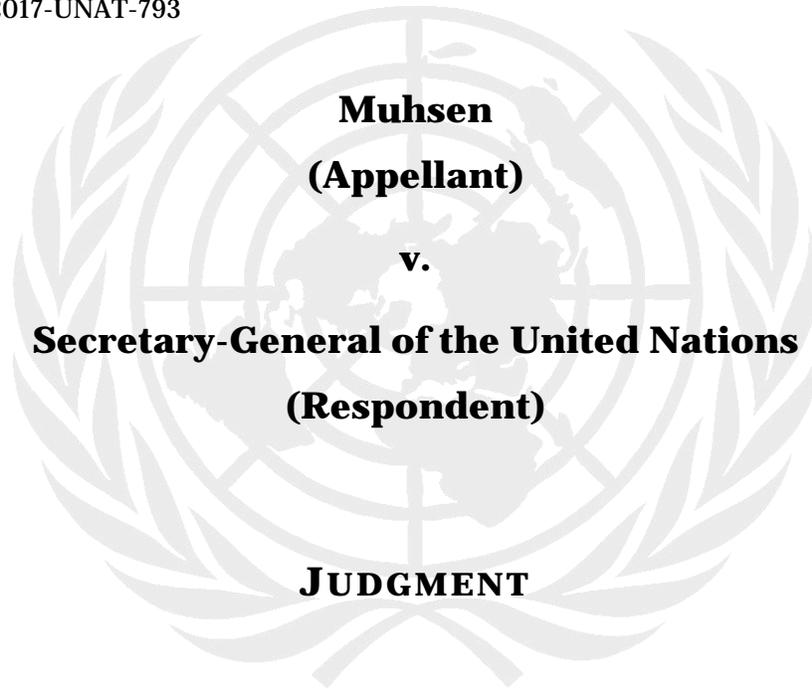




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2017-UNAT-793



Before: Judge Richard Lussick, Presiding
Judge John Murphy
Judge Sabine Knierim

Case No.: 2017-1077

Date: 27 October 2017

Registrar: Weicheng Lin

Counsel for Mr. Muhsen: Self-represented

Counsel for Secretary-General: Nathalie Defrasne

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/015, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 8 March 2017, in the case of *Muhsen v. Secretary-General of the United Nations*. Mr. Mamoon Hussain Muhsen filed his appeal on 6 May 2017, and the Secretary-General filed an answer on 7 July 2017.

Facts and Procedure

2. The following facts are uncontested:¹

... The Applicant is a staff member of the United Nations High Commissioner for Refugees (UNHCR; the High Commissioner).

...

... The High Commissioner has authority delegated by the Secretary-General to decide on promotion of his staff (...). The High Commissioner has authority delegated by the Secretary-General to carry out management evaluation as part of the formal justice system. The High Commissioner has further delegated the management evaluation functions to the Deputy High Commissioner (...).

... On 5 February 2014, the High Commissioner promulgated the Policy and Procedures for the Promotion of International Professional Staff Members (UNHCR/HCP/2014/2; "Promotion Policy" (...))/. The Promotion Policy provided that recommendations for promotion to the P-4 level would be considered by a Promotions Panel in accordance with the criteria and processes set out therein. It informed about availability of recourse in an internal procedure notwithstanding access to the formal justice system through management evaluation (...).

... On 20 October 2014, the decisions of the High Commissioner concerning promotions to the P-4, P-5 and D-1 level were announced to all staff via an email memorandum dated 17 October 2014. The Applicant was not among the successful candidates. Staff were advised that, in the event where information that may have had an impact on the final recommendation was not available at the time of the review, they could seek "recourse" in an internal procedure (...). On 25 November 2014, the Applicant submitted a recourse application (...).

¹ Impugned Judgment, paras. 1 and 11-23.

... The Promotions Panel met from 19 to 23 January 2015 to consider recourse applications submitted by staff members. On 3 March 2015, the High Commissioner's decisions on promotions following the recourse sessions were announced to all staff. The Applicant was not among the successful candidates.

... On 2 May 2015, in accordance with the UNHCR circular on the implementation of the Internal Justice System and the Promotion Policy, the Applicant submitted a request for management evaluation to the Office of the Deputy High Commissioner (...).

... On 17 June 2015, the Office of the Deputy High Commissioner informed the Applicant by email that his request for management evaluation was still under consideration. The Applicant was also informed that he had the right to file an appeal with the UNDT and his attention was drawn to the time limit for such filing in accordance with art. 8 of the UNDT Statute (...).

... By memorandum dated 4 September 2015, the Deputy High Commissioner responded to the Applicant's management evaluation request. In her memorandum, the Deputy High Commissioner stated that the recourse minutes did not provide sufficient evidence that the recourse panel had fully considered the circumstances of the Applicant's case with regard to the unavailability of his performance appraisals covering the period from June 2013 to April 2014 and thus he may not have received full and fair consideration during the recourse session. Therefore, the Deputy High Commissioner rescinded the decision not to promote the Applicant and informed him that his candidacy for promotion to the P-4 level would be reviewed anew (...).

... The Applicant was also informed that for reasons of efficiency the review would be conducted after the finalization of all management evaluations of non-promotion decisions taken as a result of the 2013 promotions and recourse sessions and that he would be contacted regarding the outcome of the reassessment of his candidacy for promotion.

... By email dated 27 November 2015, the Applicant was informed that the Office of the Deputy High Commissioner had completed the management evaluations relating to the 2013 promotions session and that his candidacy for promotion as well as that of other staff members in a similar situation would be reassessed by an independent body specifically established for that purpose (...).

... Following the finalization of the management evaluation process, the High Commissioner constituted an Ad-Hoc Promotions Review Board [Board] to advise him on the reassessment of the candidacies for promotion in relation to those staff members whose management evaluations resulted in rescission of the 2013 non-promotion decisions.

... The Board met on 14 and 16 December 2015 to reassess the candidacies of the staff members concerned. With regard to the Applicant's candidacy, the Board concluded that there was no reasonable likelihood that the Applicant would have been

recommended for promotion had he received full and fair consideration during the 2013 promotions session (...).

... The High Commissioner accepted the Board's recommendations on 28 December 2015 (...).

... On 5 January 2016, the Director, Division of Human Resources Management (DHRM) informed the Applicant of the High Commissioner's decision to confirm his non-promotion based on the Board's recommendation (...).

... [On 30 March 2016, [Mr. Muhsen] filed an application with the [UNDT] contesting the "decision [] about my recourse following the 2013 promotions session".]^[2]

3. On 8 March 2017, the UNDT issued the impugned Judgment pursuant to which it held that Mr. Muhsen's application was not receivable because he had not requested management evaluation of the 5 January 2016 decision. In reaching its decision it found that (i) the 3 March 2015 decision had been rescinded and (ii) the 5 January 2016 decision was a new decision for which Mr. Muhsen had not requested management evaluation. It noted that he had only requested management evaluation of the 3 March 2015 decision and, pursuant to Article 8(3) of the UNDT Statute, deadlines for management evaluation "cannot be waived notwithstanding whether the failing of the deadline would have been occasioned by confusing information received from the Administration".³

Submissions

Mr. Muhsen's Appeal

4. Mr. Muhsen seeks rescission of the administrative decision "as the process applied in [his] case was confusing and [he] was not informed [of] the need [for] a further recourse". In his one-paragraph submission, he asserts that he has been serving the United Nations since 2000 without any promotion and that the contested decision has caused a lot of "pain and agony".

The Secretary-General's Answer

5. The UNDT correctly dismissed Mr. Muhsen's application as non-receivable. The UNDT correctly held that the 3 March 2015 and 5 January 2016 decisions were distinct decisions and that the former decision stopped producing any consequences for his terms of appointment.

^[2] *Ibid.*, para. 2.

³ *Ibid.*, para. 32.

It also correctly concluded that Mr. Muhsen had to have requested management evaluation of the 5 January 2016 decision. In any event, Mr. Muhsen's submission fails to meet the requirements of Article 2(1) of the Appeals Tribunal Statute (Statute). The appeal should be dismissed and the impugned Judgment affirmed.

Considerations

6. Mr. Muhsen has filed an appeal against the Dispute Tribunal's Judgment, which found that his application challenging the High Commissioner's decision not to promote him was not receivable.

7. His appeal consists of a one-paragraph submission as follows:

I appeal for a rescission of the administrative decision which was judged not receivable as the process applied in my case was confusing and I was not informed for the need of a further recourse. The fact that I have been serving at the same level (P-3) since joining the organization in 2000 without any promotion, including the subject latest administrative decision, despite my tangible contributions and the annual mostly high performance appraisals and evaluations by different successive supervisors, have caused me [a] lot of pain and agony throughout the years and more severely since the last negative administrative decision.

The appeal is defective in that it fails to invoke the jurisdiction of the Appeals Tribunal under Article 2(1) of its Statute by not asserting that the Dispute Tribunal has either exceeded its jurisdiction or competence, failed to exercise its jurisdiction, erred on a question of law, committed an error of procedure, such as to affect the decision of the case, or erred on a question of fact, resulting in a manifestly unreasonable decision.

8. Mr. Muhsen also failed to comply with the requirements of Article 8(2) of the Appeals Tribunal's Rules of Procedure by not providing a brief explaining the legal basis of any of the five grounds of appeal set out in Article 2(1) of the Statute.

9. An appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied on in asserting that the judgment

is defective. It is not sufficient for an appellant to simply state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.⁴

10. Mr. Muhsen fails to meet this burden. Moreover, his claim that he was “not informed for the need of a further recourse” does not advance his appeal. It was his responsibility as a staff member to ensure that he was aware of the applicable procedure in the context of the administration of justice at the United Nations. He cannot invoke ignorance as an excuse.⁵

11. For these reasons alone, we dismiss the appeal.

12. The Dispute Tribunal did not make any error of law or fact in holding that Mr. Muhsen’s application was not receivable. The Dispute Tribunal was cognisant that, pursuant to Article 8(1) of the UNDT Statute and Staff Rule 11.2(a), management evaluation is an obligatory step to take prior to requesting judicial review of a contested administrative decision, and that under Staff Rule 11.2(c) a request for management evaluation shall 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.

13. The Dispute Tribunal correctly held that, although Mr. Muhsen had requested management evaluation of the first negative decision of 3 March 2015, that decision had been rescinded and had thus stopped producing any consequences for his terms of appointment. The Dispute Tribunal was right to find that the second negative decision, communicated to him on 5 January 2016, which was taken as a consequence of the rescission of the 3 March 2015 decision, was purportedly a fresh consideration of the matter and was dispositive of the question of promotion. Its conclusion was correct that: “As such, in order for the application to be receivable before the UNDT, this new decision should have been first submitted for management evaluation, failing which it must be dismissed.”⁶

14. It is an established fact that Mr. Muhsen failed to request management evaluation of the second negative decision communicated to him on 5 January 2016. Accordingly, the Dispute Tribunal’s decision that his application was not receivable cannot be faulted. Although the Dispute Tribunal was sympathetic in considering that the process applied in Mr. Muhsen’s case was “convoluted and confusing”, it was right to hold itself bound to take

⁴ *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 30.

⁵ *Khan v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-559, para. 31.

⁶ Impugned Judgment, para. 29.

a legalistic approach, bearing in mind that Article 8(3) of the UNDT Statute does not give it the authority to suspend or waive the deadlines for management evaluation.

15. For the foregoing reasons, the appeal must fail.

Judgment

16. The appeal is dismissed and Judgment No. UNDT/2017/015 is affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Knierim

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar