



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

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Judgment No. 2023-UNAT-1343

**Ann-Christin Raschdorf  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge Sabine Knierim Judge Gao Xiaoli
Case No.:	2022-1668
Date of Decision:	24 March 2023
Date of Publication:	11 May 2023
Registrar:	Juliet Johnson

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Counsel for Appellant: Self-represented

Counsel for Respondent: Noam Wiener

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Ms. Ann-Christin Raschdorf, a former staff member of the United Nations Assistance Mission for Iraq (UNAMI), contested three administration decisions: (i) the administrative decision not to renew her fixed-term appointment beyond 31 May 2019 (contested decision 1); (ii) the 1 September 2020 decision of the Division of Healthcare Management and Occupational Safety and Health (DHMOSH) not to recommend her for a disability pension to the United Nations Staff Pension Committee (UNSPC) (contested decision 2); and (iii) the 5 November 2020 decision of the Advisory Board on Compensation Claims (ABCC) to reject her claim for compensation on the ground that her claim was time-barred (contested decision 3).

2. In Judgment No. UNDT/2022/004 (the Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) dismissed all three applications having found that the non-renewal decision and the ABCC decision were not receivable *ratione materiae* and the DHMOSH decision was legal, rational, and procedurally correct.

3. For the following reasons, we dismiss the appeal and affirm the Judgment.

**Facts and Procedure**

4. Ms. Raschdorf joined the United Nations Secretariat on 1 April 2004. Since 2007, she served on fixed-term appointments as a Political Affairs Officer with UNAMI at the P-4 level. She separated from service from the Organization on 31 May 2019.

5. During her tenure at UNAMI, Ms. Raschdorf suffered from ill health and was placed on sick leave for long periods of time. On 2 April 2019, while she was on extended sick leave, her personal physician submitted a medical report to DHMOSH in support of her request to be awarded disability benefits from the United Nations Joint Staff Pension Fund (UNJSPF).

6. On 10 April 2019, Ms. Raschdorf exhausted her sick leave entitlements, and on 11 April 2019, she was placed on special leave without pay (SLWOP) until her separation.

7. On 16 April 2019, DHMOSH informed Ms. Raschdorf that based on the medical information that had been provided by her physician, DHMOSH could not recommend her case to the UNSPC for consideration of her eligibility for disability benefits from the UNJSPF because her conditions were not of a severity and impairment that would prevent her from being able to perform her duties for longer than a year.

8. On 27 and 30 May 2019, the UNAMI Chief of Mission Support informed Ms. Raschdorf that in accordance with Administrative Instruction ST/AI/2005/3 (Sick Leave), upon the exhaustion of her full pay and half pay sick leave entitlements, her fixed-term appointment would not be extended beyond its expiry date of 31 May 2019.

9. On 12 June 2019, Ms. Raschdorf submitted additional medical documentation to DHMOSH in support of her request to be recommended to the UNSPC for consideration of her eligibility for disability benefits from the UNJSPF.

10. On 26 June 2019, DHMOSH responded to Ms. Raschdorf, informing her that the information contained in the new documents she had submitted did not alter the determination that her medical condition would not render her eligible for a disability benefit from the UNJSPF.

11. Ms. Raschdorf challenged the evaluation by DHMOSH in accordance with the provisions of Administrative Instruction ST/AI/2019/1 (Resolution of disputes relating to medical determinations). Between July and November 2019, an Independent Medical Practitioner (IMP) examined Ms. Raschdorf and reported to DHMOSH that she should not work in field conditions. The report, however, did not indicate that her medical condition prevented her from working in duty stations located away from the field.

12. On 14 September 2020, following additional correspondence with Ms. Raschdorf, DHMOSH informed her that the review process pursuant to ST/AI/2019/1 had concluded. Based on that review, DHMOSH confirmed that it would not submit Ms. Raschdorf's case to the UNSPC with a recommendation for an award of disability benefits under the Regulations and Administrative Rules of the UNJSPF. The basis for this was because the IMP had not concluded that her medical condition rendered her incapable of working on a long-term basis for the Organization in the capacity for which she was qualified, but rather had only confirmed that she was incapable of working in certain field conditions.

13. On 28 October 2020, Ms. Raschdorf submitted a claim for compensation under Appendix D to the Staff Rules (Rules governing compensation in the event of death, injury, or illness attributable to the performance of official duties on behalf of the United Nations) (Appendix D) to the ABCC.

14. On 5 November 2020, and again on 12 November 2020, the ABCC informed Ms. Raschdorf that her submission was time-barred under Article 2.1 of Appendix D. She became aware of the medical condition which provided the basis for her claim for compensation on 11 April 2019, at the latest, when she submitted the medical report by her physician to DHMOSH, and her submission to the ABCC was more than a year later than that date.

*The Dispute Tribunal Judgment*

15. On 17 January 2022, the UNDT issued its Judgment dismissing the application in its entirety. The Dispute Tribunal held that contested decision 1 and contested decision 3 were not receivable *ratione materiae* because Ms. Raschdorf had not submitted them for management evaluation. Regarding contested decision 2, the Dispute Tribunal held it was rational, proportional, and untainted by procedural errors, and, therefore, legal.

16. On 17 February 2022, Ms. Raschdorf filed her appeal, and on 18 April 2022, the Secretary-General filed his answer.

17. On 15 March 2022, the Appeals Tribunal issued Order No. 448 (2022) dismissing Ms. Raschdorf's motion for interim measures. By Order No. 462 (2022) dated 14 June 2022, the Appeals Tribunal denied Ms. Raschdorf's motion for additional pleadings.

18. On 23 March 2023, Ms. Raschdorf filed a motion seeking leave to correct typographical errors in her appeal brief. Given the proximity of the filing date and the commencement of the Appeals Tribunal's March 2023 session, the motion was added to the case file for consideration by the panel as a preliminary matter.

## Submissions

### Ms. Raschdorf's Appeal

19. Ms. Raschdorf contends that the Dispute Tribunal erred in finding her application was not receivable *ratione materiae* with respect to contested decision 1. The decision not to renew her fixed-term appointment was made subsequent to the recommendation of the DHMOSH not to recommend her for a disability benefit under the Regulations and Administrative Rules of the UNJSPF. She could not request management evaluation because it had been made due to the ST/AI/2019/1 medical process. Moreover, her contract had been terminated as a disciplinary measure and as such the decision can be contested directly before the Dispute Tribunal.

20. Ms. Raschdorf submits that the Dispute Tribunal further erred in finding her application not receivable *ratione materiae* with respect to contested decision 3. She submitted her claim for compensation to the ABCC in October 2020, because she was required to await the conclusion of the review of the DHMOSH decision not to recommend her for disability benefits from the UNJSPF under ST/AI/2019/1. Additionally, the ABCC's decision was made pursuant to the process under ST/AI/2019/1, which constitutes advice from a technical body. She was therefore not required to submit a request for management evaluation and thus her application was receivable.

21. As for contested decision 2, Ms. Raschdorf submits that the Dispute Tribunal erred in determining that the Administration had legally and rationally concluded that she was not eligible for disability benefits from the UNJSPF.

22. Ms. Raschdorf requests that the Appeals Tribunal grant the appeal, rescind the decision to separate her, rescind the ABCC decision not to process her claim, or alternatively, grant her compensation *in lieu* of her lifetime full ABCC disability benefit, and refer her case to the UNJSPF in line with the findings of the IMP.

### The Secretary-General's Answer

23. The Secretary-General submits that the Dispute Tribunal correctly held that Ms. Raschdorf's challenge of contested decisions 1 and 3 was not receivable *ratione materiae*. As set forth in Staff Rule 11.2, with the exception of decisions made pursuant to the advice of technical

bodies and disciplinary decisions, the Dispute Tribunal has no mandate to review decisions that have not been submitted for prior management evaluation.

