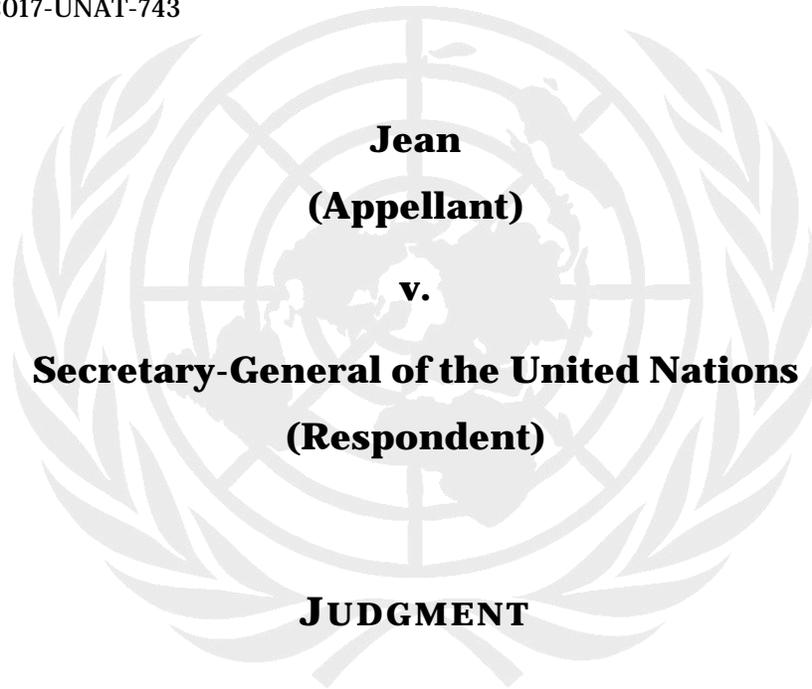




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-743



**Jean
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Martha Halfeld, Presiding Judge Deborah Thomas-Felix Judge Sabine Knierim
Case No.:	2016-942
Date:	31 March 2017
Registrar:	Weicheng Lin

Counsel for Ms. Jean: Didier Sepho

Counsel for Secretary-General: Ernesto Bondikov

JUDGE MARTHA HALFELD, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment on Receivability No. UNDT/2016/044, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 26 April 2016, in the case of *Jean v. Secretary-General of the United Nations*. Ms. Joëlle Jean filed the appeal on 27 June 2016, and the Secretary-General filed an answer on 25 August 2016.

Facts and Procedure

2. At the material time, Ms. Jean was a Personal Assistant at the G-4 level to the Under-Secretary-General (USG) and the Special Advisor on Africa, within the Office of the Special Advisor on Africa (OSAA).

3. On 20 July 2012, a Personnel Action was approved to extend Ms. Jean's fixed-term appointment for two years from 1 September 2012 until 31 August 2014. She signed the new contract on 26 July 2012.

4. According to Ms. Jean, she had a meeting with the USG/OSAA and the Director of OSAA on 27 March 2013, during which the Director of OSAA informed Ms. Jean that a G-4 level post would be reclassified and it could be Ms. Jean's post. In an e-mail titled "My contract termination with OSAA" dated 1 April 2013 addressed to the Director of OSAA and copied to the USG/OSAA and the Executive Officer of the Department of Economic and Social Affairs (DESA), Ms. Jean stated:

As per our last meeting with the USG in his office on Wednesday 27 March informing me that my position will be cut off, I am kindly enquiring about any appropriate action I need to take in this regard.

I thank you for informing me early enough so I can have enough time, as it was stated in the meeting, to apply for another position and explore any other options available.

5. On 11 September 2013, the USG/OSAA wrote to the Executive Officer, DESA, requesting that the post at the G-4 level encumbered by Ms. Jean be reclassified upwards to the G-6 level to enable his office to "recruit a regular and suitable staff member" to meet the increased needs of the USG/OSAA. The USG/OSAA's request to reclassify Ms. Jean's post was approved on 28 October 2013.

6. The Job Opening for the newly reclassified post of Staff Assistant at the G-6 level with OSAA was published on 22 January 2014.

7. Ms. Jean attended a number of meetings on 11, 12, 19 and 25 June 2014 concerning her employment in OSAA. The Secretary-General provided to the Dispute Tribunal four e-mails, respectively dated 11 June 2014, 12 June 2014, 25 June 2014 and 28 August 2014. Below each e-mail were one or multiple icons titled "Minutes of the meeting. 11.6.14. docx; Minutes of the meeting.12.6.14.docx; Minutes of the meeting. 19.6.14.docx; and Minutes of the meeting. 25.6.14.docx". None of the minutes was signed or dated. According to the minutes, Ms. Jean was verbally informed at those meetings that her post had been reclassified to the G-6 level and had been advertised, and that OSAA and DESA would assist her in applying for alternative employment in other departments at the G-4 or G-5 level. She was encouraged to make every effort to apply for other available positions before the expiry of her fixed-term appointment. The Executive Officer of DESA also drew Ms. Jean's attention to the possibility of an agreed termination. Those meeting minutes were not shared with Ms. Jean until the proceedings before the UNDT.

8. On 26 August 2014, by interoffice memorandum, an Administrative Assistant from the Executive Office, DESA, informed Ms. Jean that her separation from service would take place effective close of business on 31 August 2014 and advised Ms. Jean of the applicable separation procedures.

9. On 29 August 2014, Ms. Jean filed a request for management evaluation of the decision not to renew her fixed-term appointment. She stated that she was notified of the contested decision on 26 August 2014. Ms. Jean was informed on 1 October 2014 that the Secretary-General had decided to uphold the non-renewal decision.

10. On 16 December 2014, Ms. Jean filed an application with the Dispute Tribunal, seeking rescission of the contested decision and the issuance of a new fixed-term appointment, or alternatively, compensation for material and moral damages. The Dispute Tribunal conducted hearings for two days on the issue of receivability of Ms. Jean's application as raised by the Secretary-General.

11. On 26 April 2016, the Dispute Tribunal dismissed Ms. Jean's application on the grounds that it was not receivable *ratione materiae*. The Dispute Tribunal found that she had failed to request management evaluation of the contested decision within the statutory 60-day period set forth in Staff Rule 11.2(c). In its view, Ms. Jean had been verbally informed before and during the meetings of 11, 12 and 19 June 2014 that her fixed-term appointment would not be renewed because her post had been reclassified two levels up and that, accordingly, she "knew, or ought reasonably to have known, by 19 June 2014 at the latest, that her fixed-term appointment in the OSAA would not be renewed".¹ Taking 19 June 2014 as the notification date for purposes of Staff Rule 11.2(c), the Dispute Tribunal concluded that Ms. Jean was statutorily required to file a request for management evaluation by or on 19 August 2014, rendering her 29 August 2014 request for management evaluation outside the 60-day time limit and, thus, her application before the Dispute Tribunal not receivable. The Dispute Tribunal also reviewed the issues related to the notification received by Ms. Jean on 26 August 2014 and the failure to notify Ms. Jean of the result of the reclassification process of her post. It did not consider them new administrative decisions that would have reset the time limit for the submission of a request for management evaluation.

Submissions

Ms. Jean's Appeal

12. The Dispute Tribunal erred in fact when it mistook Ms. Jean's e-mail to the Director of OSAA of 1 April 2013 as dated 3 September 2014. It drew an erroneous legal conclusion that the e-mail corroborated the testimony of the Secretary-General's witnesses to the effect that Ms. Jean knew about the non-renewal of her contract on 19 June 2014 at the latest. At the time of Ms. Jean's e-mail on 1 April 2013, no administrative decision had been taken, be it to reclassify Ms. Jean's post, to approve such reclassification or to not renew her contract.

13. The Dispute Tribunal erred in admitting the four alleged meeting minutes into evidence. Those documents are hearsay declarations and as such are not covered under any of the exceptions to the hearsay rule in general and the business records exception in particular.

¹ Impugned Judgment, para. 79.

14. The four alleged meeting minutes lack information concerning their date, their author and the veracity of their content. Such a lack of information casts doubt on the trustworthiness of those documents, as it is impossible to determine whether the person who transmitted and/or wrote them had knowledge at or near the time of the meetings. Since those alleged meeting minutes are not admissible, the testimony of the Secretary-General's witnesses with regard to the existence of the content of those documents was equally not admissible. It was therefore an error of law for the UNDT to admit the testimony of the Secretary-General's witnesses and to make findings based on such testimony.

15. Ms. Jean requests that the Appeals Tribunal vacate Judgment No. UNDT/2016/044.

The Secretary-General's Answer

16. While it appears that the Dispute Tribunal incorrectly identified Ms. Jean's e-mail of 1 April 2013 as dated 3 September 2014 and relied on it as corroborating evidence, the Appellant has failed to show that this error of fact resulted in a manifestly unreasonable decision warranting reversal of the impugned Judgment. As the Dispute Tribunal's finding that Ms. Jean knew, by 19 June 2014 at the latest, that her appointment would not be renewed was based on ample evidence from the meeting minutes and the witness testimony.

17. The Appellant has failed to demonstrate that the UNDT Judgment was so defective as to warrant its reversal. In addition, the Appellant's entire line of hearsay-based arguments is impermissibly raised for the first time on appeal and represents a belated evidentiary objection now taking the form of an appellate argument. Contrary to Ms. Jean's contention, the Appeals Tribunal has not held that hearsay evidence is generally inadmissible. The Dispute Tribunal acted within its discretion in admitting and considering both the meeting minutes and the witness testimony as corroborating the contents of those minutes.

18. The Appellant's arguments about the date on which she received notification of the reclassification of her post are not relevant to the issue of the date on which she knew about the non-renewal of her contract, and should therefore be rejected.

19. The Secretary-General requests that the Appeals Tribunal dismiss the appeal.

Considerations

20. The main issue before us is the determination of when Ms. Jean received notification of the contested administrative decision (in this case, the non-renewal of her fixed-term appointment) for purposes of Staff Rule 11.2(c).

21. Staff Rule 11.2(a) requires a staff member who wishes “to formally contest an administrative decision” to submit a written “request for a management evaluation of the administrative decision”. Pursuant to Staff Rule 11.2(c), the management evaluation request will not be receivable “unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested”.

22. The Appeals Tribunal finds that the Dispute Tribunal committed an error in law in this case. In our view, the record does not support a reasonable finding that Ms. Jean was notified for purposes of Staff Rule 11.2(c) during the June 2014 meetings (nor any previous ones) with the effect of triggering the time limits thereunder for her request for management evaluation.

23. It is undisputed that the minutes—upon which testimony was given and the UNDT based its finding—were unsigned, undated and not shared with Ms. Jean at the time. It is also clear that the meetings held in June 2014 did not have the aim of notification of the administrative decision of non-renewal of her appointment, but rather were intended to help Ms. Jean identify new job opportunities within the Organization. We note further that there was no other corroborating evidence at that time or proximate thereto, contrary to what is suggested by the UNDT.² The UNDT’s finding here—based on meeting minutes that were, as noted above, unsigned, undated and not shared with Ms. Jean, who came to know about their existence and contents only during the UNDT proceedings—is both incompatible with good practice for the Organization and insufficient to support the finding that Ms. Jean had been notified for purposes of Staff Rule 11.2(c). There is no mention in them that Ms. Jean was expressly and unambiguously informed about the decision not to renew her appointment.

² We note in this regard the UNDT’s error in the date, which although may have been clerical, suggests this was corroborating evidence that the Appellant was on notice for purposes of Staff Rule 11.2(c) by June 2014. Although the record shows that Ms. Jean knew as early as 27 March 2013—as evidenced by her e-mail of 1 April 2013 in which she referred to her position being “cut off”, the record shows that at that time (March/April 2013) the reclassification of her post had not yet been requested. There is nothing else in the record that serves as corroborating evidence to support a finding that the Appellant was “on notice” for purposes of Staff Rule 11.2(c) with respect to the contested decision.

While it may have been reasonable to conclude that Ms. Jean had knowledge by June 2014 that her appointment would probably not be renewed, to extract from these meetings a legal notification implies extending their meaning to purposes not expressly specified by the parties or otherwise clearly supported by the record. A staff member's knowledge of a decision is not necessarily the same thing as a staff member receiving notification of a decision.

24. We hold that Ms. Jean "received notification" of the contested decision for purposes of Staff Rule 11.2(c) on 26 August 2014 in the form of the interoffice memorandum. This is the only evidence on record supporting a finding, "based on objective elements that both parties (Administration and staff member) can accurately determine",³ as to the date upon which it is possible to state with precision that Ms. Jean received notification of the contested decision for purposes of Staff Rule 11.2(c).

25. In addition, we reject Ms. Jean's assertion of a violation of Administrative Instruction ST/AI/1998/9 (System for the classification of posts), which states that an incumbent of a post which has been reclassified should be provided with a copy of the notice of the classification results. In this regard, we agree with the Secretary-General that the date on which the Appellant received formal notification of the reclassification of her post is not relevant to the dispositive issue of receivability in this case, since the question was when she received a valid notification of the non-renewal of her appointment.⁴

26. It follows from the foregoing that the Dispute Tribunal erred in law when it determined that Ms. Jean was notified for purposes of Staff Rule 11.2(c) at the latest by 19 June 2014 and that her 29 August 2014 request for management evaluation was thus late. We hold that Ms. Jean, notified for purposes of Staff Rule 11.2(c) on 26 August 2014, filed a

³ *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 25 (involving an implied decision and being relied upon for the proposition cited).

⁴ The clear reading of the letter dated 2 September 2014 from the Executive Officer of DESA to Ms. Jean, responds to the needs of notification in writing, and states that: "As you are aware, the post you are currently charged against was re-classified to the G-6 level in order to meet the programmatic needs of the Office of the Special Adviser on Africa (OSAA). As a result, your appointment was not renewed when it expired on 31 August 2014. (...)" This letter is the reiteration of the previous one, dated 26 August 2014.

timely request for management evaluation on 29 August 2014. Thus, and contrary to the Dispute Tribunal's conclusion, her application was receivable *ratione materiae*.⁵

27. Given the above, the case has to be remanded to the UNDT for consideration on its merits, pursuant to Article 2(3) of our Statute. We find it appropriate to remand the case to a different Judge of the Dispute Tribunal, pursuant to Article 10(2) of the Appeals Tribunal's Rules of Procedure.

Judgment

28. Judgment No. UNDT/2016/044 is vacated and the case is remanded to the Dispute Tribunal for full consideration of its merits by another Judge.

⁵ It was also receivable *ratione temporis* as she filed her application to the Dispute Tribunal within the applicable time limit therefore.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Knierim

Entered in the Register on this 22nd day of June 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar