



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

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Judgment No. 2024-UNAT-1457

**Alejandro Francisco Lago**  
**(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Leslie F. Forbang, Presiding Judge Katharine Mary Savage Judge Kanwaldeep Sandhu
Case No.:	2023-1840
Date of Decision:	28 June 2024
Date of Publication:	25 July 2024
Registrar:	Juliet E. Johnson

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Amanda Stoltz

**JUDGE LESLIE F. FORBANG, PRESIDING.**

1. Mr. Alejandro Francisco Lago, a former P-4 staff member with the United Nations Development Programme's (UNDP) Regional Hub in Panama City, has filed an appeal of Judgment No. UNDT/2023/052 (the impugned Judgment),<sup>1</sup> in which the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found that his application was not receivable *ratione materiae*.
2. In his application before the UNDT, Mr. Lago had contested the “[i]mplicit and continued denial by the UNDP to conduct an occupational health evaluation after the reported and objective exposure to toxic contaminations in the workplace”.
3. Mr. Lago appeals the impugned Judgment to 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<sup>2</sup>**

5. Mr. Lago started his role as a Project Manager at the P-4 level with UNDP's Regional Hub in Panama City (Regional Hub) on 12 January 2017. He later served as a staff representative and Co-Chair of the Staff Association.
6. On 20 November 2020, Mr. Lago and another staff representative requested an investigation by the UNDP Office of Audit and Investigations (OAI) into several matters, including accusations of gross negligence by UNDP senior management for exposing staff to toxic substances in the workplace. On 27 May 2021, OAI informed Mr. Lago that a formal investigation was not warranted.
7. On 26 July 2021, Mr. Lago requested management evaluation of the OAI decision not to investigate the misconduct allegations against UNDP senior management. He also requested a review of UNDP's failure to ensure a safe and healthy workplace (“first request for management evaluation”).

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<sup>1</sup> *Lago v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/052 (12 June 2023).

<sup>2</sup> Summarized from the impugned Judgment and the parties' submissions.

8. On 1 September 2021, Mr. Lago was informed that his first request for management evaluation was not receivable *ratione materiae*, as the contested OAI decision did not impact his employment terms. He was further informed that his request was not receivable *ratione personae* because he lacked standing to file the request as a staff representative. Mr. Lago did not file an application following the outcome of the first request before the Dispute Tribunal.

9. On 3 November 2021, Mr. Lago separated from the Organization upon the expiration of his fixed-term contract. That same day, Mr. Lago submitted a renewed request for management evaluation of “the implied administrative decision of UNDP’s failure to take timely corrective action to restore a safe and healthy work environment and to determine the impact of the exposure to contamination for [Mr. Lago]” (“second request for management evaluation”).

10. On 3 January 2022, Mr. Lago was notified that his second request for management evaluation was time-barred since he did not identify an implied administrative decision within the 60-day timeframe preceding the submission of his request.

*Procedure before the Dispute Tribunal*

11. On 4 April 2022, Mr. Lago filed an application with the UNDT, contesting UNDP’s implied administrative decision not to conduct an occupational health evaluation of the workplace. He requested that the UNDT either:

- i) order UNDP to conduct an occupational health evaluation for all affected personnel at the Regional Hub and to implement compensation measures; or
- ii) declare that UNDP exposed him to toxic substances in the workplace and failed to fulfil its duty of care towards him.

12. Mr. Lago also requested moral damages for the “high personal cost” resulting from the lack of response from UNDP senior management.

*The impugned Judgment*

13. In the impugned Judgment, the Dispute Tribunal examined whether the application was receivable *ratione materiae*.

14. The UNDT noted that, to challenge an implied administrative decision, an applicant “is required to clearly identify the administrative decision (...) and to provide evidence with sufficient particularity of any specific instance in which he or she made a request and the Administration had denied or ignored such a request”.<sup>3</sup>

15. The UNDT concluded that Mr. Lago did not provide evidence that he, in his individual capacity as a staff member, made a specific request for an occupational health evaluation addressed to a named official on a specified date. Although the UNDT noted that the application contained general references to requests made to officials, Mr. Lago’s “averments that he repeatedly raised the matter over a four-year period are insufficient”.<sup>4</sup> Particularly, Mr. Lago did not precisely specify who he spoke with, where the requests were made, or their impact. Additionally, he did not demonstrate that the Administration failed to act on a request within 60 days before he filed his second request for management evaluation.

16. In the absence of any identifiable administrative decision, the UNDT determined that the application was not receivable *ratione materiae*.

#### *Procedure before the Appeals Tribunal*

17. On 11 August 2023, Mr. Lago filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 23 October 2023.

### **Submissions**

#### **Mr. Lago’s Appeal**

18. Mr. Lago requests that the Appeals Tribunal (1) declare that UNDP failed in its duty of care by not conducting the necessary occupational health evaluations after his exposure to toxic contaminants; (2) order UNDP to conduct the requested health evaluations; (3) award him compensation of two years (or more) of salary due to his exposure to toxic contaminants.

19. First, Mr. Lago submits that the impugned Judgment erred in fact by finding that he had “not provided any evidence that he made a specific request for an occupational health evaluation” at an all-staff meeting with the Resident Representative of UNDP in Panama on

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<sup>3</sup> Impugned Judgment, para. 12.

<sup>4</sup> *Ibid.*, para. 13.

May 24, 2019, and to the Regional Director of UNDP on 27 August 2019. Mr. Lago submits that he has recordings and colleagues available to support his claims. Mr. Lago submits that he also reiterated this request in an e-mail on 30 August 2019, to which the Regional Director responded on 10 September 2019, confirming the request. Mr. Lago highlights that supporting documents of most of the points contained in the “timeline”<sup>5</sup> were available to support his claims.

20. Second, Mr. Lago contends that the impugned Judgment erred in fact by finding that he had not shown that the Administration failed to act on his request within 60 days before his second request for management evaluation on 23 November 2021. Mr. Lago highlights that the “actions announced and taken in the following months and years” serve as “a reiterated proof that there was a clear request and that different steps were taken by UNDP, but not the specific independent occupation health evaluation”. Mr. Lago highlights the following evidence:<sup>6</sup>

- i) An e-mail from the Regional Director to all staff on 30 December 2019.
- ii) An e-mail from the Hub Manager of the Regional Center to all staff on 20 January 2020.
- iii) An e-mail from the Hub Manager to all staff on 3 February 2020.
- iv) Announcements by the Resident Representative and the Hub Manager on 17 March and 3 April 2020.
- v) A letter from the Director of the Department of Operational Support (DOS) on 2 September 2020,
- vi) An e-mail from the Staff Association to the Hub Manager on 18 September 2020.

21. Mr. Lago did not submit all the foregoing evidence to the UNDT and failed to provide items (iii) and (iv) to the Appeals Tribunal. Despite this, Mr. Lago submits that, through these actions, UNDP neither communicated that an occupational health evaluation would not be

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<sup>5</sup> The timeline was prepared by some staff members of the UNDP Regional Hub and distributed by the UNDP Regional Representative, and Mr. Lago admitted that he revised it. See Appeal Brief, paras. 9 and 11.

<sup>6</sup> None of these alleged requests occurred in 2021, which is the year he made his two requests for management evaluation.

conducted, nor conducted the evaluation by the end of his contract on 23 November 2021. He argues that according to the Appeals Tribunal's Judgment in *Rosana*,<sup>7</sup> the objective date for the implied decision should be his contract end date.

22. Third, Mr. Lago submits that the Dispute Tribunal erred on the facts and law in applying the "continuous wrong" principle to his case, asserting that he has clearly proved that there was an implied decision.

23. Fourth, as for other aspects not addressed in the impugned Judgment, Mr. Lago submits that:

- i) He has standing before the Dispute Tribunal, as he acted on his own behalf, not as a staff representative, which the Appeals Tribunal has previously confirmed.
- ii) The implied decision is a unilateral decision with direct legal consequences, breaching the specific (not general) duty of care as stated in Staff Regulation 1.2(c).<sup>8</sup>

24. Mr. Lago does not request that the Appeals Tribunal take any specific action with respect to the impugned Judgment, rather, he asks that the UNAT make the rulings set forth above in paragraph 18.

### **The Secretary-General's Answer**

25. The Secretary-General requests the Appeals Tribunal to uphold the impugned Judgment and to dismiss the appeal entirely. The UNDT correctly found the application not receivable *ratione materiae* by properly considering the applicable law, the parties' submissions and the facts.

26. First, the Secretary-General submits that the UNDT rightly concluded that "a staff member seeking to challenge an implied administrative decision is required not only to 'clearly identify the administrative decision which is contested' but also 'to provide evidence with

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<sup>7</sup> *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 25.

<sup>8</sup> Staff Regulation 1.2 (c): "Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations. In exercising this authority, the Secretary-General shall seek to ensure, having regard to the circumstances, that all necessary safety and security arrangements are made for staff carrying out the responsibilities entrusted to them".

sufficient particularity of any specific instance in which he or she made a request and the Administrative had denied or ignored such as request.”

27. The Secretary-General submits that the UNDT correctly determined that Mr. Lago did not meet either of these requirements. The Secretary-General argues that Mr. Lago’s submissions to the UNDT consisted only of general references to various discussions at UNDP over the years without detailing a specific request or UNDP’s response. This lack of “sufficient particularity” prevented the UNDT from determining (i) whether an implied administrative decision was taken in response to a specific request, and (ii) whether Mr. Lago’s request for management evaluation was timely submitted. Therefore, the UNDT correctly determined that Mr. Lago’s application was not receivable *ratione materiae*.

28. Second, regarding Mr. Lago’s reference to events where he allegedly made requests, including (i) an all-staff meeting on 24 May 2019, (ii) an all-staff meeting on 27 August 2019, (iii) an e-mail sent on 30 August 2019, and (iv) additional events and exchanges as “reiterated proof” for a clear request, the Secretary-General maintains that these submissions failed to demonstrate any error in the impugned Judgment. In particular, the Secretary-General observes that submissions (i) and (iii) should be dismissed as they are introduced for the first time on appeal. The alleged (iv) “reiterated proof” merely shows general requests for an occupational health assessment rather than specific requests for individual administrative decisions. As for (ii), Mr. Lago’s intervention during the 27 August 2019 meeting, the UNDT did not err by not obtaining and consulting the allegedly publicly accessible recording, or by not extracting arguments from a timeline prepared by Mr. Lago, as it is not the role of the UNDT to make the case for Mr. Lago if the evidence had not been produced before it.<sup>9</sup>

29. Third, the Secretary-General submits that, even if Mr. Lago made a specific request, he did not “clearly identify a unilateral decision...that carried direct legal consequences and that he knew or reasonably should have known of in the 60-day period preceding 23 November 2023”. The Secretary-General argues that Mr. Lago has not established that any of the “responses” or “actions” were individual administrative decisions as opposed to decisions of general application, which are not reviewable. The Secretary-General also contends that Mr. Lago failed to substantiate the objective date of the alleged implied decision.

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<sup>9</sup> The Secretary-General relies on *Applicant v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-302, para. 44.

30. Fourth, regarding Mr. Lago's claims that were not addressed by the UNDT, the Secretary-General submits that:

- i) Mr. Lago did not have a standing before the UNDT because he was acting as a staff representative, and that Mr. Lago failed to provide any impact of the alleged implied decision on his terms of appointment. Therefore, Mr. Lago's application was also not receivable on these two additional grounds.
- ii) Mr. Lago's claims concerning the Organization's duty of care are beyond the scope of an appeal on receivability, and merely repeat arguments submitted before the UNDT. Should the UNAT vacate the impugned Judgment, these claims would more appropriately be remanded to the UNDT.

### **Considerations**

31. This is an appeal against Judgment No. UNDT/2023/052 of the Dispute Tribunal delivered on 12 June 2023 finding the application of a former P-4 staff member with the UNDP Regional Hub in Panama City not receivable *ratione materiae*.

#### *Preliminary issue*

32. Mr. Lago submits *inter alia* that the UNDT erred in fact by finding that he had "not provided any evidence that he made a specific request for an occupational health evaluation". He contends that he made a personal request to the Resident Representative (RR) of UNDP in Panama, Ms. Linda Maguire, at her first all-staff meeting with the Regional Hub on 24 May 2019 and also reiterated this request in an e-mail on 30 August 2019, to which the Regional Director responded on 10 September 2019, confirming the request. The Secretary-General argues that evidence of both requests made should be dismissed as they were introduced for the first time on appeal.

33. Therefore, as a preliminary issue we shall determine whether Mr. Lago's new arguments and evidence introduced for the first time on appeal are admissible, given that he has not filed a motion for additional evidence as he should do before the Appeals Tribunal.

34. We emphasize that an appeal is not the appropriate occasion to reply to a dispute in the first instance, or to introduce new elements for consideration that were not put forward at the



UNDT level.<sup>10</sup> According to our consistent case law, we do not permit issues to be raised for the first time on appeal when the circumstances giving rise to such claims were known to a party at the time and should have been presented to the Dispute Tribunal.<sup>11</sup>

35. However, under Article 2(5) of the UNAT Statute and Article 10(1) of the UNAT Rules of Procedure, additional evidence can be submitted at the appellate level in exceptional circumstances, but the party must seek leave to present such additional evidence. In the case at bar, Mr. Lago has not filed any motion to seek leave to present additional evidence before this Tribunal, nor has he demonstrated that exceptional circumstances exist to allow the Appeals Tribunal to accept this additional evidence at this stage of the proceeding pursuant to Article 2(5) of the UNDT Statute. Moreover, there is ample evidence that the requests were known to Mr. Lago at the time when the proceedings were before the UNDT.

36. Consequently, Mr. Lago's reliance on additional evidence made on 24 May 2019 and on 30 August 2019, with no further motion, are inadmissible and hereby dismissed.

*Merits of the appeal*

37. The crux of this appeal is whether the UNDT erred in finding Mr. Lago's application not receivable *ratione materiae*. The UNDT reached this conclusion primarily on two grounds, namely:

- i) Mr. Lago did not provide evidence that he, in his individual capacity as a staff member, made a specific request for an occupational health evaluation addressed to a named official on a specified date and
- ii) He did not identify an implied administrative decision within the 60-day timeframe preceding the submission of his request for management evaluation.

38. In light of the above, the real questions for our determination on appeal are whether the UNDT erred in concluding that Mr. Lago had not provided evidence of a specific request

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<sup>10</sup> *Planas v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-049, para. 13.

<sup>11</sup> *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 15; *Hasan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-541, para. 18.

for an occupational health evaluation and whether the UNDT erred in finding that there was no identifiable administrative decision.

*Whether the UNDT erred in concluding that Mr. Lago had not provided evidence of a specific request for an occupational health evaluation*

39. In the impugned Judgment, the UNDT found that Mr. Lago did not provide evidence of a specific request for an occupational health evaluation made in an individual capacity as a staff member. Mr. Lago submits that he made requests on several occasions, but the UNDT found them unsubstantiated.

40. In the course of his submissions to this Tribunal, Mr. Lago contends that he made specific requests for an occupational health evaluation in an all-staff meeting on 24 May 2019, at an all-staff meeting on 27 August 2019, and via an e-mail sent on 30 August 2019, and that the UNDT in the impugned Judgment did not address the fact that he acted on his own behalf, not as a staff representative. Having already found his submissions regarding requests made on 24 May 2019 and 30 August 2019 inadmissible on appeal, the sole request is the one made at an all-staff meeting and to the regional director of UNDP on 27 August 2019. Considering the fact that Mr. Lago made the 27 August 2019 request as an elected co-chair of the Staff Association in an all-staff meeting, his request was clearly made in a collective capacity as a staff representative and was of general application. Therefore, it was not subject to judicial review under Article 2(1)(a) of the UNDT Statute.

41. A key characteristic of an appealable administrative decision is individual application, that is, there must be an individual application of the contested decision<sup>12</sup> and it must produce direct legal consequences affecting a staff member's terms of employment.<sup>13</sup> In *Pedicelli*,<sup>14</sup> we confirmed that if the matter is of general application then the administrative decision is not subject to judicial review. Therefore, the jurisdiction of the UNDT to hear and pass judgment on applications filed by individuals is limited to those challenging an administrative decision

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<sup>12</sup> *Al Surkhi et al. v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-304, para. 26.

<sup>13</sup> *Ngokeng v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-460, paras. 26-27; *Wasserstrom v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-457, paras. 34-35.

<sup>14</sup> *Pedicelli v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-555, paras. 25-28.

alleged to be in non-compliance with the terms of appointment or contract of employment of an individual staff member pursuant to Article 2(1)(a) of the UNDT Statute.

42. We further clarified in *Faye* that:<sup>15</sup>

... A staff representative acting on behalf of staff members does not have standing to bring an application in the UNDT challenging an administrative decision. The UNDT Statute is quite clear that the right to challenge an administrative decision in the UNDT is an individual right.

...

... There is no statutory provision or other law which gives the UNDT jurisdiction to entertain an application by a staff representative on behalf of all staff members. The only recognition given to a staff association in the UNDT Statute is contained in Article 2(3), which provides: The Dispute Tribunal shall be competent to permit or deny leave to an applicant to file a friend-of-the-court brief by a staff association.

... As a matter of law, a friend-of-the-court (*amicus curiae*) must be someone who is not a party to the case.

43. Therefore, we find that the UNDT did not err in concluding that Mr. Lago had not provided evidence of a specific request for an occupational health evaluation.

*Whether the UNDT erred in finding that there was no identifiable administrative decision*

44. We have consistently held that a staff member is required to clearly identify the administrative decision which is contested.<sup>16</sup> In that vein, a statutory burden is placed upon the applicant to establish that, the administrative decision in issue was in non-compliance with the terms of his or her appointment or contract of employment. Such burden cannot be met where the applicant fails to identify the administrative decision capable of being reviewed, that is, a decision which has a direct and adverse impact on the applicant's contractual rights.<sup>17</sup>

45. Yet, it often arises that the contested administrative decision is not always express, it may sometimes be implied. In these situations, the absence of a response to a staff member's request, claim and/or complaint may constitute an implied administrative decision. We held

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<sup>15</sup> *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-657, paras. 32, 35-36.

<sup>16</sup> *Argyrou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-969, para. 32; *Haydar v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-821, para. 13.

<sup>17</sup> *Haydar v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-821, para. 13.

in *Tabari*,<sup>18</sup> that “not taking a decision is also a decision” subject to judicial review under Article 2(1)(a) of the UNDT Statute. Further, the Appeals Tribunal has consistently held that the absence of a response to a claim or complaint can in certain circumstances constitute an appealable administrative decision where it has direct legal consequences.<sup>19</sup>

46. In the case at bar, the alleged implied administrative decision under contention is the implicit and continued denial by the UNDP to conduct an occupational health evaluation after the reported and objective exposure of toxic contaminants in the workplace. The Secretary-General submits that the UNDT rightly concluded that “a staff member seeking to challenge an implied administrative decision is required not only to ‘clearly identify the administrative decision which is contested’ but also ‘to provide evidence with sufficient particularity of any specific instance in which he or she made a request and the Administration had denied or ignored such as request.’”<sup>20</sup>

47. In this vein, our jurisprudence holds that it is not sufficient to merely identify an implied administrative decision. Instead, “[t]here must be evidence that the continuous wrong was challenged by a specific request to desist and a refusal or failure by the Administration to desist or an implied decision in the form of a failure to take any decision in that regard”.<sup>21</sup>

48. Further, it is evident that Mr. Lago takes issue with UNDP management of the concerns expressed by staff regarding the safety of the work environment, but his requests mirror his persistent attempts to challenge a perceived wrong. However, the alleged existence of a continuous wrong cannot on its own be identified as an implied administrative decision.<sup>22</sup>

49. We find therefore that Mr. Lago’s arguments, to a large extent, contain various discussions with UNDP about a safe and healthy work environment and his requests to the organization to conduct an occupational health evaluation over a period spanning four years. However, there is no evidence that a specific request for an occupational health evaluation, made in an individual capacity to an appropriate official, was refused or ignored. Consequently,

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<sup>18</sup> *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-030, para. 17.

<sup>19</sup> *Cohen v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-716, para. 37, citing *Survo v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-644, paras. 25-27; *Larriera v. United Nations Joint Staff Pension Board*, Judgment No. 2020-UNAT-1004, para. 34; *Olowo-okello v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-967, para. 36.

<sup>20</sup> Secretary-General’s Answer, para. 18.

<sup>21</sup> *Argyrou v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-969, para. 33.

<sup>22</sup> *Ibid.*

we agree with the Secretary-General's submission that in the absence of any evidence of a clear request capable of giving rise to an identifiable implied administrative decision, the Dispute Tribunal had no jurisdiction to consider Mr. Lago's grievances, and thus correctly rejected his application as not receivable *ratione materiae*.

50. Accordingly, we find that the UNDT did not err in finding that there was no identifiable administrative decision.

51. On the whole, we find that the UNDT did not err when it found Mr. Lago's application not receivable *ratione materiae*.

**Judgment**

52. Mr. Lago's appeal is dismissed, and Judgment No. UNDT/2023/052 is hereby affirmed.

Original and Authoritative Version: English

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

*(Signed)*

Judge Forbang, Presiding

*(Signed)*

Judge Savage

*(Signed)*

Judge Sandhu

Judgment published and entered into the Register on this 25<sup>th</sup> day of July 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar