UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1452

Ousmane Tamba Dia

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Gao Xiaoli, Presiding Judge Leslie F. Forbang Judge Abdelmohsen Sheha
Case No.:	2023-1841
Date of Decision:	28 June 2024
Date of Publication:	23 July 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Noam Wiener

JUDGE GAO XIAOLI, PRESIDING.

1. Ousmane Tamba Dia (Mr. Dia), a former staff member of the United Nations Children's Fund (UNICEF) contested the decision to find him ineligible to participate in the Organization's after-service health insurance plan (ASHI) (contested decision).

2. By Judgment No. UNDT/2023/051 (impugned Judgment),[1] the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) concluded that the contested decision was lawful and dismissed Mr. Dia's application.

3. Mr. Dia lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).

4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. Between February 1997 and February 2005, Mr. Dia served with the World Health Organization (WHO) as a consultant and on short-term appointments. From 3 October 2016 until his retirement on 31 October 2020, he served as a Senior Immunization Specialist, on a fixed-term appointment at the P-5 level in UNICEF.

6. Upon his retirement, Mr. Dia applied to participate in the Organization's ASHI. On 1 April 2022, the Health and Life Insurance Section (HLIS), Finance Division, Management Strategy, Policy and Compliance, which administers the ASHI programme, informed Mr. Dia by e-mail that he was not eligible to participate in ASHI. The e-mail further stated that:[2]

> (…) HLIS concluded that you are not eligible for ASHI since you do not meet the requirement of 10 years of contributory service to a [United Nations] health insurance plan. You[r] periods of short-term employment and consultancy for WHO cannot be counted towards ASHI as you were not on [fixed-term appointment] or continuing appointment during your employment with WHO.

[1] *Dia v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/051.
[2] E-mail dated 1 April 2022 from the Administration to Mr. Dia, Subject: RFS-1-8306141171: ASHI application – Ousmane Tamba DIA, p. 168 of 486.

7. On 7 April 2022, Mr. Dia requested management evaluation of the contested decision.[3]

8. On 3 June 2022, the UNICEF Deputy Executive Director, Management informed Mr. Dia by letter of its decision to uphold the contested decision. He further stated that pursuant to Administrative Instruction ST/AI/2007/3 (After-service health insurance), Mr. Dia was not eligible for ASHI as he did not meet the minimum requirement of 10 years contributory service in a United Nations health insurance plan. Indeed, according to Staff Rule 4.17(a) and (b) as well as ST/AI/2007/3, the date of Mr. Dia's recruitment for the purposes of eligibility for ASHI was 3 October 2016, i.e., when he started his appointment with UNICEF.[4] With regard to Mr. Dia's periods of service with WHO, the UNICEF Deputy Executive Director, Management found that they did not provide him with the required qualifying service and further stated that:[5]

> Firstly, even if they were counted, you only have a total of five years, four months and 26 days service with WHO. Accordingly, your total service with UNICEF and WHO amounts to nine years, five months and 25 days i.e. less than 10 years.
>
> (…) Secondly, your periods of service with WHO do not amount to qualifying service. Under section 2.2 of ST/AI/2007/3, participation in an active-service coverage in a contributory health insurance plan of the United Nations includes participation in a contributory health insurance plan of other organizations in the common system, if there is a special arrangement between the United Nations and that organization. Your enrolment in the WHO health plan does not qualify:
> • The plan that you were enrolled in with the WHO does not qualify as a 'contributory health insurance plan'. It was a limited plan, with limited benefits and no coverage for spouses and children. Notably, it did not qualify you to participate in the WHO's after-service health insurance plan.
> •There is no special arrangement between the United Nations and the WHO.

9. On 6 June 2022, Mr. Dia filed an application with the Dispute Tribunal challenging the contested decision.[6]

[3] Management evaluation request dated 7 April 2022.
[4] Secretary-General's Bulletin ST/SGB/2018/1/Rev. 2 (Staff Regulations and Rules of the United Nations).
[5] Management evaluation response dated 3 June 2022.
[6] UNDT application dated 6 June 2022. However, the impugned Judgment indicates that the application was filed on 6 September 2022.

Procedure before the Dispute Tribunal

10. On 18 April 2023, the Dispute Tribunal issued Order No. 031 (NY/2023) in which it decided that the matter could be determined without an oral hearing and requested the parties to file their closing submissions by 9 May 2023.[7] Mr. Dia failed to file his closing submissions, but the UNDT granted him an additional period of 10 days to do so, i.e., until 19 May 2023.

11. On 19 May 2023, Mr. Dia requested by e-mail "suspension of the order to file a closing submission so that [he] may submit additional motions". In his e-mail to the UNDT, he also requested "clarification on the admissibility of new arguments in the [Secretary-General's] reply". On the same date, Mr. Dia also filed a motion in which he requested the UNDT to order the Secretary-General to file several additional documents "in preparation for [his] closing statement". The UNDT ordered the production of these additional documents. On 1 June 2023, the Secretary-General produced the requested documents.[8]

12. On 5 June 2023, the Dispute Tribunal informed the parties by e-mail that no further submissions would be accepted.[9]

Impugned Judgment

13. On 12 June 2023, the Dispute Tribunal issued the impugned Judgment, dismissing Mr. Dia's application. The UNDT defined the principal issue as being "the determination of [Mr. Dia's] date of recruitment in the United Nations system as this [was] a basis for ascertaining his eligibility for enrolment in ASHI".[10]

14. Relying on *Couquet* and on Staff Rule 4.18, [11] the UNDT found that Mr. Dia's re-employment with UNICEF in October 2016 constituted a new appointment. Consequently, since his new appointment occurred after 1 July 2007, "his eligibility to participate in ASHI [was] contingent on his fulfilling the criteria laid out in [Section] 2.1(a)(ii) of ST/AI/2007/3".[12] In particular, he was required to have been a participant in a contributory health insurance plan

[7] *Dia v. Secretary-General of the United Nations*, Order No. 31 (NY/2023).
[8] Impugned Judgment, paras. 4-5.
[9] *Ibid*., para. 5.
[10] *Ibid*., para. 14.
[11] *Couquet v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-574.
[12] Impugned Judgment, para. 19.

of the United Nations for a minimum of 10 years. However, the UNDT concluded that he did not satisfy this requirement as he was only a participant for 4 years and 29 days.[13]

15. Therefore, the Dispute Tribunal found that Mr. Dia was not eligible to participate in ASHI and dismissed his application.

Procedure before the Appeals Tribunal

16. On 6 September 2023, Mr. Dia filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 6 November 2023.

Submissions

Mr. Dia's Appeal

17. Mr. Dia requests the Appeals Tribunal to grant his appeal and to remand the case to the Dispute Tribunal.[14]

18. With regard to the management of the case, Mr. Dia submits that the UNDT failed to grant his motions for production of additional evidence and to address his request for clarification concerning the admissibility of new arguments. He also contends that the UNDT did not draw proper inferences from the evidence submitted by the Secretary-General.

19. Mr. Dia further argues that the UNDT exceeded its jurisdiction when it ordered, without justification and without allowing him enough time to respond to the Secretary-General's submissions, that no further submissions would be accepted.

20. Concerning the merits of the case, Mr. Dia contends that the Dispute Tribunal erred by failing to address some of his claims in the impugned Judgment, namely: i) his claims of the Administration's "bad faith"; ii) the Administration's previous admission that he was recruited before 2007 and that his eligibility for ASHI "rested on whether or not [his] WHO contracts were equivalent to 100-series and 200-series"; and iii) "whether or not [his] WHO contracts were equivalent to 100-series and 200-series, whether the proper procedure to determine ASHI

[13] *Ibid*., para. 20.
[14] Appeal form.

eligibility was followed, and whether the documents provided by the [A]dministration support[ed] their reasoning for finding [him] ineligible for ASHI".

21. Mr. Dia argues that the UNDT erred by qualifying the exchanges between him and the Administration from October 2020 to March 2022 as "e-mail exchanges" when, in fact, it constituted administrative decisions.

22. Mr. Dia submits that the UNDT also failed to address his argument that, as he was recruited before 1 July 2007, he was only required to have contributed to a United Nations contributory health insurance plan for five years (and not 10 years) to participate in ASHI.

23. Last, Mr. Dia argues that the UNDT erroneously equated the terms "recruited" and "recruitment" used in ST/AI/2007/3 with "re-employment" (and "re-appointment") used in Staff Rules 4.17 and 4.18, when there was no ambiguity in the plain meaning of these words. On the contrary, Mr. Dia observes that there is nothing in Staff Rule 4.17 that suggests that it should be used to interpret ST/AI/2007/3. Mr. Dia also contends that as the term "re-employment" (and not "recruitment") is used in its Section 5.1 (c), it confirms that these two terms do not have the same meaning.

The Secretary-General's Answer

24. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

25. Relying on Article 19 of the Dispute Tribunal Rules of Procedure (UNDT Rules), the Secretary-General argues that the UNDT's management of the case was not prejudicial to Mr. Dia. On the contrary, the UNDT correctly managed the case and Mr. Dia was given "ample opportunity" to present his submissions.

26. The Secretary-General contends that the UNDT did not err in not addressing some of Mr. Dia's submissions, as they would have had no bearing on the result of the case. Indeed, the Secretary-General observes that once the UNDT found that Mr. Dia did not have a total of 10 years contributory service in a United Nations health insurance plan, his other arguments were immaterial to the result of the case.

27. The Secretary-General also submits that the UNDT did not err in denying Mr. Dia's motions for production of additional evidence or in refusing further submissions. On the contrary,

the Secretary-General observes that the "UNDT identified the core issue at stake, identified the evidence submitted by the parties on this issue, provided the parties with the opportunity to make closing submissions and then deliberated on the resolution of the dispute based on the parties' submissions".

28. The Secretary-General contends that the UNDT correctly identified the contested decision as the 1 April 2022 decision finding Mr. Dia ineligible to participate in ASHI. The Secretary-General highlights that Mr. Dia himself identified this decision in his application before the UNDT.

29. Last, the Secretary-General submits that the UNDT correctly applied the legal framework to conclude that Mr. Dia was not eligible to participate in ASHI. The Secretary-General further observes that the UNDT did address Mr. Dia's argument that he was only required to have participated in a contributory health insurance plan for five years, but correctly found that it lacked merit. The Secretary-General also notes that Mr. Dia's contentions in this regard are "diametrically opposed" to the Appeals Tribunal's findings in *Couquet*, in which the Appeals Tribunal found that ST/AI/2007/3 and Staff Rules 4.17 and 4.18 complement each other.[15] Consequently, Mr. Dia's attempt to distinguish the terms "recruited" and "re-employment" is misplaced as it is clear from the context of ST/AI/2007/3 that the term "recruited" refers to "re-employment".

Considerations

30. The issues raised in this appeal are as follows: i) Did the UNDT err in its management of the case? ii) Did the UNDT correctly identify the contested decision? iii) Did the UNDT err in finding that Mr. Dia was not eligible to participate in ASHI because he had not been a participant in a United Nations contributory health insurance plan for a minimum of 10 years?

Did the UNDT err in its management of the case?

31. Mr. Dia contends that the UNDT erred by: i) denying his motions for the production of additional documents; ii) failing to address his request for clarification regarding the admissibility of new arguments; and iii) ordering that no further submissions would be accepted.

[15] *Couquet* Judgment, *op. cit.*

32. Articles 18 and 19 of the UNDT Rules grant the Dispute Tribunal broad discretion regarding case management and the admissibility of any evidence:

> Article 18 Evidence
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> 1. The Dispute Tribunal shall determine the admissibility of any evidence.
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> 2. The Dispute Tribunal may order the production of evidence for either party at any time and may require any person to disclose any document or provide any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings.
>
> ...
>
> 5. The Dispute Tribunal may exclude evidence which it considers irrelevant, frivolous or lacking in probative value. The Dispute Tribunal may also limit oral testimony as it deems appropriate.
>
> Article 19 Case management
>
> The Dispute Tribunal may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties.

33. We recall what we have said in *Staedtler*:[16]

> ... (...) Article 19 of the UNDT Rules (...) gives the Dispute Tribunal broad discretionary powers to issue any orders or directions which appear to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties. This Tribunal has often ruled that it would not interfere lightly with the broad discretion of the Dispute Tribunal in its case management. Mr. Staedtler has failed to demonstrate what document or related facts he would have submitted that would have affected the outcome of the case if he had been given more time.
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> ...
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> ... (...) The Dispute Tribunal has a broad discretion to determine the admissibility of any evidence under Article 18(1) of its Rules and the weight to be attached to such evidence. This Tribunal is also mindful that the Judge hearing the case has an appreciation of all of the issues for determination and the evidence before the UNDT.

34. Furthermore, in *Nadeau*, we stated:[17]

> ... Under Article 2(1)(d) of its Statute, the Appeals Tribunal is competent to hear and pass judgment on an appeal filed against a judgment rendered by the UNDT in

[16] *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, paras. 15 and 17 (internal footnote omitted).
[17] *Nadeau v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-733/Corr. 1, para. 31.

> which it is asserted that the UNDT has committed an error in procedure, such as to affect the decision of the case. It follows that a party, in order to be successful on appeal, not only has to assert and show that the UNDT committed an error in procedure but also that this error affected the decision on the case.

35. In this case, the UNDT only partially denied Mr. Dia's motions for production of additional evidence. Indeed, the UNDT ordered the production of some of the additional documents requested by Mr. Dia in his motion filed on 19 May 2023, where he requested the UNDT to order the Secretary-General to file several additional documents "in preparation for [his] closing statement".[18] Mr. Dia failed to demonstrate that the UNDT's partial denial of some of his motions for the production of additional evidence had any material impact on the outcome of his case, a requirement set out in Article 2(1)(d) of the Appeals Tribunal Statute (Statute).

36. Concerning Mr. Dia's allegation that the UNDT failed to address his request for clarification concerning the admissibility of new arguments, we note that Mr. Dia erroneously considered the written reasoning presented in the management evaluation response as "new arguments".[19] However, pursuant to Appeals Tribunal jurisprudence, a management evaluation response is considered "a decision or action of a complementary nature" to the administrative decision and not, as Mr. Dia suggests, "an item separate from the administrative decisions".[20]

37. Mr. Dia also failed to demonstrate that the UNDT erred by ordering, on 5 June 2023, that no further submissions would be accepted. Indeed, the UNDT issued Order No. 031 (NY/2023) on 18 April 2023, in which it decided that the matter could be determined without an oral hearing and requested the parties to file their closing submissions by 9 May 2023. Subsequently, the UNDT granted Mr. Dia an additional delay of 10 days to do so, i.e., until 19 May 2023. On 19 May 2023, Mr. Dia requested by e-mail "suspension of the order to file a closing submission so that [he] may submit additional motions" and "clarification on the admissibility of new arguments in the [Secretary-General's] reply". On 5 June 2023, the UNDT informed the parties that no further submissions would be accepted. From the foregoing, we find that the UNDT did wait from 19 May 2023 to 5 June 2023 before ordering that no further submissions would be accepted. In any event, Mr. Dia failed to demonstrate what document or

[18] Impugned Judgment, para. 5.
[19] E-mail dated 19 May 2023 from the New York UNDT Registry to Mr. Dia, Subject: Request for suspension of order – Case No. UNDT/NY/2022/044 (Dia).
[20] *Kalashnik v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-803, para. 27.

related facts he would have submitted, if given more time, that would have affected the outcome of the case. He only asserts that the UNDT committed an error in procedure, without indicating how this error affected the decision on the case.

38. Therefore, it appears that all the alleged errors contended by Mr. Dia had no bearing on the fact that he did not meet the requirement of 10 years of contributory service to a United Nations health insurance plan. Given the UNDT's broad discretion on its case management, we do not find any error in procedure in the impugned Judgment.

Did the UNDT correctly identify the contested decision?

39. Pursuant to well-established Appeals Tribunal jurisprudence, the UNDT has the authority to define the contested administrative decision. In particular, in *Massabni*, we stated:[21]

> … The duties of a Judge prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties' contentions. Otherwise, the decision-maker would not be able to follow the correct process to accomplish his or her task, making up his or her mind and elaborating on a judgment motivated in reasons of fact and law related to the parties' submissions.
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> … Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

40. In *Fasanella*, we further reiterated that "[i]t is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties' contentions. Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review".[22]

[21] *Massabni v. Secretary-General of the United Nations,* Judgment No. 2012-UNAT-238, paras. 25-26.
[22] *Fasanella v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-765, para. 20 (internal footnote omitted).

41. In this case, Mr. Dia described the contested decision in his UNDT application form as "HLIS' final administrative decision to consider [him] ineligible for ASHI", dated 1 April 2022.[23] Before this, Mr. Dia also described the administrative decision he sought to evaluate in his management evaluation request as follows:[24]

> I am requesting an evaluation of HLIS' final administrative decision to consider me ineligible for ASHI based on 'information received from WHO' and review of my [Personnel Action forms]. HLIS determined from the above that I require 10 years of contributory service to a [United Nations] health insurance plan and they also determined that contributions under my WHO contracts cannot be considered for the purpose of ASHI as I was not on [fixed-term] or continuing appointment.

42. Based on this information, the UNDT correctly identified that the contested decision was the decision to find Mr. Dia ineligible to participate in the Organization's ASHI. Therefore, Mr. Dia's argument that the UNDT erred by classifying the communication between him and the Administration from October 2020 to March 2022 as "e-mail exchanges", when they actually constituted administrative decisions that should have been addressed, is misplaced.

Did the UNDT err in finding that Mr. Dia was not eligible to participate in ASHI because he had not been a participant in a United Nations contributory health insurance plan for a minimum of 10 years?

43. Section 2 of ST/AI/2007/3 outlines the eligibility for after-service health insurance coverage as follows:

> 2.1 Individuals in the following categories are eligible to enroll in the after-service health insurance programme:
> (a) A 100 series or 200 series staff member who was **recruited on or after 1 July 2007**, who while a contributing participant in a United Nations contributory health insurance plan as defined in section 1.2 above, was separated from service, other than by summary dismissal:
> (i) At any age with a disability benefit under the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF) or with compensation for disability under appendix D to the Staff Rules; or
> (ii) At 55 years of age or later, provided that he or she had been a participant in a contributory health insurance plan of the United Nations for a **minimum of ten**

[23] UNDT application dated 6 June 2022.
[24] Management evaluation request dated 7 April 2022.

> **years** and is eligible and elects to receive a retirement, early retirement or deferred retirement benefit under the Regulations of UNJSPF;
>
> (b) A 100 series or 200 series staff member who was **recruited before 1 July 2007**, who while a contributing participant in a United Nations contributory health insurance plan as defined in section 1.2 above, was separated from service, other than by summary dismissal:
>
> (i) At any age with a disability benefit under the Regulations of UNJSPF or with compensation for disability under appendix D to the Staff Rules; or
>
> (ii) At 55 years of age or later, provided that he or she had been a participant in a contributory health insurance plan of the United Nations for a **minimum of five years** and is eligible and elects to receive a retirement, early retirement or deferred retirement benefit under the Regulations of UNJSPF;
>
> …
>
> 2.2 For the purpose of determining eligibility in accordance with paragraph 2.1 above and cost sharing in accordance with paragraph 3.2 (b) below, participation in a contributory health insurance plan of the United Nations is defined to include:
>
> (a) Participation in a contributory health insurance plan of other organizations in the common system under which staff members may be covered by special arrangement between the United Nations and those organizations;
>
> (b) The cumulative contributory participation during all periods of service under 100 or 200 series appointments, continuous or otherwise. Except in cases of extension of appointment beyond the normal age of retirement, only participation in a United Nations health insurance plan prior to the attainment of the normal age of retirement shall count towards meeting the five- or ten-year participation requirement for enrolment.

44. According to the foregoing provisions, the UNDT correctly identified that "[t]he principal issue before the Tribunal [was] the determination of [Mr. Dia]'s date of recruitment in the United Nations system".[25] Indeed, the recruitment date is crucial for ascertaining Mr. Dia's eligibility for enrollment in ASHI.

45. Staff Rules 4.17 and 4.18 set out the legal framework applicable to determine which terms of employment apply to staff members who, like Mr. Dia, are re-employed after a break in service:

> Rule 4.17
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> Re-employment
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> (a) A former staff member who is re-employed under conditions established by the Secretary-General shall be given a new appointment unless he or she is reinstated under staff rule 4.18.

[25] Impugned Judgment, para. 14.

(b) The terms of the new appointment shall be fully applicable without regard to any period of former service. When a staff member is re-employed under the present rule, the service shall not be considered as continuous between the prior and new appointments.

(c) 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.

Rule 4.18

Reinstatement

(a) A former staff member who held a fixed-term or continuing appointment and who is re-employed under a fixed-term or a continuing appointment within 12 months of separation from service may be reinstated if the Secretary-General considers that such reinstatement would be in the interest of the Organization.

(b) On reinstatement the staff member's services shall be considered as having been continuous, and the staff member shall return any monies he or she received on account of separation, including termination indemnity under staff rule 9.8, repatriation grant under staff rule 3.19 and payment for accrued annual leave under staff rule 9.9. The interval between separation and reinstatement shall be charged, to the extent possible, to annual leave, with any further period charged to special leave without pay. The staff member's sick leave credit under staff rule 6.2 at the time of separation shall be re-established; the staff member's participation, if any, in the United Nations Joint Staff Pension Fund shall be governed by the Regulations of the Fund.

(c) If the former staff member is reinstated, it shall be so stipulated in his or her letter of appointment.

46. In *Couquet*, we stated:[26]

... Rules 4.17(a) and (b) are clearly of general application while Rule 4.17(c) provides for specific exceptions. The Secretary-General is correct in his submission that 'Staff Rule 4.17 makes it clear that subparagraph (c) is intended to enumerate exclusions to the general rule, set out in the preceding subparagraphs, that a staff member who is re-employed is treated as having a new appointment without regard to any period of former service. Periods of former service will be relevant only in cases enumerated in Staff Rule 4.17(c) – termination indemnity, repatriation grant or commutation of

[26] *Couquet* Judgment, *op. cit.*, paras. 35-36.

> accrued annual leave [...] ASHI is not one of the exclusions specified in Staff Rule 4.17(c).'
>
> ... The ordinary meaning of Rule 4.17 is clear and unambiguous. It is common ground that Ms. Couquet was re-employed, not reinstated. Accordingly, pursuant to Staff Rule 4.17(a), her re-employment with UNAKRT constituted a new appointment, which commenced on 15 October 2009. Pursuant to Staff Rule 4.17(b), the 'terms of such new appointment' were fully applicable regardless of her period of former service, which could not be considered as continuous.

47. It follows that Mr. Dia's argument that the UNDT erroneously equated the terms "recruited" and "recruitment" in ST/AI/2007/3 with the term "re-employment" in Staff Rule 4.17 is misplaced. Indeed, in the present case, Mr. Dia served with WHO as a consultant and on short-term appointments, not on a fixed-term or continuing appointment, from February 1997 to February 2005. After a break of service of several years, he was recruited by UNICEF on a fixed-term appointment from 3 October 2016 until 31 October 2020. According to Staff Rule 4.18, Mr. Dia was not reinstated as he did not meet the qualifications for reinstatement. Consequently, his prior service and new appointment in the United Nations system should not be considered as continuous.

48. Therefore, we find that the UNDT correctly found that "following an 11-year separation from the United Nations system, [Mr. Dia] was re-employed in October 2016 and given a new appointment".[27] It can accordingly be concluded that Mr. Dia was recruited by UNICEF after 1 July 2007. Thus, pursuant to Section 2.1(a)(ii) of ST/AI/2007/3, he could only be eligible to enroll in the ASHI programme if he had been a participant in a contributory health insurance plan of the United Nations for a minimum of 10 years. However, Mr. Dia only participated, in a fixed-term capacity, in a contributory health insurance plan of the United Nations during his service with UNICEF from 3 October 2016 until 31 October 2020, which is obviously less than 10 years. Hence, he was not eligible to enroll in ASHI, and the UNDT correctly concluded that he "[did] not satisfy the criteria for enrolment and, therefore, [was] not eligible to participate in ASHI".[28]

49. Last, Mr. Dia also contends that the Dispute Tribunal erred by failing to address some of his claims in the impugned Judgment, namely: i) his claims of the Administration's "bad faith"; ii) the Administration's previous admission that he was recruited before 2007 and that his

[27] Impugned Judgment, para. 19.
[28] *Ibid.*, para. 20.

eligibility for ASHI "rested on whether or not [his] WHO contracts were equivalent to 100-series and 200-series"; and iii) "whether or not [his] WHO contracts were equivalent to 100-series and 200-series, whether the proper procedure to determine ASHI eligibility was followed, and whether the documents provided by the [A]dministration support[ed] their reasoning for finding [him] ineligible for ASHI".

50. However, our jurisprudence has upheld that the UNDT does not have to address each and every claim made by a litigant. As we stated in *Mizyed*:[29]

> ... This Tribunal is not persuaded that the UNDT ignored his closing statement. It is correct that the UNDT did not specifically mention Mr. Mizyed's closing statement in its Judgment. However, it did state that in weighing up Mr. Mizyed's case it took into account his oral testimony and his pleadings. The UNDT obviously did not accept Mr. Mizyed's arguments, but that does not mean that they were ignored. It was not essential for the UNDT to set out findings on every submission made by Mr. Mizyed. This Tribunal has held that '[i]t is not necessary for any court, whether a trial or appellate court, to address each and every claim made by a litigant, especially when a claim has no merit'. Having examined Mr. Mizyed's closing statement, we are of the view that it was open to the UNDT to consider that the arguments set forth therein were without merit. We do not find that the UNDT's failure to specifically refer to Mr. Mizyed's closing statement had any effect on the outcome of the case.

51. Therefore, since we concluded that the UNDT correctly found that Mr. Dia was ineligible for ASHI because he had not been a participant in a United Nations contributory health insurance plan for a minimum of 10 years, we find that it was unnecessary for the UNDT to address his additional claims.

[29] *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, para. 35 (internal footnote omitted).

Judgment

52. Mr. Dia's appeal is dismissed, and Judgment No. UNDT/2023/051 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States.

(Signed)	*(Signed)*	*(Signed)*
Judge Gao, Presiding	Judge Forbang	Judge Sheha

Judgment published and entered into the Register on this 23rd day of July 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar