



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1466

Fouad Moustafa El-Anani
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Katharine Mary Savage, Presiding Judge Gao Xiaoli Judge Leslie F. Forbang
Case No.:	2023-1856
Date of Decision:	28 June 2024
Date of Publication:	5 August 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant: Abdel Wahab Bachar Kharboutly

Counsel for Respondent: Amanda Stoltz

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Mr. Fouad Moustafa El-Anani, a former staff member with the Office of the United Nations Special Coordinator for Lebanon (UNSCOL), has filed an appeal of Judgment No. UNDT/2023/074 (impugned Judgment),¹ in which the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found his application not receivable *ratione temporis*.
2. In his application before the UNDT, Mr. El-Anani had contested the imposition on him of the disciplinary measure of separation from service with compensation in lieu of notice and without termination indemnity, for submitting false medical insurance claims (contested Decision).
3. Mr. El-Anani 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 Procedure²

5. On 28 March 2023, Mr. El-Anani received an e-mail, with an attached sanction letter dated 27 March 2023 informing him of the contested Decision.
6. In the notification, Mr. El-Anani was asked to “acknowledge receipt of this e-mail”. Moreover, the e-mail explicitly stated: “in accordance with section 9.3, the decision will be deemed to be received by you on the date the decision is electronically communicated to you”.³

Procedure before the Dispute Tribunal

7. On 28 June 2023, Mr. El-Anani filed an application with the UNDT, challenging the contested Decision.

¹ *El-Anani v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/074.

² Summarized from the impugned Judgment together with the documents included in the case record.

³ Section 9.3 of Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process).

8. On 7 July 2023, the Secretary-General filed a motion for summary judgment, seeking dismissal of the application on the grounds that it was filed after the 90-day deadline stipulated in Article 8(1) of the Dispute Tribunal Statute (UNDT Statute) and Staff Rule 11.4(b).

9. On 14 July 2023, Mr. El-Anani responded to the motion for summary judgment.

The impugned Judgment

10. On 21 July 2023, the UNDT issued the impugned Judgment dismissing Mr. El-Anani's application as not receivable *ratione temporis*.

11. The UNDT found that, according to Article 8(1)(d)(ii) of the UNDT Statute and Staff Rule 11.4(b), in cases where management evaluation of the contested decision is not required, the application should be filed within 90 calendar days of the applicant's receipt of the administrative decision. In the present case, the evidence presented—two Microsoft Outlook notification records acknowledged by Mr. El-Anani—indicated that the contested Decision was delivered to and read by Mr. El-Anani on 28 March 2023. The UNDT found that Mr. El-Anani should therefore have filed his application no later than 26 June 2023, but he did not do so until 28 June 2023, two days past the 90-day deadline, which rendered his application time-barred.

12. In support of its finding, the UNDT highlighted, as the applicable legal framework, the UNDT Statute and Rules of Procedure (UNDT Rules), UNAT jurisprudence, and the United Nations Regulations and Rules. It refused to rely on “unspecified international law and Lebanese Law” asserted by Mr. El-Anani.

Submissions

Mr. El-Anani's Appeal

13. Mr. El-Anani requests that the Appeals Tribunal suspend the implementation of the contested Decision until the issuance of a final judicial decision in this matter, accept the appeal, and reverse the impugned Judgment. In the alternative, he requests that the matter be remanded to the UNDT for additional findings of fact, the “[a]nnulment of the administrative decision dated 27 March 2023 and [a] declaration [of his] innocence [of] any prohibited conduct”. Mr. El-Anani also requests that the matter be referred to the

Ombudsman and/or to mediation. Lastly, he seeks that he be reinstated with retroactive effect, paid all the financial amounts due to him in terms of salary, “additions” and allowances, together with “all legal fees, expenses, holidays and damages”.

14. Mr. El-Anani submits, first, that the UNDT failed to exercise its jurisdiction, violating the United Nations Charter, the International Covenant on Economic, Social and Cultural Rights, International Labour Organization (ILO) Recommendation No. 44, and Lebanese labor law.

15. Second, he states that the UNDT erred in law by determining that the time limit for filing the application had started to run on 28 March 2023, which was during his approved annual leave. He argues that giving notification to a staff member while he or she is on leave or outside of a working day is incorrect. With reference to Article 29 of the Appeals Tribunal Rules of Procedure (UNAT Rules), he notes that if the last day of a period is not a working day, the time limit extends to the next working day. He argues that the same rule should apply to the start of the time limit, meaning that it should have begun on the next working day after his annual leave ended. Further, he asserts that giving notifications outside working hours violates custom, common sense, human rights, and the rights of staff.

16. Third, Mr. El-Anani contends that the UNDT erred in law by finding that he had received the contested Decision via e-mail on 28 March 2023. The terms “receipt” under Article 7(1)(c) of the UNDT Rules and “communicated” under Section 9.3 of ST/AI/2017/1 require the recipient’s awareness of the decision. He claims that there is no evidence proving that he was aware of the contents of the attachment containing the contested Decision on 28 March 2023, and thus no “receipt” occurred on that date. Instead, an e-mail from the Human Resources Office, UNSCOL, on 30 March 2023 should be considered the valid “receipt” date, starting the application time limit.

17. Fourth, Mr. El-Anani argues that the impugned Judgment erred in fact by ignoring the impact of the bold words in the 28 March 2023 e-mail, which stated that “we request that you acknowledge receipt of this e-mail”. However, the phrase “deemed to be received on the date the decision was electronically communicated” in the same e-mail was not in bold and thus misleading.

18. Finally, Mr. El-Anani submits additional written testimonies and requests further fact-finding on both the merits of the contested Decision and the end date of his annual leave, should the case be remanded to the UNDT. He also argues that his request for legal representation by Office of Staff Legal Assistance (OSLA) was wrongly rejected.

The Secretary-General's Answer

19. The Secretary-General requests that the Appeals Tribunal uphold the impugned Judgment and dismiss the appeal.

20. The Secretary-General submits that the UNDT correctly found Mr. El-Anani's application not receivable *ratione temporis*. According to Article 8(1)(d)(ii) of the UNDT Statute and Article 7(1)(c) of the UNDT Rules, when a management evaluation is not required, an application must be filed within 90 calendar days of the applicant's receipt of the contested decision. Section 9.3 of ST/AI/2017/1 further specifies that a decision to separate or dismiss a staff member is "deemed to be received on the date the decision was electronically communicated". The UNDT correctly relied on the Microsoft Outlook notification records, concluding that Mr. El-Anani was notified of and read the contested Decision on 28 March 2023. Consequently, his filing on 28 June 2023 was two days past the deadline.

21. The Secretary-General contends that Mr. El-Anani has not demonstrated any error in the UNDT's conclusion that his application was time-barred. First, the United Nations Charter, Human Rights treaties, ILO Recommendations, and Lebanese law do not form part of the applicable legal framework before the UNDT. Second, the UNAT has established that administrative decision notifications are valid even if communicated during a staff member's annual leave. Third, arguments that Mr. El-Anani did not read the attachment of the 28 March 2023 e-mail, and that he was informed of the contested Decision on 30 March 2023, were introduced for the first time on appeal and should be dismissed for this reason alone. Further, Mr. El-Anani's new evidence supporting his new arguments should also be dismissed because he did not file a motion for additional evidence with the UNAT and failed to demonstrate any exceptional circumstances justifying the introduction of the additional evidence.

22. Next, the Secretary-General argues that, even if these new arguments and new evidence are admissible, the date a decision is received constitutes an objective standard, regardless of whether the recipient knows it, reads it, or opens the attachment and that it is the staff

member's responsibility to read an e-mail, not just the bolded sentences. Finally, the UNAT has established that e-mails sent outside working hours to the staff members are considered received on that day.

23. The Secretary-General also asserts that Mr. El-Anani has not shown any other errors in the impugned Judgment. The argument that his request for legal representation had been wrongly rejected was presented for the first time on appeal and should be dismissed. Nevertheless, the UNAT has confirmed that the right to receive legal assistance does not guarantee the right to be represented by OSLA.

24. With regard to the merits, the Secretary-General submits that the Mr. El-Anani's requests for additional findings are either beyond the scope of the appeal or irrelevant.

Considerations

25. At the outset, it is necessary to consider Mr. El-Anani's motion in which he sought an oral hearing of this appeal. Under Article 8(3) of the Appeals Tribunal Statute (UNAT Statute) and Article 18(1) of the UNAT Rules, the Appeals Tribunal may grant an oral hearing if it would "assist in the expeditious and fair disposal of the case". The Secretary-General filed no submissions regarding such request.

26. This Tribunal has previously denied requests for oral hearings where the factual and legal issues arising from the appeal have already been clearly defined by the parties and an oral hearing would not "assist in the expeditious and fair disposal of the case".⁴ An appeal is not a rehearing of the matter but an opportunity for the parties to address narrow issues, including errors of law, fact and jurisdiction. Given that the factual and legal issues in this appeal have been clearly defined by the parties, we are not persuaded that an oral hearing would assist in the expeditious and fair disposal of the case. For these reasons, the motion for an oral hearing is refused.

27. Article 8(1)(d)(ii) of the UNDT Statute provides that an application shall be receivable by the UNDT if the application is filed, in cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant's receipt of the

⁴ *Krioutchkov v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-712, para. 12. See too *Mustapha Guenfoudi v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1364, paras. 61-62; and *Anshasi v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-790, para. 15.

administrative decision. Similarly, Article 7(1)(c) of the UNDT Rules requires that applications shall be submitted to the Dispute Tribunal through the Registrar within 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required. Staff Rule 11.4(b) further provides that where a staff member is not required to request a management evaluation, he or she may file an application directly with the UNDT within 90 calendar days from the date on which the staff member received notification of the contested administrative decision.

28. The UNDT found that Mr. El-Anani's application was not receivable *ratione temporis* in that two Microsoft Outlook notification records acknowledged by Mr. El-Anani indicated that the contested Decision had been delivered to and read by him on 28 March 2023 and that he was therefore required to file his application with the UNDT by no later than 26 June 2023. Since he did not file the application until 28 June 2023, two days past the 90-day deadline, his application was rendered time-barred.

29. Section 9.3 of ST/AI/2017/1, which concerns unsatisfactory conduct, investigations and the disciplinary process, provides that a decision to separate or dismiss the staff member under Staff Rule 10.2(a)(viii) or (ix) may be communicated in hard copy or electronically and will be deemed to have been received on the date the decision was electronically communicated.

30. A staff member cannot unilaterally determine the date of an administrative decision, nor is the date when an administrative decision was communicated dependent on the willingness of a staff member to receive such decision.⁵ Yet, on appeal for the first time and without filing a motion for additional evidence, Mr. El-Anani contends that he did not read the contested Decision on 28 March 2023, even if the e-mail was received on that day, and that he was only informed of the contested Decision on 30 March 2023.

31. Article 2(5) of the UNAT Statute provides that in exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. This evidence shall not however include evidence that was known to either party and should have

⁵ *Ashraf Ismail abed Allah Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1246, para. 66.

been presented at the level of the Dispute Tribunal. Article 10 of the UNAT Rules similarly states that additional documentary evidence may be received in exceptional circumstances where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, provided that the additional written evidence was not known to the party seeking to submit the evidence and should not have been presented to the Dispute Tribunal. The purpose of this is, in the absence of exceptional circumstances, to prevent new evidence being produced for the first time on appeal when, given the United Nations' two-tier system for the administration of justice, this would result in no appeal in respect of that material and the issues it raises being available to the other party.⁶

32. Since no motion was filed seeking to have additional evidence admitted on appeal to show that Mr. El-Anani had not read the attachment to the 28 March 2023 e-mail, and that he had only been informed of the contested Decision on 30 March 2023, and no submissions were made to demonstrate exceptional circumstances justifying the admission of such evidence, it is not permissible for such new evidence to be admitted for the first time on appeal.

33. This Tribunal has repeatedly and consistently strictly enforced the statutory time limits which exist for filing applications and appeals. In doing so, it has recognized that strict adherence to filing deadlines ensures adherence to the goals of the current system of administration of justice established in 2009, namely the timely hearing of cases and rendering of judgments, with it having been found to be irrelevant whether a deadline is missed by several minutes, several hours or several days.⁷

34. The clear and unambiguous wording of Article 8(1)(d)(i)(a) of the UNDT Statute, confirmed by the jurisprudence of this Tribunal, is that it is the receipt of the response to the request for management evaluation which triggers the time limit for filing an application to the UNDT, not the moment when the staff member or her legal representative could reasonably be assumed to have taken notice of this response.⁸ The UNDT cannot be faulted for finding that the administrative decision was delivered to and read by Mr. El-Anani on 28 March 2023, who did not deny the authenticity of the Microsoft Outlook notifications. The date a decision is

⁶ See *Koffi Gilles Wilfried Amani v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1301, para. 61.

⁷ *Ali v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2017-UNAT-773, para. 13; *Rüger v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-693, para. 18.

⁸ *Hoyce Temu v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1174, para. 33.

received constitutes an objective standard, regardless of whether the recipient knows it, reads it, or opens the attachment with it. It is the staff member's responsibility to read the e-mail, not just the bold sentences within it, such as the request made to Mr. El-Anani to acknowledge receipt of the e-mail sent.

35. The UNDT correctly considered itself bound by the applicable legal framework for applications before the Tribunal, namely the UNDT Statute and Rules, UNAT jurisprudence and the United Nations Staff Regulations and Rules. It was not bound by unspecified international law and Lebanese law in relation to the issues and cannot be faulted for rejecting Mr. El-Anani's arguments to the contrary.

36. Notifications of administrative decisions are valid even if communicated during a staff member's annual leave.⁹ In addition, e-mails sent outside working hours to staff members are considered received on the day sent. There is consequently no merit in Mr. El-Anani's submissions to the contrary.

37. Given the findings above, there is no reason for this Tribunal to grant Mr. El-Anani's requests that a number of additional findings be made in this matter, some of which seek orders to be made which are beyond the scope of the appeal.

38. In relation to the Mr. El-Anani's claim that his request for legal representation by OSLA had been wrongly rejected, the UNAT has confirmed that the right to receive legal assistance does not guarantee the right to be represented by OSLA.

39. For these reasons, it follows that the appeal falls to be dismissed with the impugned Judgment affirmed.

⁹ *Ismail abed allah Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1246, para. 66.

Judgment

40. Mr. El-Anani's appeal is dismissed, and Judgment No. UNDT/2023/074 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Savage, Presiding

(Signed)

Judge Gao

(Signed)

Judge Forbang

Judgment published and entered into the Register on this 5th day of August 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar