



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

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Judgment No. 2022-UNAT-1272

**Sahar Darweesh Hanjoury  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Kanwaldeep Sandhu, Presiding Judge John Raymond Murphy Judge Dimitrios Raikos
Case No.:	2021-1637
Date of Decision:	28 October 2022
Date of Publication:	18 November 2022
Registrar:	Juliet Johnson

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Counsel for Appellant: Edwin Nhliziyo

Counsel for Respondent: Sylvia Schaefer

**JUDGE KANWALDEEP SANDHU, PRESIDING.**

1. Ms. Sahar Darweesh Hanjoury, a staff member with United Nations Interim Security Force for Abyei (UNISFA), contested her being de-rostered for FS-5 positions in the Administrative Assistant category. She was dropped off the roster during a process that dissociated job codes between the job categories of FS-5 Claims Assistant and FS-5 Administrative Assistant. In its Summary Judgment No. UNDT/2021/114<sup>1</sup> (the impugned Judgment or UNDT Judgment), the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) dismissed the application as neither receivable *ratione materiae* nor *ratione temporis*.<sup>2</sup>

2. For the reasons below, we dismiss the appeal and affirm the UNDT Judgment.

**Facts and Procedure**

3. Ms. Hanjoury is an Administrative Assistant at the FS-4 level serving with the United Nations Interim Security Force for Abyei (UNISFA).

4. The following facts are taken from the impugned Judgment:<sup>3</sup>

... The Applicant applied for an FS-5 Claims Assistant position in 2010, which was then associated with an FS-5 Administrative Assistant position. She was rostered for both positions in 2010. She has remained in her FS-4 position for several years thereafter.

... In 2017, she was asked to move to a new duty station as a lateral move but made it clear that she was interested in an FS-5 Administrative Assistant position since she had been rostered for same for seven years. She was then surprised to be told that she was no longer cleared for that position (she no longer had the clearance of the Field Central Review Board).

... The Applicant made enquiries about this change of circumstances for a period of three years. She asserts that she then realized there was no intention on the part of the Administration to restore her to the FS-5 roster for the position.

... In her application, the Applicant speculates that her removal from the roster was by virtue of a glitch some time in 2017. However, she refers to a document annexed as A/2 to her application and states that on 1 March 2020 it became apparent to her that she was no longer on the roster for the position.

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<sup>1</sup> *Hanjoury v. Secretary-General of the United Nations*, Judgment No. UNDT/2021/114.

<sup>2</sup> *Ibid.*, para. 23.

<sup>3</sup> *Ibid.*, paras. 2-6.

... The Applicant filed her request for management evaluation on 6 June 2021, which was about one year after she was notified of the impugned decision. On 14 July 2021, the Management Evaluation Unit (“MEU”) found that the request for management evaluation was not receivable as there was in administrative decision.

*The UNDT Judgment*

5. The Dispute Tribunal held that Ms. Hanjoury received an e-mail dated 1 March 2020 from the Human Resources Services Division (HRSD) unequivocally informing her that she no longer had FS-5 Administrative Assistant Roster status. She requested management evaluation on 6 June 2021, more than a year beyond the 60-day deadline. Therefore, the Dispute Tribunal held that it had no jurisdiction to determine the application as it contested a decision that was not submitted for timely management evaluation.<sup>4</sup> Further, the Dispute Tribunal held that there was no appealable administrative decision in the case.<sup>5</sup>

**Submissions**

**Ms. Hanjoury’s Appeal**

6. Ms. Hanjoury submits that the Dispute Tribunal erred and misdirected itself as to the facts and evidence when it ruled that her application was non-receivable.

7. She acknowledges that there was never an administrative decision to remove her from the FS-5 Administrative Assistant roster, but that “[s]he simply dropped off the roster during a process to dissociate job codes”. Therefore, although the dissociation of job codes was not expressly directed at her, it had a direct legal consequence for her. Further, she says the dissociation did not indicate who made the decision to dissociate the job codes or the reasons behind it.

8. Ms. Hanjoury submits that the Dispute Tribunal erred in law because it failed to address and correct the adverse legal consequences she experienced. She argues that there was a “constructive administrative decision”, namely that, in being dropped from the roster, she lost an acquired right to be given first consideration for openings at the FS-5 Administrative Assistant level without due process.

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<sup>4</sup> *Ibid.*, paras. 15-17.

<sup>5</sup> *Ibid.*, para. 18.

9. Further, she contends that, upon questioning why she had lost her roster membership in 2020, she was misled by managers about the possible fixes and explanations. Ms. Hanjoury also submits that the Dispute Tribunal failed to consider that the process of dissociating job codes was discriminatory.

10. She says that she “engaged management” as soon as she became aware of her predicament, which was some three years after the process to dissociate the job codes was carried out.

11. Ms. Hanjoury requests that the impugned Judgment be reversed and her application be remanded back to the Dispute Tribunal for review on its merits. She wants her membership on the FS-5 Administrative Assistant roster restored and commensurate compensation for the violation of her due process and acquired rights, and for the lost opportunity to apply for higher level posts.

### **The Secretary-General’s Answer**

12. In response, the Secretary-General requests that the appeal be dismissed in its entirety. He argues that the Dispute Tribunal correctly held that Ms. Hanjoury’s application was not receivable on the basis that she did not submit a timely request for management evaluation pursuant to Article 8(1) of the UNDT Statute and Staff Rule 11.2(c).

13. The Secretary-General submits that the Ms. Hanjoury initially became aware of the de-rostering in 2017 and received written notification of such action by e-mail from HRSD on 1 March 2020; however, she only filed the request for management evaluation on 6 June 2021.

14. Further, the Secretary-General states that the Dispute Tribunal correctly determined that the de-rostering was not a reviewable administrative decision as required by Staff Rule 11.2(a) and Article 2(1) and Article 8(1)(a) of the UNDT Statute, and pursuant to well-established jurisprudence on the definition of an “administrative decision”.<sup>6</sup>

15. In addition, the Secretary-General contends that there is no such concept as a constructive administrative decision (relying on *Adnan Tolon*<sup>7</sup> for definition of an administrative decision). The Secretary-General submits that, contrary to Ms. Hanjoury’s

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<sup>6</sup> *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 49; former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V.

<sup>7</sup> *Adnan-Tolon v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-970, para. 29.

contentions, the de-rostering had no direct legal consequences for her, noting that the Dispute Tribunal correctly adopted the view of the MEU that the Staff Rules do not provide a right for staff members to be rostered for positions with associated job codes to which they did not apply.

### Considerations

16. The only issue in this appeal is whether the Dispute Tribunal erred in its determination that the application was not receivable either *ratione materiae* because Ms. Hanjoury requested management evaluation beyond the 60-day deadline required by Staff Rule 11.2(c) or *ratione temporis* as there was no administrative decision with direct legal consequences to her.

17. Article 8 (1)(c) of the UNDT Statute provides that an application shall be receivable if “(a)n applicant has previously submitted the contested administrative decision for management evaluation, where required”.

#### *Timely Management Evaluation Request*

18. Staff Rule 11.2(c) provides that “[a] request for management evaluation shall not be receivable by the Secretary General 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”.

19. Further to Article 8(3) of the UNDT Statute and established jurisprudence of the Appeals Tribunal, the Dispute Tribunal has no authority to extend or waive the deadlines for management evaluation and the time limits must be strictly enforced.<sup>8</sup>

20. The Dispute Tribunal correctly found that Ms. Hanjoury was informed on 1 March 2020 that she no longer had FS-5 Administrative Assistant Roster status, but she requested management evaluation well beyond the 60-day deadline on 6 June 2021.

21. In the 1 March 2020 e-mail from HRSD to Ms. Hanjoury, the Administration confirmed that she was rostered for FS-5 Claims Assistant in 2010 and at that time, the Claims Assistant position was associated with the Administrative Assistant position. However, the e-mail further advised that in 2017 the Claims Assistant function was no longer used and thus any

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<sup>8</sup> *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 38; *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335, para. 19.

associated rosters were also removed. As a result, she no longer had FS-5 Administrative Assistant Roster status. This e-mail was a clear notification of her roster status and the latest date that Ms. Hanjoury knew or reasonably should have known of the challenged decision, based on objective elements that both parties could accurately determine.

22. We say latest date, because in Ms. Hanjoury's own e-mail of 16 February 2020, she advised that she became aware of the removal of the Administrative Assistant clearance and asked for an explanation on what "basis the FCRB clearance for the Administrative Assistance FS-5 had been removed". This suggests that she was aware of her removal from the roster at the date of this e-mail, or earlier. However, even if we do not take this evidence into consideration and give Ms. Hanjoury the benefit of the doubt, we find that the latest notification of her removal from the FS-5 Administrative Assistant roster would be the 1 March 2020 e-mail from HRSD which clearly and unequivocally advised her of her lack of roster status.

23. Subsequent to this, she continued to make requests about finding "options" and made inquiries as to who removed the function and why, but these do not amount to a "notification of the administrative decision to be contested". This subsequent correspondence does not extend the time limit for seeking management evaluation.

24. As a result, Ms. Hanjoury's request for management evaluation on 6 June 2021 was beyond the 60-day deadline and therefore, her application to the Dispute Tribunal was not receivable *ratione materiae*.

#### *Appealable Administrative Decision*

25. The Dispute Tribunal also held there was no administrative decision for the purposes of Staff Rule 11.2(a) which provides that "[a] staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1(a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision".

26. The Dispute Tribunal, having found the application not receivable due to the request for management evaluation being out of time, did not need to make a finding on whether the application was also not receivable due to the lack of an appealable administrative decision.

27. Nonetheless, the Dispute Tribunal proceeded to find “merit” in the MEU’s position that the de-rostering was not an administrative decision for the purposes of Staff Rule 11.2(a) and held that there was “no such administrative decision in the instant case” but without elaborating its reasons.<sup>9</sup> The Dispute Tribunal did not review the relevant facts and evidence underlying this finding nor how the legal principles defining an “administrative decision” (such as the requirement for the existence of a unilateral decision by the Administration of individual application with direct legal consequences) applied to those facts. The Dispute Tribunal also did not explain how the definition or test for an “administrative decision” was not met in the present case.

28. However, as indicated, the Dispute Tribunal correctly held that the application was not receivable due to the untimely request for management evaluation, therefore, the UNDT’s lack of adequate reasons on whether there was an “administrative decision” is not fatal to the UNDT’s Judgment. Likewise, we need not address Mr. Hanjoury’s argument that she was subject to a “constructive” administrative decision, particularly since t our jurisprudence has not accepted the concept of “constructive” administrative decisions.<sup>10</sup>

29. Lastly, Ms. Hanjoury argues that the Dispute Tribunal erred in not considering the adverse legal consequences of the contested decision; however, tribunals can only address a matter if it has jurisdiction to do so. Jurisdiction is conferred by legislated requirements such as a timely management evaluation and the existence of an administrative decision. Where, as here, the Dispute Tribunal had no jurisdiction because her application was not receivable, it had no authority to address any legal consequences of a decision or conduct, including, alleged discrimination or violation of an “acquired right”, or alleged lack of explanation by the Administration for the dissociating of the codes that led to the de-rostering. As result, there is no remedy available to her.

30. In conclusion, we affirm the impugned Judgment dismissing Ms. Hanjoury’s application as not receivable.

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<sup>9</sup> *Hanjoury, op. cit.*, para. 20.

<sup>10</sup> *Adnan-Tolon, op. cit.*, paras. 29-31.

**Judgment**

31. The appeal is dismissed, and Judgment No. UNDT/2021/114 is affirmed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of October 2022 in New York, United States.

*(Signed)*

Judge Sandhu, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Raikos

Judgment published and entered into the Register on this 18<sup>th</sup> day of November 2022 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar