



UNITED NATIONS APPEALS TRIBUNAL

TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2025-UNAT-1528

John Njuguna Bernard
(Applicant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT ON APPLICATION FOR REVISION

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| Before: | Judge Katharine Mary Savage, Presiding Judge Graeme Colgan Judge Gao Xiaoli |
| Case No.: | 2024-1925 |
| Date of Decision: | 21 March 2025 |
| Date of Publication: | 28 April 2025 |
| Registrar: | Juliet E. Johnson |

Counsel for Mr. Bernard: Self-represented

Counsel for Secretary-General: Francisca Lagos Pola

JUDGE KATHARINE MARY SAVAGE, PRESIDING.

1. Mr. John Njuguna Bernard, a staff member of the United Nations Environment Programme (UNEP) has filed an application for revision of Judgment No. 2024-UNAT-1422 rendered by the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) on 30 April 2024 in the case of *John Njuguna Bernard v. Secretary-General of the United Nations* (UNAT Judgment). In its Judgment, the Appeals Tribunal dismissed Mr. Bernard's appeal against Judgment UNDT/2023/014 in which the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) had found premature and thus not receivable his application challenging the outcome of a 2010 reclassification process (contested decision).
2. For the reasons set out below, the Appeals Tribunal dismisses the application.

Facts and Procedure

3. At the relevant time of events, Mr. Bernard was a G-6 Computer Information Systems Assistant in the UNEP Governance Affairs Office at the United Nations Office at Nairobi (UNON).¹
4. On 4 August 2009, the reclassification of two positions to the next higher level, including the G-6 position in which Mr. Bernard was employed, was formally requested through the Human Resources Management Service (HRMS), UNON.²
5. On 26 May 2010, the Recruitment and Classification Section, HRMS, UNON, notified the Administration that the reclassification requests had been processed and that both positions would remain at the same level without any upward reclassification, effective 1 June 2010.³
6. On 17 November 2021 and 25 January 2022, Mr. Bernard inquired about the reclassification outcome to the Director, Corporate Service Division (CSD), UNEP.⁴
7. On 30 August 2022, the Director, CSD, UNEP, advised Mr. Bernard that the reclassification request for the G-6 position in which he was employed had been submitted and

¹ UNAT Judgment, para. 5.

² *Ibid.*, para. 6.

³ *Ibid.*, para. 7.

⁴ *Ibid.*, paras. 8 and 9.

processed by UNON in May 2010, and that the result of that reclassification review was that the G-6 position would remain at the same level, effective 1 June 2010.⁵

8. On 8 September 2022, Mr. Bernard was formally notified of the negative outcome of the reclassification request.⁶

9. On 28 September 2022, Mr. Bernard requested management evaluation of the contested decision.⁷

10. On 24 October 2022, the Management Evaluation Unit (MEU) informed him that his request was not receivable because “appeals of classification decisions are governed by ... ST/AI/1998/9” and “must be submitted within 60 days from the date on which the classification decision is received by the respective head office, which in [his] case [was] 8 September 2022”. The MEU further noted that “it does not review classification decisions given that there is a separate internal process for such matters”.⁸

11. On 17 November 2022, Mr. Bernard filed an application with the UNDT, challenging the contested decision.⁹

12. On 2 March 2023, the UNDT issued Judgment No. UNDT/2023/014 (UNDT Judgment on Receivability) dismissing the application as premature as he had not exhausted the remedy provided in Section 5 of ST/AI/1998/9 by submitting an appeal of the reclassification decision.¹⁰

13. On 9 March 2023, Mr. Bernard filed an appeal of the UNDT Judgment on Receivability with the UNAT.¹¹

14. On 30 April 2024, the Appeals Tribunal issued the UNAT Judgment, affirming the UNDT Judgment on Receivability.

⁵ *Ibid.*, para. 11.

⁶ *Ibid.*, para. 12.

⁷ *Ibid.*, para. 13.

⁸ *Ibid.*, para. 14.

⁹ *Ibid.*, para. 15.

¹⁰ *Ibid.*, paras. 16 and 18.

¹¹ *Ibid.*, para. 19.

15. On 27 May 2024, Mr. Bernard filed an application for revision of the UNAT Judgment, and the Secretary-General filed his comments on 28 June 2024.

Submissions

Mr. Bernard's Application

16. Mr. Bernard claims that the Secretary-General's answer to his appeal introduced a new fact warranting a revision of the UNAT Judgment, namely that the results of the reclassification review were out on 24 May 2009, almost three months before the process was initiated.

17. Mr. Bernard seeks to prove that the policies under ST/AI/1998/8 (for promotion to the professional category level) had been applied and that as a result, the Secretary-General's arguments presented in his answer to Mr. Bernard's appeal were invalid. The professional category level occupational code referenced on the results confirms the application of ST/AI/1998/8.

18. The effective date of the reclassification result is 1 June 2010, which does not conform with Section 4.1 of ST/AI/1998/9.

19. Mr. Bernard claims that the Secretary-General's answer to his appeal is based on the argument that the results had been provided to Mr. Bernard on 8 September 2022 by memorandum dated 30 August 2022. Similarly, the UNDT Judgment on Receivability was also based on Mr. Bernard's failure to pursue an appeal pursuant to Sections 5 and 6 of ST/AI/1998/9.

20. Mr. Bernard argues that the reclassification results "originated from unethical[] and un-identifiable processes" and, as such, were not covered by ST/AI/1998/9.

21. Mr. Bernard submits that the Secretary-General's answer to his appeal at paragraph 8 declares that the results with an effective date of 1 June 2010 were non-existent and unlawful and as a result, the Secretary-General "technically withdrew" from the case.

22. Mr. Bernard submits that he learned about these new facts after the Secretary-General continued to refer to the application of the policies under ST/AI/1998/8 as typographical error. When reexamining the details and conducting further research, Mr. Bernard understood that the Secretary-General had "already declared the results illegal/unlawful".

23. Mr. Bernard contends that in light of the above, his request for “revision” is not on receivability, but he seeks an “appropriate Judgment informed by the new developments”.

The Secretary-General’s Comments

24. The Secretary-General contends that contrary to what Mr. Bernard appears to suggest, the fact that the outcome of the post classification review took effect on 1 June 2010 is not a decisive fact which was, at the time the UNAT Judgment was rendered, unknown to the Appeals Tribunal or Mr. Bernard. Indeed, Mr. Bernard received notice that the outcome of the post classification took effect on 1 June 2010 by way of the Memorandum dated 30 August 2022.¹² Mr. Bernard attached that Memorandum to his appeal before the UNAT, which shows that he was well aware of the Memorandum and of its contents prior to the issuance of the UNAT Judgment. The Appeals Tribunal also was aware of the Memorandum dated 30 August 2022 and of its contents and indeed took note of it in the procedural section of the UNAT Judgment. Consequently, as there is no decisive fact discovered after the issuance of the UNAT Judgment, which was unknown to the UNAT and Mr. Bernard, the application for revision of the UNAT Judgment does not comply with the requirements in Article 11 of the Appeals Tribunal Statute (UNAT Statute).

25. Mr. Bernard is attempting to challenge a reclassification decision (i.e., the contested decision) which cannot be challenged through the Tribunals as it is not an administrative decision which directly impacts on the contractual rights of the staff member. Further, with the application for revision, Mr. Bernard is attempting to re-open a final judgment of the UNAT with which he disagrees by presenting facts that were already known at the time of the UNAT Judgment. Mr. Bernard cannot at this stage bring forward an application for revision to relitigate a case that did not go his way. A party may not seek revision of a judgment merely because he or she is dissatisfied with it and wants to have a second round of litigation.

26. The Secretary-General submits that since Mr. Bernard fails to substantiate the discovery of any new, decisive fact which was, at the time the UNAT Judgment was rendered, unknown to the Appeals Tribunal and Mr. Bernard, there is no basis to grant the application for revision under Article 11(1) of the UNAT Statute. The UNAT should thus deny the application.

¹² Memorandum dated 30 August 2022 from the Administration to Messrs. Bernard and Ng’Ang’A, Subject: Follow-up on reclassification of positions 30600275 and 30601214.

Considerations

27. The judgments of this Tribunal are, in accordance with Article 10(6) of the UNAT Statute final and not subject to appeal. A party may however, in accordance with Article 11(1):

... apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was rendered, unknown to the Appeals Tribunal and to the party applying for revision, always provided that such ignorance was not due to negligence. The application must be made within 30 calendar days of the discovery of the fact and within one year of the date of the judgement.

28. Yet, as we cautioned in *Payenda*,¹³ since this Tribunal is the final appellate body in the United Nations internal justice system, an application for revision of a judgment is neither a collateral means of contesting the judgment, nor may it be used to seek to obtain a second right of appeal.

29. In *Mohammad*,¹⁴ it was noted that for an application for revision to be receivable by this Tribunal, such application should indicate that (i) the new fact discovered was unknown to the Appeals Tribunal and to the party applying for revision at the time the judgment was rendered; (ii) such ignorance was not due to negligence of the party seeking the revision; (iii) the new fact would have been decisive in reaching the original judgment; and (iv) the application was made within 30 calendar days of the discovery of the fact and within one year of the date of the judgment.

30. Mr. Bernard contends that the fact that the post classification review took effect on 1 June 2010 is a decisive fact which was, at the time the UNAT Judgment was delivered, unknown both to him and this Tribunal. However, the facts indicate that Mr. Bernard received notice of the outcome of such post classification, which took effect on 1 June 2010, by way of the Memorandum dated 30 August 2022. He attached that Memorandum to his appeal before the UNAT, from which it is evident that he was aware of the Memorandum and its contents prior to the Judgment of this Tribunal being issued. That Memorandum was placed before this Tribunal and the Tribunal was therefore aware of its contents, of which it took note. Consequently, there is no merit in Mr. Bernard's contention that a new and decisive fact was discovered after the issuance of the

¹³ *Ahmad Shuaib Payenda v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1276, para. 21.

¹⁴ *Samer Nayif Mahmud Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2023-UNAT-1352, para. 31.

UNAT Judgment, which was unknown both to him and the Tribunal when this was patently not so.

31. Consequently, on this basis alone the application for revision must fail since no new and decisive fact has been shown to exist that was unknown to Mr. Bernard and the Appeals Tribunal when the Judgment of this Tribunal was made which would have materially impacted the outcome of such Judgment. Mr. Bernard's application for the revision of the Judgment of this Tribunal does not therefore comply with the requirements set out in Article 11(1) of the UNAT Statute and the application for revision of the UNAT Judgment must be dismissed.

Judgment

32. Mr. Bernard's application is dismissed.

Original and Authoritative Version: English

Decision dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Savage, Presiding

(Signed)

Judge Colgan

(Signed)

Judge Gao

Judgment published and entered into the Register on this 28th day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar