



**Before:** Judge Goolam Meeran

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

PEDICELLI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

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**Counsel for the Applicant:**

George Irving

**Counsel for the Respondent:**

Katya Melliush, UNON

Camila Nkwenti, UNEP

## **Introduction**

1. On 4 August 2016, the Parties were informed that this matter has been transferred to the docket of Judge Goolam Meeran.
2. On 9 August 2016, the Tribunal issued Order No. 410 (NBI/2016) setting the matter down for a Case Management Discussion (CMD).
3. The CMD took place on 17 August 2016, in the presence of the Applicant and Counsel for both Parties.
4. On 18 August 2016, the Tribunal issued Order No. 416 (NBI/2016) summarising the case management discussion.

## **History**

5. On 26 June 2014, the Dispute Tribunal found that the application was not receivable.<sup>1</sup>
6. The Applicant successfully challenged the UNDT judgment at first instance. The Appeals Tribunal ruled on 2 July 2015 that the application was receivable, and remanded the case to the Dispute Tribunal for consideration before another judge.<sup>2</sup>
7. In remanding the Application, the Appeals Tribunal's held that:

Contrary to the Secretary-General's submission, the Appeals Tribunal finds that Ms Pedicelli has demonstrated that the renumbering exercise had an adverse and direct impact on her. Annexed to her UNDT Application as well as her appeal brief were Ms Pedicelli's Personnel Action Forms, the first approved on 23 February 2011, before the renumbering exercise, and the second approved on 4 November 2012, after implementation of the renumbering exercise. Her Personnel Action Forms reflected her

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<sup>1</sup> UNDT-2014-087.

<sup>2</sup> 2015-UNAT-555.

respective salary scale and level for the periods under contest and evidence, as Ms Pedicelli claims, that after implementation of the renumbering exercise her salary was reduced.

The UNDT failed to give any consideration to them and thus erred on a question of fact leading to a manifestly unreasonable decision, and erred in law in concluding that Ms Pedicelli's application was not receivable.

This error alone warrants remand of the matter to the UNDT for *de novo* consideration.

8. UNAT having ruled that the Application was receivable, because of the "direct legal consequences of" the Secretary-General's implementation of the International Civil Service Commission's (ICSC) decision, and having found as fact that the Applicant was adversely affected, in that "the renumbering exercise had an adverse and direct impact" on the Applicant and taking into account that the Respondent did not seek a review of the Appeals Tribunals finding, the Tribunal finds it necessary to seek the Respondent's submissions on whether the UNDT has power to review, disregard or overturn findings made by the Appeals Tribunal.

IT IS ORDERED THAT:

9. **On or before 2 September 2016 the Respondent is to file succinct submissions, not exceeding three pages, identifying and explaining the legal basis for his contention that this tribunal has power to review the factual findings made by UNAT.**

*(Signed)*

Judge Goolam Meeran

Dated this 26<sup>th</sup> day of August 2016

Entered in the Register on this 26<sup>th</sup> day of August 2016

*(Signed)*

Eric Muli, for  
Abena Kwakye-Berko, Registrar, Nairobi