24. Contrary to Ms. Raschdorf's submission, contested decision 1 (not to extend Ms. Raschdorf's appointment) was neither a disciplinary measure nor was it taken subsequent to advice from a technical body. As for contested decision 3, the Secretary-General also says that the Dispute Tribunal correctly determined that Ms. Raschdorf's challenge of contested decision 3 was not receivable because Ms. Raschdorf did not first submit it for management evaluation.

25. Moreover, the Secretary-General avers that the Dispute Tribunal correctly held that contested decision 2 was procedurally sound, rational, and legal. The determination by DHMOSH that Ms. Raschdorf was not eligible for disability benefits was procedurally sound.

26. Consequently, the Secretary-General requests the Appeals Tribunal to dismiss the appeal and affirm the Judgment.

### **Considerations**

*Preliminary matter: Ms. Raschdorf's motion seeking leave to correct typographical errors in her appeal brief*

27. A review of Ms. Raschdorf's motion reveals that the corrections sought to be made to the appeal brief concern purely numerical errors and errors on dates. The corrections do not impact the consideration of the merits of her case but correct background information. As such, there is no prejudice to the Secretary General or the process in ensuring the information is corrected in this manner. To ensure accuracy, we allow the motion to correct.

*Receivability of application challenging contested decision 1 (contract non-renewal) and contested decision 3 (ABCC's decision)*

28. Article 8(1)(c) of the Dispute Tribunal Statute provides that an application shall be receivable if "[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required". There is no dispute that Ms. Raschdorf did not previously submit either contested decision 1 (the non-renewal of her contract) or contested decision 3 (the ABCC decision) for management evaluation.

29. Staff Rule 11.2(a) confirms that staff members wishing to formally contest an administrative decision alleging non-compliance with their contract of employment or terms of appointment, including all pertinent Regulations and Rules pursuant to Staff Regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

30. The Appeals Tribunal has consistently held that, except for decisions made pursuant to advice from technical bodies and disciplinary decisions, requesting management evaluation is a required first step in the process.<sup>1</sup> The Dispute Tribunal cannot waive this requirement. Therefore, the issue is whether contested decisions 1 and 3 were made pursuant to advice from technical bodies or as part of a disciplinary process.

31. With regard to the non-renewal of Ms. Raschdorf's appointment (contested decision 1), she argues that it was a disciplinary measure and taken subsequent to advice from a technical body, which excuses the requirement for management evaluation.

32. There is no evidence that the non-renewal and separation from service was as a result of a finding of misconduct that would lead to a disciplinary measure pursuant to the Staff Regulations and Rules. No disciplinary proceedings had been initiated against Ms. Raschdorf.

33. Rather, the decision to not extend and renew her fixed-term appointment was taken by the UNAMI Chief of Mission Support, in accordance with the sick leave policy as set forth in ST/AI/2005/3. In the letter of 30 May 2019, the UNAMI Chief Mission Support confirmed that in accordance with Section 3.9 of ST/AI/2005/3, a staff member may be granted an extension of the appointment for the continuous period of certified illness up to the maximum entitlement to sick leave, but Ms. Raschdorf had exhausted her sick leave entitlements and any further extension would be predicated on her being considered for a disability benefit. However, DHMOSH had not recommended her for consideration for disability benefit as there was no medical report supporting disability.

34. The decision to not renew and extend her appointment was not taken with input from a medical board or technical body and was, therefore, not made subsequent to the recommendation of a technical body.

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<sup>1</sup> *Jolanta Wozniak v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1229, paras. 27-28.

35. As for contested decision 3, the ABCC's rejection of her claim for compensation on the ground that her claim was time-barred, Ms. Raschdorf submitted her claim for compensation under Appendix D in October 2020, more than one year after 11 April 2019 when she became aware of her medical condition. Ms. Raschdorf argues that she submitted her claim late because she was required to await the conclusion of the review of the DHMOSH decision not to recommend her for disability benefits from the UNJSPF and that the ABCC's decision was made pursuant to the process under ST/AI/2019/1 (Resolution of disputes relating to medical determinations) which constitutes advice from a technical body.

36. However, a claim for compensation under Appendix D is separate from claims for disability benefits from the UNJSPF and not dependent on the outcome of UNJSPF claims. Ms. Raschdorf had no reason to wait for the results of her challenge initiated under ST/AI/2019/1 and the medical determination relevant to her request for a disability benefit from the UNJSPF, before submitting her claim to the ABCC.

37. Also, Article 5.2 of Appendix D provides that “[c]laimants wishing to contest a decision taken on a claim under [Appendix D], to the extent that the decision was based on considerations other than a medical determination, shall submit to the Secretary-General a written request for management evaluation in accordance with staff rule 11.2”. In the present case, the ABCC's decision on whether the claim is time-barred was not based on a consideration of a medical determination, therefore, the requirement for management evaluation applies.

38. In addition, prior jurisprudence has confirmed that decisions related to the timeliness of applications to the ABCC are regular administrative decisions that must be submitted for management evaluation because they address the administrative, rather than medical, aspects of the ABCC's work.<sup>2</sup>

39. In conclusion, a request for a management evaluation must be made within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. This was not done with regards to contested decisions 1 and 3. The Dispute Tribunal has no jurisdiction to waive the deadlines for management evaluation. As a result, the Dispute Tribunal did not err in determining that the application with respect to contested decisions 1 and 3 was not receivable.

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<sup>2</sup> *Massi v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1002, para. 33.



*Lawfulness of contested decision 2 (DHMOSH's decision not to recommend her for a disability pension to UNSPC)*

40. In the impugned Judgment, the Dispute Tribunal held DHMOSH's decision to not recommend Ms. Raschdorf for a disability pension to UNSPC was rational, proportional, and untainted by procedural errors, and, therefore, lawful.

41. The Appeals Tribunal has consistently held that<sup>3</sup>

When judging the validity of the Secretary-General's exercise of discretion in administrative matters, the Dispute Tribunal determines if the decision is legal, rational, procedurally correct, and proportionate. The UNDT can consider whether relevant matters have been ignored and irrelevant matters considered, and also examine whether the decision is absurd or perverse. But it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him. Nor is it the role of the Dispute Tribunal to substitute its own decision for that of the Secretary-General.

42. Ms. Raschdorf submits that the Dispute Tribunal erred in its Judgment (i) by ignoring procedural errors made by the Administration in the course of the ST/AI/2019/1 process; and (ii) by ignoring the report of the IMP and refusing to consider whether her medical condition rendered her unable to perform her duties as a Political Affairs Officer.

43. Article 33(a) of the UNJSPF Regulations requires proof of incapacitation before a recommendation can be made to the UNSPC for a disability pension. It provides that "[a] disability benefit shall, subject to article 41, be payable to a participant who is found by the Board to be incapacitated for further service in a member organization reasonably compatible with his or her abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration".

44. Incapacitation is a purely medical issue to be proven by medical evidence and once the Dispute Tribunal decides that the procedure for presenting a medical opinion to the Secretary-General was flawed, the only proper course for it to take, since the issue was a

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<sup>3</sup> *Abdeljalil v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2019-UNAT-960, para. 23; *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-902, para. 47.

medical one, is to remand the case back to the ABCC to convene a medical board to consider the original determination.<sup>4</sup>

45. In terms of the process, Ms. Raschdorf says there were intentional delays in payment to the IMP and interference by the Administration that caused a nine-month delay in the submission of the IMP's report of her condition. The Dispute Tribunal further erred by not citing specific parts of the IMP's report, thereby abdicating its duty to review the inconsistencies between that report and DHMOSH's determination.

46. Ms. Raschdorf was advised on 16 April 2019 by DHMOSH that based on the medical information that had been provided by her physician, DHMOSH could not recommend her case to the UNSPC for consideration of her eligibility for disability benefits from the UNJSPF. She subsequently continued to submit additional medical documentation to DHMOSH, including on 12 June 2019. On 26 June 2019, DHMOSH again responded to Ms. Raschdorf, informing her that the information contained in the new documents she had submitted did not alter their determination.

47. Further to ST/AI/2019/1 (Resolution of disputes relating to medical determinations) and Ms. Raschdorf's request, between July and November 2019, an IMP examined Ms. Raschdorf. On 15 November 2019 and 5 December 2019, the IMP reported to DHMOSH that she should "not return to any work in a region where there is limited access to health care or where there is any risk of chest infection or air pollution" and "ought to stay in the United Kingdom". In September 2020, DHMOSH reiterated its decision on the basis that the IMP report did not indicate that she was incapacitated from working at all due to an impairment to health which is likely to be permanent or of long duration.

48. We accept the Secretary General's contention that there is no evidence that there were intentional delays in payment to the IMP and "interference" by the Secretary-General that caused a nine-month delay in the submission of the IMP report. The e-mail exchanges submitted as evidence indicate that the Administration did attempt to contact the IMP's clinic to resolve the issues that held up the release of his report.

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<sup>4</sup> *Karseboom v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-601, para. 12.

49. Further, the review procedure under ST/AI/2019/1 was followed and allowed Ms. Raschdorf to challenge medical determinations made by the Administration concerning sick leave entitlements and her medical condition by requesting independent reviews. The Administration followed the steps in this administrative issuance including DHMOSH issuing the terms of reference, which Ms. Raschdorf did not contest, and recommending the IMP, which she did not oppose. The IMP sent his report to Ms. Raschdorf and DHMOSH.

50. Further to the final decision on 1 September 2020, DHMOSH confirmed it had reviewed the IMP report which in their assessment confirmed their previous determination that Ms. Raschdorf did not qualify for the recommendation for disability benefit because she was still fit to work in selected duty stations, and therefore, was not incapacitated for further service. In the 15 November 2019 IMP report, the IMP endorsed the recommendations of the consultant in respiratory medicine who had previously reported that it was “unlikely” that “she will be able to return to the field for her operations as a UN employee” but she “might be able to do light office work in a duty station with a more moderate climate in the future after the completion of respiratory rehabilitation, like Geneva, Vienna or NY”. There is no error in the interpretation that this did not amount to “incapacitation” to work.

51. Based on this evidence, the Dispute Tribunal did not err in fact or law in finding that Ms. Raschdorf has not demonstrated that DHMOSH committed any procedural errors in arriving at contested decision 2.

52. Ms. Raschdorf also contends that the Dispute Tribunal made several errors of fact at paragraphs 4, 7 and 10 of the Judgment. While it subsequently corrected some of them, upon an application for correction by Ms. Raschdorf, it left all the conclusions in place as they were. Ms. Raschdorf contends that the Dispute Tribunal erred in fact in finding that she had been put on “Special Leave Without Pay” until 30 April 2019 instead of until 31 May 2019; and that Ms. Raschdorf had engaged the IMP, when, in accordance with ST/AI/2019/1, it was the Organization who had engaged the IMP.

53. In the Judgment, there were some errors in relation to dates however, they were remedied by a Corrigendum (UNDT/2022/004/Corr.1) on 9 February 2022. As for any error on who engaged the IMP, even if this is accepted as an error, there is no indication that the error affected the outcome of the Judgment. Therefore, we find that the Dispute Tribunal did not make factual errors resulting in a manifestly unreasonable decision.

**Judgment**

54. The Appellant's appeal is dismissed, and Judgment No. UNDT/2022/004 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24<sup>th</sup> day of March 2023 in New York, United States.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Knierim

*(Signed)*

Judge Gao

Judgment published and entered into the Register on this 11<sup>th</sup> day of May 2023 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar