



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

Judgment No. 2021-UNAT-1162

Maha Fayek-Rezk

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Kanwaldeep Sandhu Judge Jean-François Neven
Case Nos.:	2020-1495
Date:	29 October 2021
Registrar:	Weicheng Lin

Counsel for Ms. Fayek-Rezk:

Joseph Grinblat

Counsel for the Secretary-General:

André Luiz Pereira de Oliveira

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Ms. Fayek-Rezk (the Appellant) appeals the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) Judgment on Receivability No. UNDT/2020/191 (the impugned Judgment), issued in New York on 12 November 2020, dismissing her application as not receivable *ratione materiae*. Ms. Fayek-Rezk had challenged the Administration's refusal to reassign her to a post in the French Unit of the Social Media Section within the Department of Global Communications (DGC) in New York.
2. For the reasons set out below, we dismiss the appeal and affirm the UNDT decision.

Facts and Procedure

3. Ms. Fayek-Rezk served as a Public Information Officer at the P-3 Step 14 level with the News and Media Division within the DGC. In 2017, the Acting Under-Secretary-General for DGC (Acting USG/DGC) established the Social Media Team (SMT). As part of this establishment, the Acting USG/DGC reassigned the post encumbered by Ms. Fayek-Rezk to the SMT.
4. On 2 January 2019, following various temporary assignments outside of DGC, Ms. Fayek-Rezk returned to her post in the SMT.
5. On 14 February 2019, upon her return, Ms. Fayek-Rezk was informed via e-mail of her new duties from the Chief of the Social Media Section. Her duties did not include management of the French social media account.
6. On 1 March 2019, a job opening was advertised for a Public Information Officer (French) in the SMT, a new position.
7. On 8 July 2019, Ms. Fayek-Rezk e-mailed the Deputy Director, News and Media, DGC, requesting Ms. Fayek-Rezk's e-mail reads as follows:

I am requesting to resume my normal duties as P3 in charge of the French Social Media Account as of 15 August 2019, to allow 2 weeks to finalize temp assignments ... following my return from leave on 23 July.

I know that there is an urgent need for a P3 in the French social media news, as there is a request for creating a new post there, and I can observe that only a G6 is currently doing the job with some help from an English P3 producer.

As you promised to make your decision known by next Tuesday 9 July, I cancelled a booking yesterday for my annual leave to meet with you next Tuesday 9 July in agreement with you.

8. On 12 July 2019, the Deputy Director responded by informing Ms. Fayek-Rezk that she would continue in her role of Social Media Research and Projects as it had been defined in the 14 February 2019 e-mail from the Chief of the Social Media Section and extensively explained her role.

9. On 15 July 2019, Ms. Fayek-Rezk submitted a request for Management Evaluation and received a reply from the Management Evaluation Unit rejecting her request.

10. On 16 November 2019, Ms. Fayek-Rezk filed an application before the UNDT contesting the administration's "refusal to move her, with her post, to her normal function of P-3, French Unit of the Social Media Section". She requested to be moved back to the French Unit with her post as soon as possible and requested indemnity to compensate her for harassment in the amount of at least 6 months' salary.

11. The UNDT¹ dismissed the application as not receivable. It found that, on 14 February 2019, the Chief of the Social Media Section, DGC, informed Ms. Fayek-Rezk of her new tasks and responsibilities and there was no evidence that Ms. Fayek-Rezk challenged this decision.² The Dispute Tribunal found that she would be barred from contesting it.³ The Dispute Tribunal further found that the 12 July 2019 did not constitute a fresh decision but a mere reinstatement of the 14 February 2019 email.⁴ In turn, the UNDT held that the 12 July e-mail was not an administrative decision producing direct legal consequences to the legal order.⁵ Therefore, the UNDT found the 12 July e-mail did not constitute an appealable administrative decision under Article 2.1 of the UNDT's Statute and was therefore not receivable *ratione materiae*.⁶

¹ Impugned Judgment, paras. 19-20.

² Impugned Judgment, para. 16.

³ Impugned Judgment, para. 20.

⁴ Impugned Judgment, para. 18.

⁵ Impugned Judgment, para. 19.

⁶ Impugned Judgment, paras. 19-20.

12. The Appellant submitted her appeal of the impugned Judgment on 30 November 2020.
13. On 12 January 2021, Counsel for Ms. Fayek-Rezk informed the Appeals Tribunal that Ms. Fayek-Rezk died on 5 January 2021.
14. The Secretary-General filed his answer on 29 January 2021.
15. On 31 January 2021, Counsel for Ms. Fayek-Rezk filed a Motion to Comment on the Respondent's Answer. On 12 February 2021, the Respondent filed his observations requesting the Appeals Tribunal to reject the motion.
16. On 26 March 2021, the President of the Tribunal issued Order No. 406 (2021) staying the proceedings until the Tribunal received notification that Ms. Fayek-Rezk's counsel was authorised to represent her estate before the Tribunal.
17. On 28 March 2021, counsel for Ms. Fayek-Rezk requested the Tribunal to lift the stay of proceedings and submitted Letters of Administration granting an Estate Administrator who via letter dated 27 March 2021 authorised counsel to represent Ms. Fayek-Rezk's estate before the Tribunal.
18. The Respondent filed comments on 6 April 2021 having no objection to the lifting of the stay of proceedings.
19. On 9 April 2021, the President of this Tribunal issued Order No. 408 (2021) and lifted the stay of proceedings, having been satisfied that counsel was duly authorised to represent the estate before the Tribunal.

Submissions

Appellant's Appeal

20. Ms. Fayek-Rezk requests this Tribunal to find that her application before the UNDT was receivable and remand it to the UNDT for judgment on the merits. The UNDT held that Ms. Fayek-Rezk's application was not receivable because there had been no administrative decision to complain about. This is an error of fact. On 8 July 2019, Ms. Fayek-Rezk had written to the Deputy Director, requesting to resume her normal duties as a P-3 in charge of the management of the French social media account. The UNDT determined that the

12 July 2019 e-mail from the Deputy Director which refused her request did not constitute a fresh decision but a mere restatement of the 14 February 2019 e-mail.

21. This is erroneous as in the 12 July 2019 e-mail, replying to Ms. Fayek-Rezk's 8 July request, the Deputy Director stated:

... we would like you to continue the role of Social Media Research and Projects. In relation to the functions of day-to-day content management of social media accounts in French, this function will continue to be handled by [a G-5 staff member], and she will be joined by [another staff member] full-time from August 1st.

The above quoted statement is not a repetition of something stated in February 2019, but is a clear, direct rejection of Ms. Fayek-Rezk's request which she had made on 8 July 2019, to be transferred back as of 15 August 2019 to her normal function of being in charge of the management of the French social media account. It is therefore an administrative decision that can be appealed. It is also not true that another staff member took over the full-time management of the social media account on 1 August 2019 as he had not done so by 16 November 2019, when Ms. Fayek-Rezk filed her application before the UNDT. Based on the foregoing it was clear there had been an administrative decision that was receivable.

22. Ms. Fayek-Rezk further asserts that refusal to return her to her functions was a continuation of the harassment to which she had been subjected since 2007. This was retaliation for her proving that she had been legally deprived of the P-4 post of Chief of the French Radio, by her supervisors, who falsified the results of the selection process that had found her to be the most qualified job applicant.

Respondent's Answer

23. The Respondent requests the Tribunal to dismiss the appeal and uphold the impugned Judgment. In support, the Secretary-General argues the UNDT correctly determined the application was not receivable. Ms. Fayek-Rezk requested management evaluation of "the decision not to assign [her] as Chief of the French Unit in the Social Media Section". However, in her application she stated she was contesting the "refusal to move her back, with her post, to her normal functions of P-3 French Unit of the Social Media Section". Given the fluid and vague description of the contested decision Ms. Fayek-Rezk did not meet her burden to

establish the exact decision allegedly in non-compliance with the terms of her appointment. Ms. Fayek-Rezk cannot extend time-limits by renaming issues.

24. The UNDT considered the contested decision to be that of the 12 July 2019 e-mail which, it determined correctly, did not notify Ms. Fayek-Rezk of any new or fresh decision. It was a restatement of the 14 February 2019 e-mail from the Chief of Social Media Section. Further, Ms. Fayek-Rezk was aware of the 14 February 2019 decision as she had not acknowledged receipt but expressly agreed with the new assignments set forth in that e-mail. If the Appeals Tribunal considers the contested administrative decision to be the advertisement of the new post on 1 March 2019, the 60-day deadline to request a management evaluation expired on 30 April 2019, more than two months prior to her request for management evaluation. Furthermore, Ms. Fayek-Rezk would not have standing to challenge that recruitment process as she had not applied for that post.

25. Ms. Fayek-Rezk failed to demonstrate any error of law or fact by the UNDT warranting the reversal of the impugned Judgement. Ms. Fayek-Rezk's claims that she had been illegally deprived of the P-4 post of Chief of the French Radio and mention of harassment are outside of the scope of this case as Ms. Fayek-Rezk has not requested a management evaluation of any decision taken relating to any such alleged facts. The 12 July 2019 e-mail did not render a new decision, but was a restatement of the 14 February 2019 decision, and Ms. Fayek-Rezk has failed to demonstrate any error of fact or law warranting reversal.

Considerations

26. In the present case, Ms. Fayek-Rezk passed away on 5 January 2021, namely during the course of the present litigation and before the hearing of the case. Therefore, in view of the fact that Ms. Fayek-Rezk's appeal refers to a claim of hers which by its nature was strictly connected to her person (*ad personam*) and not inheritable or transferable, the relevant cause of action does not survive Ms. Fayek-Rezk's death. This claim, namely her challenge to the Administration's refusal to move her back to her previous position, does not pass to her legal successor(s) in interest and no action is allowed to be commenced by Ms. Fayek-Rezk's personal representative or successor in interest. Under the specific circumstances of the case at bar and the nature of the dispute, the issue in dispute is moot.

27. Be that as it may, this Tribunal determines that the UNDT’s conclusion that Ms. Fayek-Rezk’s application was non-receivable *ratione materiae* is correct for the reasons below. “At the outset, we recall that ‘the key characteristic of an administrative decision subject to judicial review is that the decision must “produce [] direct legal consequences’ affecting a staff member’s terms and conditions of appointment’. Further, ‘[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine’.”⁷

28. The Appeals Tribunal has consistently held that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines; rather time starts to run from the date on which the original decision was made.⁸ For this reason, a staff member cannot reset the time for management evaluation by asking for a confirmation of an administration decision that has been communicated to him earlier.⁹

29. In the present case, as per the documents on file, on 14 February 2019, the Chief of the Social Media Section informed Ms. Fayek-Rezk of her new tasks and responsibilities within the Social Media Section which she acknowledged.

30. Ms. Fayek-Rezk never challenged the decision of 14 February 2019 by requesting management evaluation of it and then taking her case to the UNDT. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process.¹⁰ The Appeals Tribunal has noted many times that the requirement of management evaluation

⁷ *Said v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-813, para. 14 (footnote omitted), citing *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28 citing *Rabee v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-296, in turn citing *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.

⁸ *Said v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-813, para. 15, citing *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, citing *Samuel Thambiah v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-385; *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275; and *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079.

⁹ *Said v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-813, para.15, citing *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 31, citing *Chahrour v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-406, citing in turn *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273.

¹⁰ *Said v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-813, para. 17 (footnote omitted), citing *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; and *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.¹¹ Neither the Dispute Tribunal nor the Appeals Tribunal has jurisdiction to waive deadlines for the filing of requests for management evaluation or to grant any exceptions to it as it is a mandatory requirement pursuant to the Staff Rules.¹²

31. However, later that year, on 8 July 2019, Ms. Fayek-Rezk wrote to the Deputy Director, News and Media, DGC, requesting to “resume [her] normal duties as P3 in charge of the French Social Media Account as of 15 August 2019, to allow 2 weeks to finalize temp assignments given by [the Chief of the Social Media Section] following [her] return from leave [...]”. She stated in her email that there was an urgent need for a P-3 level staff member in the French Social Media Unit because a temporary position at that level had been advertised. Thereupon, on 12 July 2019, the Deputy Director responded by extensively explaining Ms. Fayek-Rezk's current role, as it had been defined in the 14 February 2019 e-mail from the Chief of the Social Media Section. The Administration's response of 12 July 2019 was the subject of Ms. Fayek-Rezk's request for management evaluation, as well as of her application filed with the UNDT on 16 November 2019.

32. Ms. Fayek-Rezk submits, *inter alia*, that the UNDT erred in holding that the 12 July 2019 e-mail did not constitute a fresh decision but a mere restatement of the 14 February 2019 e-mail and therefore it was not an appealable administrative decision.

33. There is no merit in Ms. Fayek-Rezk's assertion. Having reviewed the relevant documents, the Appeals Tribunal holds that the e-mail of 14 February 2019 which informed Ms. Fayek-Rezk of her new tasks and responsibilities within the Social Media Section conveyed a clear and definitive administrative decision with direct legal consequences for her as to the core subject of this litigation, as is evident from her application to the UNDT, in which she contested the Administration's “refusal to move her back, with her post, to her normal function

¹¹ *Said v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-813, para. 17 (footnote omitted), citing *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13, citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, and in turn citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and citations therein.

¹² *Said v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-813, para. 17, citing *Faust v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-695, para. 40, citing *Eggesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-402, para. 23 and citations therein.

of P-3, French Unit of the Social Media Section”. Nevertheless, as already noted, this administrative decision of 14 February 2019 has never been disputed by Ms. Fayek-Rezk.

34. Therefore, we find that the UNDT correctly concluded that the e-mail of 12 July 2019 from the Deputy Director, in which the latter responded by extensively explaining Ms. Fayek-Rezk’s current role as it had been defined in the 14 February 2019 e-mail from the Chief of the Social Media Section, was not challengeable before the UNDT, as it was only a confirmation of the 14 February 2019 decision.

35. For the foregoing reasons, we determine that the UNDT did not err in law or fact, resulting in a manifestly unreasonable decision, when it found that Ms. Fayek-Rezk’s application was not receivable *ratione materiae* and her appeal must be dismissed accordingly. The remainder of the arguments raised by Ms. Fayek-Rezk in her appeal, i.e., that refusal to return her to her functions was a continuation of the harassment to which she had been subjected since 2007, concern the merits of the case and cannot be assessed at this stage of the proceedings, which are terminated at the receivability phase.

Judgment

36. The appeal is dismissed and Judgment No. UNDT/2020/191 is hereby affirmed.

Original and Authoritative Version: English

Dated this 29th day of October 2021.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Sandhu
Vancouver, Canada

(Signed)

Judge Neven
Brussels, Belgium

Entered in the Register on this 21st day of December 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar