UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1433

Palash Kanti Das

(Respondent/Applicant)

v.

Secretary-General of the United Nations

(Appellant/Respondent)

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case No.:	2023-1815
Date of Decision:	22 March 2024
Date of Publication:	6 May 2024
Registrar:	Juliet E. Johnson

Counsel for Mr. Das:	Self-represented
Counsel for Secretary-General:	Patricia C. Aragonés

JUDGE GRAEME COLGAN, PRESIDING.

1. The Secretary-General of the United Nations (Appellant) has appealed the Judgment of the United Nations Dispute Tribunal (UNDT) in claims brought to it by a former staff member, Palash Kanti Das (Respondent).[1] The UNDT concluded first that the Respondent's claims were receivable and, second, that the Secretary-General was not entitled to recover an overpayment of money for untaken annual leave because the Respondent had a legitimate expectation to the receipt of this money. The UNDT rescinded the decision to recover the sum at issue from the Respondent, which would take effect in practice if he is again employed by the United Nations.

2. For the reasons set out below, we grant the Secretary-General's appeal and reverse the Judgment of the UNDT.

Background and Procedure

3. In 2016 the Respondent ended a period of employment with the United Nations Development Programme (UNDP).[2] He then had accrued untaken annual leave entitlements exceeding 60 days from his time at UNDP. The Respondent was only entitled to "cash up", or commute, a maximum of 60 days' untaken leave and so, in November 2016, was paid a lump sum representing the monetary value of 60 days' leave.

4. In the meantime, the Respondent then took up a position on a fixed-term appointment with UN Women.[3] In this role he became eligible for annual leave and that untaken leave accumulated. In March 2021 he informed his supervisor, UN Women's Country Representative for Bangaldesh (CR), that he planned to accept an offer of employment outside the Organization. If the CR did not direct, the CR at least strongly sought to persuade the Respondent not to take his outstanding annual leave before separating. This was because of the Organization's operational needs. The CR also told him that fixed-term staff (as he was) could "generally" be paid out unused leave of up to 60 days at the end of their employment. In reliance on this advice Mr. Das did not take any of the leave due to him and continued to work until his final day with UN Women on 31 May 2021.

[1] *Das v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/024 (impugned Judgment).
[2] Impugned Judgment, para. 2.
[3] *Ibid.* Mr. Das joined UN Women on 29 September 2016, the day following his separation from UNDP.

5. Based on what subsequently was confirmed as the Organization's prohibition on paying out this sum, it seems at least likely that Mr. Das could lawfully have insisted on taking at least some of his accrued leave during his notice period of two months.[4] In fact, he acquiesced and helped the Organization out of its operational difficulties. When his employment with UN Women ended, he again had more than 60 days' accrued but untaken annual leave, in the case of his time with UN Women, 78 days. The Organization then sought to recover from him the money it had paid him for the period during which he may well have been entitled to use annual leave.

6. After his separation from the Organization and payment to him of a sum representing 60 days untaken annual leave from UN Women, a decision was taken by the Organization to recover that payment because of what it conceded was an error in the calculation of his entitlements.[5] It justified this decision by advising Mr. Das that his untaken leave could not be converted to money in view of Staff Rule 4.17, applicable at the relevant time.[6] The amount claimed back from Mr. Das was then BDT (Bangladeshi taka) 2,063,895.40, being 2,799,399.31 minus a "staff assessment deduction" of BDT 735,503.91.[7]

7. The basis of the Organization's claim to a refund was Staff Rule 4.17.[8] This applied in circumstances in which a staff member was engaged by a United Nations agency within a period of 12 months after a separation from another United Nations agency. The maximum leave entitlement that could be cashed up upon a subsequent separation could not exceed an

[4] *Ibid*., para. 5.

[5] *Ibid*., para. 7. The e-mail from UN Women, received by Mr. Das on 24 May 2021, stated:

> ...
> We are very sorry to inform you that your remaining leave balance will not be [encashed] referred to the email from GSSU [UNDP's Global Shared Service Unit]. But this below (yellow highlighted amount) leave encashment amount they calculated wrongly in May's salary and you will get it in your account soon. UNDP Finance will be guided me the procedures and papers works, how to transfer the amount from your account to UNDP account?
> Seeking your kind cooperation.
> ...

[6] Secretary-General's Bulletin ST/SGB/2018/1/Rev.1 (Staff Regulations and Rules of the United Nations).

[7] Impugned Judgment, para. 8.

[8] Staff Rule 4.17(c) provided: "When a staff member receives a new appointment in the United Nations common system of salaries and allowances less than 12 months after separation, the amount of any payment on account of termination indemnity, repatriation grant or commutation of accrued annual leave shall be adjusted so that the number of months, weeks or days of salary to be paid at the time of the separation after the new appointment, when added to the number of months, weeks or days paid for prior periods of service, does not exceed the total of months, weeks or days that would have been paid had the service been continuous."

amount equivalent to the staff member's leave entitlement based on a deemed period of continuous employment of the staff member spanning both periods of employment and the duration of the intervening period of non-employment by the Organization. Mr. Das' circumstances fell into this category.

8. There followed several interactions recorded in correspondence between the parties during which (and indeed in his final payslip issued to him) the Organization's intention to recover the overpaid monies remained unwavering.[9] Mr. Das challenged the demands made of him on three grounds: first, that there was no agreement between UNDP and UN Women providing for the transfer of accrued leave between the two bodies at the relevant time; second, that Staff Rule 4.17 was ambiguous; and third, that the amount to be recovered should be a net and not a gross sum as it appeared was being claimed.

9. By a further formal letter of demand of repayment received by Mr. Das on 13 August 2021, UN Women again clearly conveyed its decision to require repayment of the monies overpaid and set out the regulatory basis for doing so.[10] Mr. Das continued to contest this demand by a letter sent by him to UN Women on 18 August 2021, which was responded to in writing on 1 October 2021 (received by Mr. Das on 2 October) which was a reiteration of its previous position and added nothing further to its fundamental position requiring repayment.

10. The case before the UNDT turned first on the receivability of Mr. Das' application and then on whether he had a legitimate expectation arising from his communications with the CR of receiving that annual leave sum that he was paid.

11. Because the Secretary-General also challenges the UNDT's conclusion that Mr. Das' application was receivable, we now set out the relevant facts relating to that aspect of the case.

12. The Organization's first advice of its intent to recover the overpayment from Mr. Das was given to him on 29 June 2021. The Respondent challenged and resisted the Organization's claims. Following exchanges of correspondence between the parties, there was further advice to the Respondent received by him on 13 August 2021. This set out specific details of the decision, including the reasons justifying it, the specific amount of BDT 2,799,399.31

[9] *Ibid.*, paras. 11-15.
[10] *Ibid.*, para. 13.

reclaimed, and a demand for its payment. Repayment was said to be required so that the Organization could process his final separation entitlements to take effect from 31 May 2021.

13. On 18 August 2021, Mr. Das replied to this letter, repeating his previous contentions and supplying further supporting documents.[11]

14. On 2 October Mr. Das received the Organization's response which acknowledged receipt of the further documentation sent by him on 18 August, but confirming its earlier decision to seek reimbursement of the overpayment.

15. On 5 November 2021 Mr. Das requested management evaluation of what he said was the Organization's decision not to compensate him for the losses he contended he had suffered by relying on the CR's assurances about the payment for untaken annual leave. On 15 December 2021 that management evaluation request was declined as untimely. The Respondent initiated proceedings in the UNDT on 1 March 2022.

The UNDT's impugned Judgment

16. The UNDT concluded that Mr. Das' application was receivable, the administrative decision that he purported to challenge being that conveyed to him on 2 October 2021 which it held was not simply a repetition or confirmation of the original decision received on 13 August 2021.[12] The decision conveyed on 2 October was held to have been significantly different from its predecessor: the set of arguments for recovery had changed, as had the amount claimed. The advice to the Respondent of 2 October 2021 was held to have been of a new administrative decision and so the request for management evaluation of the latter communication was found by the UNDT to have been made within time.

17. As to the lawfulness of the challenged decision, the UNDT concluded that the CR's advice to Mr. Das was conveyed on behalf of the Organization, that the Respondent relied on it to elect to take money instead of accrued leave and to work during the period when he could and probably would otherwise have taken actual leave.[13]

[11] *Ibid.*, para. 14.
[12] *Ibid.*, paras. 27-31.
[13] *Ibid.*, paras. 45-51.

18. The UNDT acknowledged that pursuant to Staff Rule 4.17(c), in cases where a former staff member of an entity in the United Nations common system is re-employed by another entity in the United Nations common system, then on separation from the subsequent entity, the staff member is entitled to commute no more than the amount of annual leave they would have been entitled to if they had been continuously employed.[14] In other words, given that the gap in service for Mr. Das between UNDP and UN Women was less than 12 months, he was deemed to have been continuously employed. Thus, under Staff Rule 4.17(c) he was entitled to cash up a maximum of 60 days of annual leave for his period of employment at both entities. The UNDT noted that Staff Rule 9.9 addressed the computation of those monetised leave entitlements, which was a maximum of 60 days for Mr. Das.

19. The UNDT described Staff Rule 4.17(c) as "fictionalizing" a legal relationship to ensure that the Organization was not unduly prejudiced financially in such circumstances.[15] This meant, in the UNDT's conclusion, that Mr. Das would have been entitled to a maximum of 60 monetised days of leave calculated from the original date when he joined the Organization, which sum he had received when leaving UNDP in 2016. It followed that, but for his claim to a legitimate expectation, he would not have been entitled to any further monetised leave when he left UN Women.

20. The UNDT then addressed Mr. Das' claim in reliance on a legitimate expectation of receiving the commutated payment that he did. It held that, despite having no right in law to this sum, but given the CR's official authority and representation and his reliance on this in arranging his affairs, this bound the Organization not to renege on that representation or promise as a matter of fairness, justice and equity.[16] The UNDT considered that Mr. Das had acted, in reliance on the CR's advice, to his ultimate detriment. It was significant that the Secretary-General did not essentially dispute Mr. Das' evidence of what he had been told by the CR, but rather suggested that a somewhat more nuanced and equivocal interpretation should be put on the CR's words. Rejecting this defence, the UNDT decided that to insist upon repayment of the amount paid to Mr. Das in error was consequently unlawful and should be rescinded.

[14] *Ibid.*, paras. 35-41.
[15] *Ibid.*, paras. 39-41.
[16] *Ibid.*, paras. 42-51.

21. The UNDT rescinded the contested decision on the basis of Mr. Das having had a legitimate expectation to the monies he received and had relied on this expectation which, had it been dishonoured by the recovery of the monies overpaid to him, would have been to his detriment.[17] The UNDT rejected his claim for moral damages as it was not supported by evidence as it is required to be. There is no appeal by Mr. Das against that outcome of the case before the UNDT.

22. The Respondent has received the money that the UNDT determined was his. The impugned administrative decision will only take effect practically if and when the Respondent might again be appointed to a UN role.

Submissions

The Secretary-General's Appeal

23. The Secretary-General requests the Appeals Tribunal to vacate the impugned Judgment and dismiss the application.

24. The Secretary-General argues that the UNDT erred in law and fact, resulting in a manifestly unreasonable outcome, by concluding that the application was receivable. As Mr. Das indicated in the application, he was informed of the contested decision on 24 May 2021. A month later, he received the June 2021 pay slip that clearly indicated the overpayment as pending recovery, in net monetary terms. He received confirmation of the recovery decision on 29 June 2021 and again, in gross monetary terms, on 13 August 2021. On 2 October 2021, he received a further reiteration of the decision and confirmation that the overpayment to be returned was the net amount. For his claim to have been receivable by the UNDT, he should have requested management evaluation on 12 October 2021 at the latest, while awaiting a response to his third, 18 August 2021 request for reconsideration.

25. The Secretary-General submits that the UNDT erred in law and fact, resulting in a manifestly unreasonable outcome, when it concluded that the 1 October 2021 letter constituted a new administrative decision. Contrary to UNAT jurisprudence, the UNDT effectively allowed Mr. Das to unilaterally determine the date of the contested decision. The UNDT erroneously relied on his unsubstantiated claim that the decision of 12 August 2021 was not final "as there

[17] *Ibid.*, paras. 54-55.

was an indication that the decision would be reviewed". In reality, no response from him was expected. The 1 October 2021 letter did not add or subtract anything.

26. The Secretary-General further contends that the UNDT failed to identify what the "new arguments" in the 1 October 2021 "decision" were. The reference to Mr. Das as a "rehire" does not constitute a new argument and there were no new arguments. Also, it is clear that the "difference" was merely a difference between the net and gross amounts sought to be recovered.[18] The reference in the 12 August 2021 letter to the amount to be recovered in gross terms may have caused confusion, but it does not amount to a difference of a "fundamental" element. The amount (gross or net) was ancillary, not material to the recovery decision.

27. The Secretary-General argues that the UNDT erred when it concluded that the contested decision was unlawful. The UNDT erred in law when it ordered rescission, thereby compelling the Administration to act contrary to the legal framework and its duty to correct administrative error. The UNDT's reliance on jurisprudence in cases of non-renewal was misplaced.

28. The Secretary-General asserts that the UNDT erred in fact, resulting in a manifestly unreasonable outcome, when it found that Mr. Das had a legitimate expectation to receive the overpayment. No express promise, abuse or motivation existed.[19] The UNDT's finding is based on a mischaracterization of the record. The Secretary-General had disputed Mr. Das' submission of the verbal exchange between him and the CR. The UNDT failed to consider that the CR's statement was made in general terms and the CR had no authority to make any specific representation with regard to Mr. Das' second commutation and did not make any. Moreover, there was no evidence that the CR knew that Mr. Das was not entitled to receive the commutation.[20] He failed to disclose having previously received a commutation when seeking information from the HR department.

[18] The Secretary-General refers to the May and June 2021 pay slips, the correspondence from 24 until 26 May 2021 indicating that any recovery should be based on the net, rather than the gross amount, and the fact that the word "net" was bolded in the 1 October 2021 letter when referencing the amount to be recovered.
[19] The Secretary-General cites *Ahmed v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-153, para. 47.
[20] The Secretary-General reiterates the submission that the CR was not aware that Mr. Das had already received a lump-sum payment for his accrued annual leave upon his separation from UNDP and maintains that the CR's statement was made without full knowledge of the relevant facts.

29. The Secretary-General submits that the UNDT exceeded its competence when it found that the overpayment was exceptionally justified. By granting an entitlement expressly prohibited by the Staff Rules and Regulations, it has effectively amended the regulatory framework.

Mr. Das' Answer

30. The Respondent requests that the Appeals Tribunal reject the appeal and uphold the impugned Judgment.

31. He argues that the appeal should not be permitted on any statutory grounds because the Secretary-General has used new facts and terms that are misleading and confusing; namely, introduced a new term "recovery decision". Furthermore, 24 May 2021 as the beginning of the timeline for the receivability of the application, as stated in the appeal, is a new fact directly contradicting paragraphs 34-35 of the Secretary-General's reply before the UNDT.

32. Mr. Das contends that the Secretary-General has failed to specifically identify any errors in the impugned Judgment. The Secretary-General has not considered the entirety of the application for identifying the notification of the contested decision and has misinterpreted the impugned Judgment. The claim that the UNDT allowed Mr. Das to unilaterally decide the date of the notification is incorrect in regard to the fact that he raised the issues related to the gross and net amounts of the overpayment with UN Women and/or the GSSU several times—on 26 May, 29 June and 18 August 2021—but UN Women never addressed the issue. It is vital to examine the language of notifications. The letter of 12 August 2021 did not mention the date of 24 May 2021 nor the term "gross", but merely that "UN Women must take action".

33. Turning to the lawfulness of the contested decision, Mr. Das disagrees with the Secretary-General's criticism that the UNDT relied only on irrelevant jurisprudence. The UNDT's conclusion was not based on the legitimate expectation emerging from the context of non-renewals of appointment. In the present case, the legitimate expectation was not created by unlawful actions but from the principle of good faith as he relied on the Secretary-General's advice and directions.

34. Mr. Das argues that the UNDT did not err factually. Since the conversation in March 2021 between him and the CR took place verbally, the only evidence on the content of the CR's advice is the CR's e-mail sent on 5 April 2021 acknowledging the receipt of his e-mail sent on 31 March 2021. There is nothing in the case record to substantiate the Secretary-General's interpretation of the advice the CR provided to him.

35. He submits, furthermore, that during the period from March 2021 to 5 November 2021 when he asked for clarifications, the Secretary-General did not raise the arguments now raised before the Tribunals. In the appeal, the Secretary-General has not provided any evidence to refute the UNDT's findings. Moreover, the CR's e-mail of 5 April 2021 is evidence that the Administration was aware of the facts: in the resignation e-mail of 31 March 2021, copied to the HR department of UN Women, he requested guidance and support from it. It had full knowledge of the lump-sum payment made in November 2016 and the accrued 78 days of annual leave as of March 2021.

Considerations

36. The essential questions facing the UNDT were three. First, was management evaluation sought by Mr. Das within the statutory period allowed for this after receiving advice of the relevant administrative decision? If so and second, did Mr. Das have a legitimate expectation of receiving the full 60 days of monetised accumulated but untaken leave from UN Women? And third, if so, did Mr. Das act to his detriment in reliance on expectations created by the CR so that it is equitable that he should retain the payout from UN Women? If the Secretary-General is successful in the first element of the appeal, there is no need to consider the second and third as this would have the effect of making Mr. Das' case to the UNDT both unreceivable and without prospect of salvation because the UNDT is not empowered to extend or otherwise vary this time limit under any circumstances.

37. The relevant legal provisions governing the receivability of applications before the UNDT are as follows:

> **Article 2 of the UNDT Statute**
>
> 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;
> …
>
> **Article 8 of the UNDT Statute**
>
> 1. An application shall be receivable if:

> …
> (c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; (…)
> …
>
> **Staff Rule 11.2[21]**
> **Management evaluation**
>
> (a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her 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.
> …
> (c) A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested. (…)

38. There is only one previous case that has touched on this issue, albeit on different facts. In *McCloskey*, the UNAT, seized of a case where the UNDT had found requests for the recovery of an overpayment reiterative, noted:[22]

> (…) On 17 August 2010, the ITU sent Mr. McCloskey a written notice that the 2007 advance of USD 52,596.00 was an overpayment, which he must repay. Since then, the ITU has sent Mr. McCloskey this notice annually, including most recently on 29 December 2011 regarding the 2010 tax year.
>
> (…) On 7 February 2012, Mr. McCloskey filed a request for management evaluation of (…) the ITU's determination that he received an overpayment in the amount of USD 52,596.00, which he must repay.
> …
> (…) On 20 March 2012, the Management Evaluation Unit (MEU) responded to Mr. McCloskey's requests, determining that the requests were not receivable because they were untimely. The MEU specifically found that "the decision date with respect to the overpayment in the amount of USD 52,596 and remittance request relating to the 2007 tax statement was 17 August 2010" and the tax statement of 29 December 2011 was the same decision, not a new decision.
> …

[21] ST/SGB/2018/1/Rev.1.
[22] *McCloskey v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-424, paras. 6-7, 9 and 33.

> (…) In its Judgment on Receivability No. UNDT/2012/199, the UNDT determined that Mr. McCloskey's challenge to the ITU's determination that he was overpaid in 2007 was not timely and was not receivable. (…) Since neither the Secretary-General nor Mr. McCloskey has appealed the UNDT's legal conclusions on receivability, the overpayment issue also is not before the Appeals Tribunal and we will not address it.

39. Because in *McCloskey* the UNAT did not determine the issue currently before us as it was not the subject of the appeal, the UNDT's Judgment in that case stands as authority for the position argued for by the Secretary-General in this case.

40. It is only if the 1 October 2021 letter from UN Women to Mr. Das is construed to be the first advice of a new administrative decision and not simply a reiteration of a previously conveyed decision, that the Respondent's request for management evaluation made on 5 November 2021 was lodged within the time limit.

41. It is significant that the 5 November 2021 request for management evaluation referred to the Administration's alleged "continued failure" to, as he put it, compensate him for the loss he suffered in reliance on its "utterance" about the commutation of annual leave. The reference by Mr. Das to a continual failure or error on the part of UN Women tends to reinforce a conclusion that it was the consistent decision conveyed to him over several months, and from which the Organization could not be moved, that was the subject of the Respondent's complaint.

42. We reiterate that the requirement to seek management evaluation included a strictly enforceable time limit and one which the UNDT had no power to waive or modify.

43. We are satisfied that the UNDT did err in law in determining the date of notification of the contested administrative decision as 2 October 2021. The essential nature of the administrative decision was to require repayment of money mistakenly overpaid to the Respondent. The repayment demand was made and, as Mr. Das accepted in his application to the UNDT, conveyed to him on 24 May 2021. The recovery request was reiterated subsequently in both unequivocal correspondence and in pay slips received by Mr. Das. As we have noted, also, Mr. Das appeared to have accepted impliedly the reiterative nature of the subsequent correspondence in his request for management evaluation by reference to the consistency of the Organization's requests of him.

44. While the calculation of the precise amount to be repaid changed because it was incorrectly calculated initially as being a gross amount whereas it was subsequently corrected to be a net sum, the precise amount of the payment was not the administrative decision but only an

elemental detail of it. The administrative decision was that overpaid monetised leave had to be refunded and this decision, and notification of it to Mr. Das, did not change from the initial advice of it on 24 May 2021.

45. Mr. Das' fundamental objection was to having to repay any money at all in the circumstances in which he alleged that at all times he had acted to his detriment in reliance on an assurance that he would be entitled to receive payment for 60 days untaken accumulated annual leave. While he also challenged the detail of how much he should have to repay should he be obliged in law to do so, this was a detail of the fundamental decision that he should repay all commutated leave.

46. We further note that whether the distinct administrative decision was the one taken on 24 May 2021, as the Secretary-General submits and as we accept the evidence shows, we are satisfied that Mr. Das was on notice of the contested decision on 13 August 2021 at the latest, making him at least 24 days beyond the 60 days available to him when he first sought management evaluation of it on 5 November 2021.

47. The administrative decision triggering the statutory appeals process was not about the repayment amount and whether it should be calculated on either a net or a gross basis, which was the subject of the correspondence leading up to 2 October 2021, the date which the UNDT held was when the administrative decision was settled. The essence of the administrative decision was that under the Staff Rules and Regulations, Mr. Das was not entitled to cashed-up unused annual leave from a second appointment taken up within 12 months of relinquishing a first appointment after which such leave had been commutated. This was communicated to him on 24 May 2021. While Mr. Das may have had a valid argument of a legitimate expectation of this sum in the circumstances as the UNDT concluded he had, he failed to seek management evaluation within the strict time limit allowed. No matter how compelling his circumstances might be, they cannot allow a waiver of the time limits for management evaluation.

48. There is a further point made by the UNDT (although less than clearly), which is that in addition to the change to the sum to be recovered from Mr. Das, the UNDT supported its conclusion that the letter received by Mr. Das on 2 October 2021 was the expression of a new and distinct administrative decision. At paragraph 29 of its Judgment, the UNDT referred to the 2 October 2021 communication as containing "new arguments". In the absence of any further

explanation of what the UNDT meant by this cryptic reference, we will assume in Mr. Das' favour that this meant new grounds for, or explanations of, the Administration's decision.

49. However, even if, in responding to Mr. Das' correspondence, the Secretary-General did expand upon the reasoning or even add further justifications for the administrative decision previously made, it is the administrative decision that was contested and not the subsequently expressed discussion of its reasoning that must be the subject of management evaluation. Put another way, the correspondence entered into by Mr. Das after 13 August 2021 and the Secretary-General's response to it received by Mr. Das on 2 October 2021 did not change the decision previously made or announce a new administrative decision. The UNDT erred in law in deciding this point as it did.

50. The case law of the Appeals Tribunal is to the effect that the repetition of an administrative decision by the Secretary-General does not re-set the time limit so that the 60 days for seeking management evaluation does not begin anew with each reiteration of the same decision. While the UNDT accepted and applied this principle, its decision turned erroneously on the true nature of the administrative decision. The UNDT erred in concluding that the change only to the amount reclaimed by the Administration re-set the start of that period.

51. It is unfortunate for Mr. Das that what was otherwise adjudged by the UNDT to have been a meritorious case, must founder because of his failure to comply with a time limit. Nevertheless, that is unavoidable under Staff Rule 11.2(c) which sets this time limit for requesting management evaluation and any departure from which is prohibited however meritorious a staff member's case may be.

52. We should not be thought to be uncritical of the Administration of UN Women in this case. It changed its mind no fewer than three times about the amount that Mr. Das was required to repay to it, based on whether this was a gross or a net amount, what seems to us to have been a relatively simple question. Nor is it to the credit of the Administration of UN Women that having sought and obtained Mr. Das' agreement to work to assist it in its plight when he could have taken leave due to him, it then insisted on requiring repayment from him of money he had already received in good faith and probably spent.

53. The UNDT's error of law means that the Secretary-General's appeal succeeds.

Judgment

54. The Secretary-General's appeal is granted and Judgment No. UNDT/2023/024 is hereby reversed.

Original and Authoritative Version: English

Decision dated this 22nd day of March 2024 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Colgan, Presiding	Judge Ziadé	Judge Sheha

Judgment published and entered into the Register on this 6th day of May 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar