



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

Judgment No. 2023-UNAT-1351

**Imran Ahmad Shah
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Case No.:	2022-1711
Date of Decision:	30 June 2023
Date of Publication:	7 July 2023
Registrar:	Juliet Johnson

Counsel for Appellant:	Daniyal Hassan
Counsel for Respondent:	Sylvia Schaefer

JUDGE SABINE KNIERIM, PRESIDING.

1. Mr. Imran Ahmad Shah, a staff member in the United Nations Military Observer Group in India and Pakistan (UNMOGIP) appeals the summary judgment of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal). In Judgment No. UNDT/GVA/2022/044 (impugned Judgment), the UNDT decided that his application was not receivable *ratione materiae* because Mr. Shah had not challenged a final administrative decision that affected the terms of his appointment.¹

2. For the reasons set forth in this opinion, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

3. Mr. Shah (the Appellant) has served as an Information Systems Assistant, at the G-5 level, with the UNMOGIP since 2006. Mr. Shah was based in the UNMOGIP office in Srinagar, India.

4. On 27 September 2021, the Chief of Mission Support (CMS) of UNMOGIP issued an Inter-Office Memorandum entitled “Adjustment of Mission Support Structure to clarify the Reporting lines of Staff based in India” (Inter-Office Memorandum).² Mr. Shah identifies this Inter-Office Memorandum as the contested decision.

5. In the contested decision, the CMS advised that henceforth all mission support staff on the Indian side of UNMOGIP’s activities would have as their First Reporting Officer (FRO), the CMS Representative in Srinagar (the Head of the Mission Support Office – Srinagar or HOMSOS), and the Heads/Unit Chiefs of the staff’s technical specialization would serve as their Second Reporting Officer (SRO).

6. The Inter-Office Memorandum explained that it was “important that staff should always report to the ‘Principal Officer’ responsible for the level of operation at each location” and on the Indian side, in Srinagar, this was the HOMSOS. The technical units, which were based in

¹ *Shah v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/044 (13 May 2022).

² Appellant’s Annex 9.

Islamabad, Pakistan, were only responsible for monitoring the performance of staff in their technical specialization and therefore should be the SROs.

7. The Inter-Office Memorandum directed all Section Chiefs with staff on the Indian side to implement this directive on the changed reporting structure effective with the performance year starting 1 April 2021.

8. On 30 September 2021, Mr. Shah sent an e-mail alleging that the Inter-Office Memorandum was directed at only him, because the other national staff in India were already reporting to the HOMOSOS. He queried how a non-technical person (the HOMOSOS) could rate his tasks and projects, and said this change was “truly demotivating and stressful”. Prior to the issuance of this Inter-Office Memorandum, Mr. Shah’s FRO had been in the Field Technology Section (FTS) based in Islamabad.

9. On 4 October 2021, the Chief of the FTS in Islamabad responded that as Mr. Shah was part of the mission support staff based in Srinagar, he would report to the HOMOSOS as stated in the Inter-Office Memorandum.

10. Further, the Chief of the FTS advised that “local support for FTS backend equipment in Srinagar HQ will be minimal (exaggeratedly less than 30%) as all network equipment and servers will be centrally managed remotely taking into account (...) that we are well into the implementation of cloud computing”. Accordingly, Mr. Shah’s involvement with FTS would be mainly related to “providing end user support in Srinagar”.³

11. On 15 November 2021, Mr. Shah requested management evaluation of the Inter-Office Memorandum, arguing that this decision was frustrating, limited his professional growth, and downgraded his responsibilities. Mr. Shah noted that he had always reported to the FTS in Islamabad and that this new structure, wherein he reported to the HOMOSOS, was “discrediting” and “a humiliation”.

³ Appellant’s Annex 4 (4 October 2021 e-mail, Subject : Adjustment of Mission Support Structure to clarify the Reporting lines of Staff based in India).

12. On 30 December 2021, the Management Evaluation Unit (MEU) rejected his request as not receivable. The MEU considered that the decision to change the reporting lines of all UNMOGIP staff members serving on the Indian side “was an operational decision within the scope of managerial discretion of the CMS” and did “not produce direct, adverse legal consequences on [his] terms of appointment”. Accordingly, pursuant to Staff Rule 11.2(a), which limits the scope of the MEU’s review to “administrative decision[s] alleging non-compliance with [a staff member’s] contract of employment or terms of appointment”, Mr. Shah’s request was deemed not reviewable.⁴

13. On 18 March 2022, Mr. Shah filed an application with the UNDT. The Secretary-General responded with a motion to have receivability determined as a preliminary matter.

14. On 13 May 2022, the UNDT issued its summary judgment on receivability, finding that the application was not receivable *ratione materiae*. The UNDT found that the Inter-Office Memorandum was “nothing but an operational decision of general application that promoted a change in the reporting lines of all UNMOGIP staff members on the Indian side”.⁵

15. Moreover, the UNDT held that “even if this change in the reporting lines did affect [Mr. Shah’s] responsibilities, that does not mean that the [Inter-Office Memorandum] had a legal effect *per se* on his terms of appointment or contract of employment”.⁶ The UNDT noted that no staff member has the right to select his or her supervisor.

16. In light of the extensive of submissions by Mr. Shah related to alleged retaliation and workplace harassment, the UNDT advised him to follow the relevant procedures for such claims and stated that the Dispute Tribunal was not the place to lodge such complaints in the first instance.⁷

⁴ Letter of 30 December 2021, Reference: MEU/592-21/R(AS).

⁵ Impugned Judgment, para. 18.

⁶ *Ibid.*, para. 19.

⁷ *Ibid.*, para. 21.

17. On 12 July 2022, Mr. Shah filed an appeal of the impugned Judgment with the Appeals Tribunal. He requested that the impugned Judgment be set aside, and that he be awarded USD 1 million for “suffering irreparable mental, physical, social and economic loss (...) as a result of the unlawful actions by UNMOGIP and UNDT’s failure to redress [his] grievances”.⁸

18. The Secretary-General submitted his answer on 12 September 2022, requesting the UNAT to dismiss the appeal in its entirety.

Submissions

Mr. Shah’s Appeal

19. Mr. Shah avers that he suffered a stroke in December 2017, the primary cause of which was a toxic work environment. He states that while he was on sick leave, and in a “life and death situation”, the UNMOGIP circulated the contested Inter-Office Memorandum in September 2021, which showed insensitivity to his situation.

20. Mr. Shah states that he made (unspecified) claims with the Office of Internal Oversight Services (OIOS) in December 2021 and represents that he was advised that OIOS had decided an investigation was not warranted.

21. Mr. Shah takes exception to various events post-dating the impugned Judgment concerning the selection of an independent contractor in Srinagar.

22. Mr. Shah argues that the UNDT erred on a question of law in finding that the Inter-Office Memorandum did not constitute an administrative decision under the terms of the Dispute Tribunal Statute (UNDT Statute), because it did not affect the terms and conditions of his employment.

23. Mr. Shah submits that the Inter-Office Memorandum directly impacted the terms of his employment because his role was adversely reduced given that “local support for FTS backend equipment in Srinagar HQ [would] be minimal” going forward.

⁸ Appellant’s Appeal Form, Part IV.

24. Mr. Shah further contends that the UNDT erred on a question of fact when it failed to appreciate all the documents that he had submitted in which he explained the context of the “constant retaliation he has been facing in the [O]rganization since 2014”.

25. Mr. Shah prays that the UNAT set aside the impugned Judgment, find that the Inter-Office Memorandum was issued unlawfully, with the *mala fide* intent to target him, and award him compensation in the amount of USD 1 million.

The Secretary-General’s Answer

26. The Secretary-General submits that the UNDT correctly held, pursuant to Articles 2(1)(a) and 8(1)(a) of the UNDT Statute that Mr. Shah’s application was not receivable for lack of a reviewable administrative decision.

27. The Secretary-General further submits that the UNDT correctly found that the Inter-Office Memorandum outlined an operational decision of general applicability and was not an administrative decision that affected Mr. Shah’s terms of employment. The Secretary-General avers that Mr. Shah continues to perform his duties as an Information Systems Assistant for the FTS of UNMOGIP.

28. The Secretary-General argues that a change of reporting lines cannot produce direct adverse legal consequences on a staff member’s terms of employment, because it is within the Administration’s discretion to organize its staffing as required for the performance of the Organization’s mandate.

29. In this case, the Secretary-General notes that for reasons of performance management and oversight, it was decided that all UNMOGIP staff members serving in India, not just Mr. Shah, would be supervised by an FRO who was also stationed in India, namely, the HOMSSOS.

30. The Secretary-General submits that Mr. Shah failed to identify an error of law with regard to the UNDT’s determination of what constitutes a reviewable administrative decision.

31. The Secretary-General also argues that there was no error in the UNDT ruling upon the receivability of the application by way of summary judgment.

32. The Secretary-General submits that the summary judgment procedure is provided for in Articles 9 and 19 of the UNDT Rules of Procedure.

33. The Secretary-General maintains that the UNDT was correct to direct Mr. Shah to the relevant resources for pursuing his complaints of retaliation and harassment. The Secretary-General noted that while the UNDT has jurisdiction to determine if there was a proper investigation into a harassment complaint, it does not have jurisdiction to conduct an investigation on its own.

Considerations

Did the UNDT err in concluding that the Inter-Office Memorandum on changing reporting lines was not a reviewable administrative decision?

34. The main issue presented in this appeal is whether the UNDT was correct to dismiss Mr. Shah's application as not receivable *ratione materiae* because he was not challenging a final administrative decision. The UNDT's jurisdiction is prescribed by its Statute, which provides in Article 2(1)(a) as follows:

1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided for in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged non-compliance;

35. The Appeals Tribunal has often dealt with the issue of what is an appealable administrative decision and instructed that the Dispute Tribunal is to apply the definition of administrative decision set forth in *Andronov*:⁹

It is acceptable by all administrative law systems that an 'administrative decision' is a unilateral decision taken by the administration in a precise individual case (individual

⁹ *Hassanin v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-759, para. 36 (citing Former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V).

administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules and regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences. ...

36. We have further emphasized that:¹⁰

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; the administrative decision must ‘have a direct impact’ on the terms of appointment or contract of employment of the individual staff member. Additionally, the Dispute Tribunal may consider ‘the nature of the decision, the legal framework under which the decision was made, and the consequences of the decision’.

37. We recognize that it is not always easy to determine what constitutes a contestable administrative decision. In *Andati-Amwayi*,¹¹ we held that “[i]n terms of appointments, promotions, and disciplinary measures, it is straightforward to determine what constitutes a contestable administrative decision as these decisions have a direct impact on the terms of appointment or contract of employment of the individual staff member”. But “[i]n other instances, administrative decisions might be of general application seeking to promote the efficient implementation of administrative objectives, policies and goals”. In such cases, “[a]lthough the implementation of the decision might impose some requirements in order for a staff member to exercise his or her rights, the decision does not necessarily affect his or her terms of appointment or contract of employment”.¹²

38. An example of an administrative decision of general application was considered by the Appeals Tribunal in *Saffir*¹³. In that case, the Assistant Secretary-General of the Department for General Assembly and Conference Management (ASG/DGACM) made an announcement to staff in the Publishing Section concerning a forthcoming advertisement of

¹⁰ *Ibid.*, para. 37 (internal citations omitted).

¹¹ *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 17.

¹² *Ibid.*, para. 18.

¹³ *Saffir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-565.

19 positions in Inspira to fulfil the need for in-house printing services using digital equipment, as part of a restructuring exercise. Mr. Saffir, a staff member of the Publishing Section, challenged the initiation of this recruitment. We “conclude[d] that there was no administrative decision capable of being appealed before the Dispute Tribunal” because this announcement “did not deprive [the staff member] of his work, or affect his functions”. We held that “in the absence of any direct or negative consequences for Mr. Saffir or his terms of appointment, [the announcement] was not appealable by him”.¹⁴

39. Based on our jurisprudence, we find that the impugned Judgment is without legal or factual errors. The UNDT correctly found that the Inter-Office Memorandum announcing changes to reporting lines for all UNMOGIP staff in Srinagar does not contain an appealable administrative decision. It did not deprive Mr. Shah of his work, or affect his functions. It was limited to announcing a general change of reporting lines with regard to FROs and SROs. Therefore, in the absence of any direct impact or negative consequences for Mr. Shah or his terms of appointment, it was not appealable by him.

40. We also note that the Appeals Tribunal has confirmed that a staff member has no right to a particular supervisor or reporting lines. In *Rees*¹⁵, we held:

(...) No staff member has the right to select his or her own supervisors. No organization can be compelled to keep such a staff member who insists on retaining his or her post while refusing to report to a supervisor who he or she claims has discriminated against him or her or created a hostile work environment.

41. In his appeal, Mr. Shah protests that the Inter-Office Memorandum did directly affect the terms of his appointment because his role would be reduced, in that “local support for FTS backend equipment in Srinigar HQ [would] be minimal” and he would be focused on “end user support”. However, the comments to which Mr. Shah refers were not contained in the Inter-Office Memorandum, but rather reflect a separate communication from the Chief of FTS about operational changes to the FTS infrastructure in Srinagar, which is not the contested decision. In any event, we have consistently held that the “Administration has broad discretion to reorganize its operations and departments to meet changing needs and

¹⁴ *Ibid.*, paras. 23 and 25.

¹⁵ *Rees v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-266, para. 76.

realities”.¹⁶ Accordingly, Mr. Shah’s arguments on this score do not call the UNDT judgment into doubt.

Did the UNDT err in failing to consider Mr. Shah’s submissions concerning an alleged history of retaliation or harassment in the workplace?

42. We next consider whether, as Mr. Shah submits, the UNDT erred on a question of fact because the UNDT failed to appreciate the retaliation that he has allegedly faced since 2014.

43. The Appeals Tribunal has addressed the question under which conditions the Dispute Tribunal has jurisdiction regarding allegations of harassment and abuse of authority. In *Adnan-Tolon*¹⁷, we outlined the proper procedures for such complaints:

(...) Before a staff member may file a harassment or abuse of authority claim with the Dispute Tribunal, he or she must make efforts to pursue internal remedies set out in the Bulletin which provides for an informal and formal process for addressing these allegations.

(...) In circumstances where informal resolution is not desired or appropriate, or has been unsuccessful, the aggrieved individual may submit a written complaint to the head of department, office or mission concerned, except in those cases where the official who would normally receive the complaint is the alleged offender, in which case the complaint should be submitted to the Assistant Secretary-General for Human Resources Management or, for mission staff, to the Under-Secretary-General for Field Support. Formal resolution may also be initiated by the submission of a report of prohibited conduct from a third party that has direct knowledge of the situation to one of the officials listed above. Upon receipt of a formal complaint, the responsible individual will promptly review the complaint or report and take appropriate measures, including an investigation.

44. In *Adnan-Tolon*, the staff member challenged the alleged failure by the Organization to compensate him for his overtime work; however, in his application the staff member also included complaints that he had been subjected to harassment and abuse of authority. The

¹⁶ *Hassanin Judgment, op. cit.*, para. 45.

¹⁷ *Adnan-Tolon v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-970, paras. 35-36.

Appeals Tribunal held that the UNDT did not err in rejecting these claims as not receivable, reasoning that:¹⁸

(...) The Appellant did not follow either the informal or formal process as required by the Bulletin. As stated by the Appeals Tribunal previously, if a staff member has been subjected to acts of harassment and abuse of authority over several years, there is “a contractual entitlement to request that his allegations are addressed. That entitlement, and the procedural path he is obliged to take to bring his complaint to his employer, is set out in the Secretary-General’s Bulletin ST/SGB/2008/5 on the ‘Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority’”.

(...) The Appellant did not follow that procedural path under the Bulletin. He did not file a complaint of harassment and abuse of authority against his supervisors. He failed to raise or allege such harassment and abuse of authority in his request for management evaluation. As such, he did not pursue the internal processes required by the Bulletin.

45. As in the latter case, here Mr. Shah only challenged before the UNDT the Inter-Office Memorandum concerning a general change of reporting lines. Accordingly, the UNDT did not have authority to review Mr. Shah’s allegations of retaliation and harassment absent a decision of the Administration pursuant to the relevant procedures.¹⁹

46. For the foregoing reasons, we conclude that the UNDT was correct to decide that Mr. Shah’s application was not receivable and we deny Mr. Shah’s appeal.

¹⁸ *Ibid.*, paras. 37-38.

¹⁹ The relevant procedures are contained in ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment, and abuse of authority) which has superseded ST/SGB/2008/5 referenced in *Adnan-Tolon*.

Judgment

47. Mr. Shah's appeal is dismissed, and Judgment No. UNDT/2022/044 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 30th day of June 2023 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Halfeld

Judgment published and entered into the Register on this 7th day of July 2023 in New York, United States.

(Signed)

Juliet Johnson, Registrar