



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

---

Judgment No. 2014-UNAT-412



**Masyllkanova  
(Appellant)**  
**v.**  
**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

---

**Before:** Judge Luis María Simón, Presiding  
Judge Sophia Adinyira  
Judge Richard Lussick

**Case No.:** 2013-463

**Date:** 2 April 2014

**Registrar:** Weicheng Lin

---

**Counsel for Appellant:** Self-represented

**Counsel for Respondent:** Wambui Mwangi

**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Aidai Masytkanova against Judgment No. UNDT/2013/033, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 26 February 2013, in the case of *Masytkanova v. Secretary-General of the United Nations*. Ms. Masytkanova appealed on 25 April 2013, and the Secretary-General answered on 1 July 2013.

**Facts and Procedure**

2. The Dispute Tribunal made the following findings of fact, which are not contested by the parties:<sup>1</sup>

... The Applicant, a former staff member of the United Nations Assistance Mission in Afghanistan (UNAMA), contests the decision to disband and not reinstate the fact-finding panel formed in February 2012 to investigate her allegations of harassment and abuse of authority by her supervisor in 2011 when she served under a temporary appointment with UNAMA. The Applicant alleges that she is subject to 'deliberate attempts to prevent a transparent and fair investigation denying [her] of the delivery of justice'.

...

**Facts**

... The Applicant commenced her employment with UNAMA in March 2011 on a six-month temporary appointment that was subsequently extended until March 2012.

... On 15 November 2011, the Applicant filed a complaint with the Conduct and Discipline Office (CDO), UNAMA, alleging harassment and abuse of authority by her supervisor.

... On 17 November 2011, the Conduct and Discipline Officer of the CDO sent a memorandum to Mr. Manuel Calzada, Officer-in-Charge, Chief of Staff. (At around the same time, Mr. Calzada was also the Head of the Office of Legal Affairs, Office of the Special Representative of the Secretary-General, UNAMA.) In her memorandum, the Conduct and Discipline Officer recommended to Mr. Calzada that the Applicant's claims be investigated. She stated:

... In assessing the complaint, it is noted that the alleged acts of harassment that include intimidating, humiliating and undermining [the

---

<sup>1</sup> The following text is taken from Judgment No. UNDT/2013/033, paras. 1-18.

Applicant] in the office and outside of the office (guest house), appear to be done or are deliberately done by [the Applicant's supervisor] in her capacity as supervisor and senior officer of [the Applicant]. It is also noted that the alleged harassing conduct of [the Applicant's supervisor] has created a hostile working environment for [the Applicant].

... The Complainant [i.e., the Applicant] ... has informed the CDO that she would desire for a formal investigation to be conducted because previous interventions ... were not successful and that [the Applicant's supervisor] has not changed her alleged harassing conduct but gets worse each day.

... As per Complainant's [i.e., the Applicant's] desire to initiate a formal investigation and as per provisions of ST/SGB/2008/5 [, entitled 'Prohibition of discrimination, harassment, including sexual harassment, and abuse authority'], copy attached, an investigation in accordance [with ST/SGB/2008/5] is hereby requested.

... In January 2012, the Applicant received a rating of 'does not meet performance expectation' in her performance evaluation report [(PER)], signed by her supervisor.

... She was notified on 20 February 2012 that her temporary appointment would not be extended beyond 5 March 2012.

... The Respondent submits that, on 29 February 2012, a fact-finding panel was formed to investigate the Applicant's claims of harassment and abuse of authority.

... On 5 March 2012, the Applicant's contract expired and she was separated.

... On 15 March 2012, the Applicant filed a request for management evaluation of '[t]he decision not to renew [her] temporary appointment upon its expiration on 5 March 2012'. She filed an application with the [Dispute] Tribunal against the same decision on 11 July 2012 (Case No. UNDT/NY/2012/063).

... The Applicant submits that, on 17 April 2012, almost two months after its formation and five months after the CDO made its recommendation, she was informed of the creation of the fact-finding panel to investigate her claims of abuse of authority and harassment. The Applicant was interviewed by the panel on 26 April 2012, and alleges that she was the only one interviewed. She states that she was told that the panel would revert back to her in two or three weeks, but this never happened.

... On 17 July 2012, Mr. Calzada sent an email to the Applicant stating that the work of the fact-finding panel was 'held in abeyance following challenges to the composition of the Panel, and other procedural questions raised by [the Applicant's supervisor]'. Mr. Calzada stated that '[t]hese issues required an evaluation of the [f]act [f]inding [p]anel [p]rocess from the legal standpoint, which is currently under consideration' and pending which 'the workings of the [p]anel have necessarily been held in abeyance'.

... On 18 July 2012, the Applicant sent an email to Mr. Calzada seeking clarification with regard to the circumstances of the decision to hold the work of the panel in abeyance and asking when it would resume its work.

... It appears that no further information was provided to the Applicant in response to her email of 18 July 2012, despite her follow-up emails to the Chief of Staff of UNAMA on 16 October and 9 November 2012.

... On 7 December 2012, the Applicant filed the present application with the Dispute Tribunal[, challenging the Respondent's disbanding of, and failure to reinstate, the fact-finding panel formed to investigate her allegations of harassment and abuse of authority against her supervisor].

... On 6 January 2013, UNAMA convened a new fact-finding panel, of which the Applicant was informed on the same date by a letter from the Special Representative of the Secretary-General [(SRSG)]. Subsequent to this, the Applicant received two notifications of further changes to the composition of the panel's membership on 17 January [2013] and 17 February 2013.

3. In its Judgment, the UNDT dismissed Ms. Masytkanova's application, finding it moot in view of the fact that the fact-finding panel had been reconvened. Moreover, the UNDT observed that it had no jurisdiction to consider the case as Ms. Masytkanova had not requested management evaluation of the contested issue, which is a necessary requirement for both current and former staff members prior to filing an application.

### **Submissions**

#### **Ms. Masytkanova's Appeal**

4. Ms. Masytkanova submits that the UNDT erred in finding her case moot. Rather, she argues, the fact-finding panel was reconvened in bad faith to impede her application from going further.

5. She further submits that the UNDT focused on lecturing her on the rights and obligations of current and former staff members regarding management evaluation, despite the fact that she sought management evaluation of her separation from service.

6. Ms. Masytkanova requests that the merits of her case be reviewed by the Appeals Tribunal and for it to hold that UNAMA violated her access to due process and fair treatment. On the merits, she submits that the UNDT erred by not granting her request for the

PER completed by her former supervisor in January 2012 to be removed from her file as it was issued in retaliation for her complaints and is hence unfair and inaccurate. She also contends that ST/SGB/2008/5 was violated when the Administration failed to deal with her allegations in an expeditious manner.

7. Ms. Masykkanova requests that, due to the Administration's disregard for the SRSG's instruction to extend her contract pending the results of the investigation, she be awarded compensation for loss of wages from the date of separation to the date of reinstatement. Further, notwithstanding the fate of Case No. UNDT/NY/2012/063 before the UNDT, she requests financial compensation for emotional distress.

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

8. The Secretary-General submits that the UNDT correctly dismissed Ms. Masykkanova's application as being non-receivable. The impugned administrative decision, namely, the decision to disband the fact-finding panel, was superseded by its reconvening. As such, no administrative decision existed in non-compliance with her terms of appointment, as required by Article 2(1)(a) of the UNDT Statute.

9. The Secretary-General further submits that Ms. Masykkanova failed to prove, as required by Article 2(1) of the Appeals Tribunal statute, any error that the UNDT committed in its determination that a request for management evaluation for both current and former staff members is a mandatory requirement before the contested decision can be received by the Dispute Tribunal.

10. The Secretary-General submits that the UNDT did not err in the present case by not considering the merits of the Application as the case was patently not receivable, *ratione materiae*. As such, he rejects Ms. Masykkanova's submissions that the UNDT erred in not entertaining a number of issues that went to the merits of her case. The UNDT acted quite properly because these issues were either already being considered in a different case before it (Case No. UNDT/NY/2012/063) or because Ms. Masykkanova had not requested management evaluation thereof.

11. He contends that Ms. Masykkanova's claim regarding violation of ST/SGB/2008/5 is not sufficient because she merely refers to a number of the same arguments she made before the UNDT concerning the manner in which her allegations of harassment and abuse of authority were handled by the Administration.

12. Finally, he avers that Ms. Masykkanova has failed to substantiate her claim for compensation as she does not identify any injuries that she sustained for which the UNDT could have awarded relief, nor does she refer to any specific evidence of damages that would justify an award of compensation for emotional distress or loss of wages.

13. The Secretary-General requests the Appeals Tribunal to affirm the UNDT Judgment and to dismiss the appeal in its entirety.

### **Considerations**

14. The Appeals Tribunal holds that the UNDT correctly determined that the staff member's application had become moot and therefore will dismiss the appeal in its entirety.

15. The administrative decision to disable the fact-finding panel was superseded by its reconvening, after being impugned by the Appellant.

16. Thus, at the administrative stage, the alleged illegality was solved after the judicial procedure had begun, rendering the latter unnecessary, as the specific remedy sought was reached.

17. This does not mean that the eventual past existence of the illegality deprives the staff member of her claim concerning harassment, damages and compensation, which is the matter of the other case she filed before the UNDT (Case No. UNDT/NY/2012/063).

18. Indeed, such issues, including the initial decision to hold in abeyance the fact-finding panel and the grievances Ms. Masykkanova asserts in respect of alleged unfair treatment, relate to Case No. UNDT/NY/2012/063, rather than the instant case, which was limited to the decision not to constitute the fact-finding panel and which was, inevitably, rendered moot by the constitution of said panel. Ultimately, once the investigation has been concluded, its outcome and administrative consequences, as well as any related acts or omissions, can be challenged in their own right via management evaluation and before the Dispute and Appeals Tribunals.

19. It follows, then, that no error was committed by the UNDT in its determination that the application in the instant case was not receivable, having been rendered moot.

**Judgment**

20. The UNDT's Judgment is affirmed and the appeal is dismissed in its entirety.

Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of April 2014 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Lussick

Entered in the Register on this 13<sup>th</sup> day of May 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar