

2. The United Nations Appeals Tribunal (Appeals Tribunal) finds that the Judgment of the UNDT is correct and accordingly dismisses the appeal.

Facts and Procedure

3. On 14 November 2011, the UNDP appointed Mr. Qassem to the post of Administrative Clerk/Dispatcher in the Operations/General Services Unit of the Programme of Assistance to the Palestinian People (PAPP). He initially served at the G-3 level, Step 5, on a Fixed Term Appointment (FTA) in Jerusalem.

4. In September 2015, Mr. Qassem complained to the Special Representative of the Administrator of UNDP for the PAPP (Special Representative) about a work conflict with the then Deputy Special Representative (DSR). After several e-mail exchanges, on 3 November 2015, the Special Representative sent a letter to Mr. Qassem informing him that he was going to be transferred from East Jerusalem to Ramallah. The aim was to address the difficult working relationship the latter had with the DSR. The decision allowed Mr. Qassem to continue to serve at the same level, have similar responsibilities and terms of reference (ToR), but avoided daily contact between Mr. Qassem and the DSR. Mr. Qassem communicated his acceptance of the transfer to Ramallah to the Special Representative on the same day.

5. On that same day, 3 November 2015, Mr. Qassem submitted a complaint of harassment and retaliation against the DSR to the UNDP Ethics Office (Ethics Office), the UNDP Legal Support Office, and the UNDP Office of Audit and Investigations. On 11 November 2015, in an e-mail exchange with the Director of the Ethics Office, Mr. Qassem

¹ *Qassem v. Secretary-General of the United Nations*, Judgment No. UNDT/2020/099 dated 29 June 2020 (Impugned Judgment).

requested “intervention” to stop his move to Ramallah while also querying some of his updated functions. He asked not to be reassigned until the conclusion of the investigation. The Director of the Ethics Office described the updates to his functions as changes in his “day-to-day job responsibilities,” which were intended to remove Mr. Qassem from an unhealthy environment and did not find a case of retaliation.

6. About two and a half years later, in April 2018, Mr. Qassem requested management evaluation of the November 2015 decision to transfer him to the Ramallah office. On 18 May 2018, his request was denied on the grounds that it was time-barred.

7. In 2018, UNDP/PAPP underwent a restructuring process based on a transformation plan. On 24 July 2018, Mr. Qassem e-mailed the UNDP Human Resources Office asking how the restructuring plan would affect his post. The next day, on 25 July 2018, the UNDP Human Resources Office (HR) responded that the restructuring would not affect his position and confirmed that while his duty station was Jerusalem, his place of work remained Ramallah. HR informed him further that there were no plans to change his situation. On the same day, Mr. Qassem also received an e-mail from the Special Representative stating that his functions would be unaffected by the restructuring process, and the Special Representative reiterated that Mr. Qassem would continue to perform his functions in Ramallah.

8. On 18 September 2018, the Special Representative sent a “no-change letter” to Mr. Qassem stating that based on the transformation plan, it had been confirmed that there would be no change in his functions and that his position was not affected by the ongoing change management process. As such, he was specifically informed that he would retain his current position and the terms of his appointment would remain unchanged. The UNDT held that this decision was the contested administrative decision in the application, which is now the subject of this appeal.

9. Mr. Qassem affixed his signature to the no-change letter, thereby accepting the position of Administrative Clerk - East Jerusalem, G-3. The no-change letter, which Mr. Qassem signed, explicitly provided: “I hereby accept my confirmation to post #4476, Administrative Clerk – East Jerusalem, G3 with effect from 21 September 2018 and also accept the conditions specified above.”

10. On 2 October 2018, Mr. Qassem once again requested the UNDP Administration to move him back to East Jerusalem. On 3 October 2018, the Administration responded as follows: “For the VERY last time, your duty station is Jerusalem and your work-station is Ramallah (for the long term). If you are unable to fulfil your functions or report to your workstation, kindly decline the matching exercise. We will be happy to provide support to identify other employment opportunities. Please, we need to move on.”

11. Mr. Qassem continued during October 2018 to request to be moved to East Jerusalem and questioned why he could not undertake the functions that he had been “matched with” in the restructuring exercise. He was informed in correspondence during October and November 2018 that he had been matched to his current position and that he was expected to perform his duties in Ramallah.

12. Undaunted, six months later, on 18 April 2019, Mr. Qassem again contacted the UNDP Administration requesting to receive clarity on why he “was not authorized to perform the functions” set out in the ToRs for his post. On 8 May 2019, the Administration sent Mr. Qassem an e-mail informing him again that his functions had not changed (the 8 May 2019 e-mail). Mr. Qassem maintains that this e-mail contained the contested administrative decision, which is the subject of challenge in these proceedings.

13. On 19 June 2019, Mr. Qassem requested management evaluation challenging the decision to “strip him of the majority of his functions and duties, including moving his main [sic] to another duty station,” and also challenging “the [UNDP] Administration’s failure to implement the 18 September 2018 decision regarding the outcome of the restructuring process”. On 25 July 2019, the UNDP Administration found that the request for management evaluation was time-barred, and therefore not receivable.

14. On 18 October 2019, Mr. Qassem submitted an application to the UNDT contesting the decision to: (1) “effectively strip him of the majority of his functions and duties”; (2) “move him from his duty station in Jerusalem to Ramallah”; and (3) “the Administration’s failure to implement the decision dated 18 September 2018 regarding the outcome of the restructuring process.”

15. On 29 June 2020, the UNDT issued its Judgment. It identified the 18 September 2018 decision as the contested administrative decision and held that the record of the correspondence between the parties showed that the Administration's many reiterations of the 18 September 2018 decision "did not give rise to a new challengeable decision so as to bring forward the time within which a request for management evaluation could be made." The UNDT, therefore, rejected the application, finding that the 19 June 2019 request for management evaluation was not timely as it had been submitted past the stipulated timelines, and consequently the application was not receivable.

Submissions

Mr. Qassem's Appeal

16. Mr. Qassem submits that the no-change letter asked him to confirm his acceptance of post #4476, Administrative Clerk – East Jerusalem, not Ramallah. Additionally, the DSR with whom Mr. Qassem had a difficult relationship was transferred to UNDP Kuwait. These developments led Mr. Qassem to believe that he was entitled to return to Jerusalem. Additionally, Mr. Qassem's job description and ToR specified duties that he could only perform in Jerusalem, which served as the hub of the UNDP/PAPP's main vehicle fleet.

17. He contends that even after the September 2018 no-change letter, he was still in talks with the Administration to resolve the discrepancies in the no-change notice and to finalize his job description and ToR. Even if he had accepted to be in Ramallah, he could not perform the duties in his ToR, which were written for a Jerusalem post. There were e-mails and meetings held in that regard, and it was not until the May 2019 e-mail that he realized that UNDP had no intention to reassign him to his previous functions or move him back to Jerusalem. This, he maintains, was the final decision, with the result that his request for management evaluation was timely and his application to the UNDT receivable.

Secretary-General's Answer

18. The Secretary-General submits that the contested decision was in fact the one contained in the no-change letter of 18 September 2018. Subsequent communications to Mr. Qassem, including the one on 8 May 2019, were merely a reiteration of the 18 September 2018 decision. The determining date for the request for management evaluation is the date on which Mr. Qassem was informed of the decision that his post,

his functions, and his then current place of work would remain the same (i.e. on 18 September 2018) and not on the date he realized that UNDP had no intention to reassign him to his previous functions or move him back to East Jerusalem (i.e., 8 May 2019).

19. He submits further that Mr. Qassem's request to return to work in East Jerusalem and to perform the functions specified in his ToRs were consistently presented together and as such, the UNDP dealt with the two requests conjunctly.

20. What Mr. Qassem refers to as negotiations or "discussions" were merely "responses" of the Administration to Mr. Qassem's attempts to reopen the matter.

21. Hence, the Secretary-General submits the UNDT did not err and the appeal should be dismissed.

Considerations

22. Article 8(1)(c) of the Dispute Tribunal Statute (UNDT Statute) provides that an application to the UNDT shall be receivable only if an applicant has previously submitted the contested administrative decision for management evaluation, where required. It is undisputed that Mr. Qassem was required to submit the contested administrative decision to management evaluation in this instance. Staff Rule 11.2(c) requires the staff member to file a request for management evaluation within "60 calendar days from the date on which the staff member received notification of the administrative decision to be contested". Should the staff member fail to submit a request for management evaluation timeously, the request will not be receivable by the Management Evaluation Unit (MEU), and the UNDT will lack jurisdiction to hear and determine the application as a mandatory condition precedent would not be fulfilled. In terms of Article 8(3) of the UNDT Statute, the UNDT has no jurisdiction to suspend or waive the deadlines for management evaluation. Should the relevant 60-day period for requesting management evaluation lapse, the consequence will be that the UNDT irreversibly will lack jurisdiction to hear and determine the application to appeal the administrative decision. It has no power to cure the jurisdictional defect.

23. This Tribunal has repeatedly and consistently held that the time limit for requesting management evaluation against an administrative decision starts once a staff member has been notified of the decision in writing and in clear and unequivocal terms.

24. Mr. Qassem was informed that the restructuring plan for UNDP/PAPP would not affect his post, functions, and his then assigned place of work in clear and unequivocal terms on 18 September 2018 in the no-change letter to which he affixed his signature. The subsequent communications to him on 3 October 2018, 25 October 2018, 15 November 2018, and 8 May 2019 were quite evidently mere reiterations of the 18 September 2018 decision.

25. Mr. Qassem's claim that the time for the request for management evaluation began to run at 8 May 2019 (as it was only evident then to him that UNDP had no intention to reassign him his functions or move him back to East Jerusalem) is simply not plausible. A staff member cannot reset the time for management review by asking for a confirmation of an administrative decision communicated to him earlier. Nor is it for a staff member unilaterally to determine the date of an administrative decision. The determining date for the request for management evaluation is the date on which the staff member was informed of the decision, and not when he realized that there were grounds to request management evaluation.

26. The determining date for the request for management evaluation in this case is the date on which Mr. Qassem was informed of the decision that his post, functions, and his then current place of work would remain the same (i.e., 18 September 2018) and not the date on which he realized (somewhat improbably) that UNDP had no intention to reassign him to his previous functions or move him back to East Jerusalem (i.e., 8 May 2019). Hence, the time limit for requesting management evaluation ran from 18 September 2018. Alternatively, the e-mail of 3 October 2018 left no doubt at all that his "workstation" would continue to be Ramallah. Accordingly, the request for management evaluation had to be filed on or before 17 November 2018 or at the latest on 2 December 2018. Mr. Qassem instead submitted a request for management evaluation on 19 June 2019, i.e., between 199 and 214 calendar days after the deadline for such a request. The UNDT, thus, correctly determined that the request for management evaluation was time-barred. As a consequence, the UNDT lacked jurisdiction to hear and determine the application to it by virtue of Article 8(1)(c) of the UNDT Statute. It accordingly did not err in its decision that the application was not receivable.

27. The appeal must accordingly be dismissed.

Judgment

28. The appeal is dismissed, and the Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Dated this 25th day of June 2021.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 30th day of July 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar