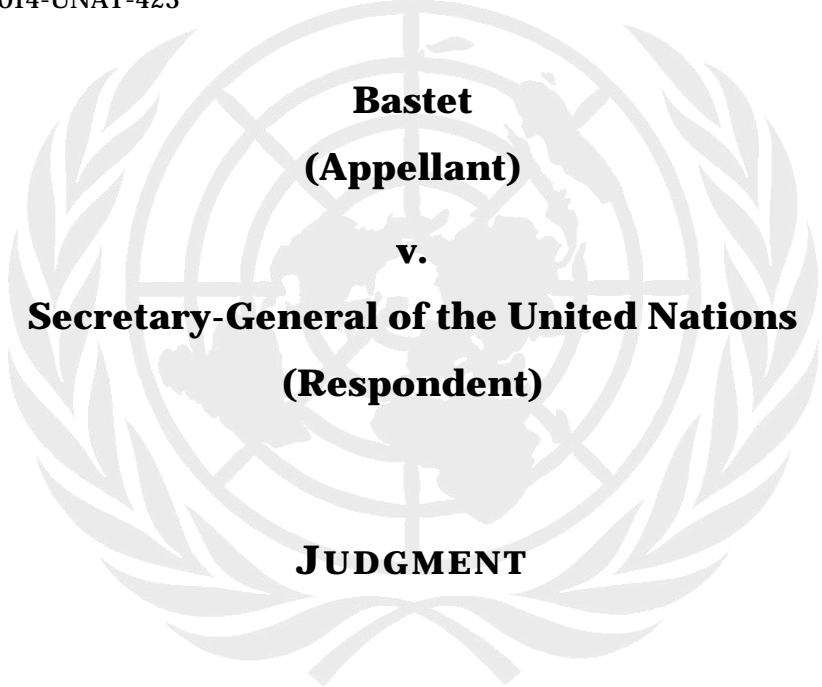




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2014-UNAT-423



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

**JUDGMENT**

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**Before:** Judge Mary Faherty, Presiding  
Judge Inés Weinberg de Roca  
Judge Richard Lussick

**Case Nos.:** 2013-477, 2013-493 & 2013-535

**Date:** 2 April 2014

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** François Lorient

**Counsel for Respondent:** Stéphanie Cartier/Paul Oertly/Amy Wood

**JUDGE MARY FAHERTY, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it three appeals filed by Mr. Bruno Bastet on 10 May 2013,<sup>1</sup> 6 June 2013 and 24 October 2013, respectively, against the following Orders:

- a) Order No. 96 (NY/2013) (Order on Change of Venue), issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 12 April 2013;
- b) Order No. 58 (GVA/2013) (Order on Case Management), issued by the UNDT in Geneva on 16 May 2013; and
- c) Order No. 160 (GVA/2013), issued by the UNDT in Geneva on 22 October 2013.

2. The Secretary-General filed his respective answers on 2 July 2013, 3 July 2013, and 21 November 2013.

**Procedural History**

3. On 3 September 2012, Mr. Bastet filed an application with the Dispute Tribunal in New York, contesting the Secretary-General's decision to dismiss him from service for claiming and receiving a rental subsidy from the Organization, to which he was allegedly not entitled.

4. On 11 December 2012, the UNDT issued its Judgment on Receivability, Judgment No. UNDT/2012/196, by which it found that Mr. Bastet's application was not time-barred and that it was thus receivable.

5. On 16 December 2013, the UNDT in Geneva issued Judgment No. UNDT/2013/172. The UNDT found that the decision to dismiss Mr. Bastet was unlawful because it was tainted by procedural defects. The UNDT, however, found that Mr. Bastet had committed serious misconduct and that had the procedural irregularities not occurred, that misconduct would have merited dismissal. The UNDT concluded that "the loss of the Applicant's job was attributable not to the purely technical illegality committed by the Administration but solely to the Applicant's

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<sup>1</sup> Refiled on 31 May 2013.

misconduct”.<sup>2</sup> The material damage he sustained was thus exclusively the result of his own actions...”. The UNDT therefore decided as follows:

- a. The decision to dismiss the Applicant is rescinded on the grounds of procedural defect; should the Respondent elect to rescind the decision, all evidence relating to the disciplinary proceedings shall be removed from the Applicant’s file;
- b. Should the Respondent elect not to execute the above rescission order, no compensation shall be paid to the Applicant and the evidence relating to the disciplinary proceedings shall remain in the file;
- c. All other pleas of the Applicant are rejected.<sup>3</sup>

6. On 7 February 2014, Mr. Bastet filed a request for an extension of time to file an appeal (Case No. 2014-583). By Order No. 179 dated 2 April 2014, the Appeals Tribunal dismissed the Motion.

### **Considerations**

7. Mr. Bastet has three appeals before the Appeals Tribunal arising from interlocutory orders made by the UNDT on 12 April 2013 (Order No. 96 (NY/2013)); 16 May 2013 (Order No. 58 (GVA/2013)); and 22 October 2013 (Order No. 160 (GVA/2013)) in the context of an application initiated by Mr. Bastet before the Dispute Tribunal in New York on 3 September 2012.<sup>4</sup>

8. For the purpose of judicial economy, the Appeals Tribunal has consolidated the three appeals. Oral hearings were sought by Mr. Bastet with regard to two appeals, requests which were denied by the Appeals Tribunal.

*Mr. Bastet’s Appeal of UNDT Order No. 96 (NY/2013)*

9. By Order No. 96 (NY/2013) (Order on Change of Venue), the Dispute Tribunal in New York transferred Mr. Bastet’s case to the Dispute Tribunal in Geneva. As is apparent from the face of the Order, this was done following submissions made by Mr. Bastet and by the Secretary-General after the Dispute Tribunal sought the parties’ views on the transfer, and in the context of the Dispute Tribunal, by 12 April 2013, being apprised of certain geographical,

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<sup>2</sup> Judgment No. UNDT/2013/172, para. 80.

<sup>3</sup> Judgment No. UNDT/2013/172, para. 84.

<sup>4</sup> Case Number UNDT/NY/2010/090. The case now bears the reference UNDT/GVA/2013/018.

language and technical factors which the UNDT considered relevant for the making of Order No. 96 (NY/2013).<sup>5</sup>

10. Mr. Bastet grounds his appeal on the basis that “the UNDT erred on questions of fact, resulting in an unreasonable decision when, after 32 months of proceedings in [New York City], it suddenly ruled and unilaterally changed the venue of [the] case to Geneva”. Mr. Bastet argues that this change will result “in a Geneva trial *in absentia*, without counsel, on a US deed, on US rentals, without US witnesses, and contrary to the judicial principles of *lex loci* and economy of justice”. Mr. Bastet also seeks to appeal against the Dispute Tribunal clarification, in Order No. 96 (NY/2013), whereby it “informs the parties that any requests for additional disclosure [of documents] or witnesses not specifically addressed in Order No. 74 was denied”. By Order No. 74 (NY/2013) issued on 21 March 2013, the UNDT had identified four witnesses for the oral hearing, namely Mr. Bastet’s father, his former common law spouse, and two OIOS investigators.

11. Mr. Bastet maintains that in ruling as it did, the UNDT exceeded its jurisdiction and competence, erred in law and fact and committed an error of procedure.

12. For the Appeals Tribunal to embark on a consideration of Mr. Bastet’s appeal, it must be satisfied that the appeal is receivable.

13. Article 2(1) of the Statute of the Appeals Tribunal provides that the Appeals Tribunal shall be competent to hear and pass judgment on an appeal filed “against a judgement rendered by the United Nations Dispute Tribunal”. The Appeals Tribunal has consistently held that appeals arising from preliminary proceedings before the Dispute Tribunal are not receivable save in those exceptional cases where the Dispute Tribunal has clearly exceeded its jurisdiction or competence.<sup>6</sup>

14. With regard to the Dispute Tribunal’s decision to transfer the case to Geneva, the Appeals Tribunal notes that Mr. Bastet grounds his appeal on the basis of an alleged error of fact resulting in an “unreasonable decision” by the UNDT. He has not suggested that the Dispute Tribunal exceeded its competence or jurisdiction in transferring the case. Even had

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<sup>5</sup> See paragraph 228 of Order No. 96 (NY/2013).

<sup>6</sup> See *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062; and *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

Mr. Bastet claimed an excess of competence or lack of jurisdiction on the part of the UNDT in this regard, such a claim would be unsustainable having regard to the wide margin of discretion enjoyed by the Dispute Tribunal in all matters relating to case management. In *Khambatta* (and applying our rationale in *Bertucci*), we have stated that the Appeals Tribunal “must not interfere lightly in the exercise of the jurisdictional powers conferred on the tribunal of first instance to enable cases to be judged fairly and expeditiously and for dispensation of justice”.<sup>7</sup> This Tribunal has also ruled that the determination of venue is a matter entirely for the Dispute Tribunal.<sup>8</sup>

15. Mr. Bastet’s complaint of the unreasonableness of the Dispute Tribunal’s decision to transfer his case to Geneva falls squarely within the jurisdiction and competence of the UNDT. Thus, even if (and we do not so determine such matters being for review in any appeal on the merits) there were legal, factual or procedural errors on the part of the Dispute Tribunal, that Tribunal did not exceed its competence or jurisdiction. Mr. Bastet’s appeal on the issue of the transfer to Geneva is thus not receivable.

16. The same legal principles apply to the second ground of complaint, namely that the UNDT exceeded its competence and/or erred in law, fact or procedure in restricting disclosure of documents and witnesses to within the confines of UNDT Order No. 74 (NY/2013).

17. The discretion to order, or not to order, as the case may be, certain documents is within the competence of the Dispute Tribunal. It “has broad discretion with respect to case management”.<sup>9</sup> Thus, the Dispute Tribunal’s clarification ruling on 12 April 2003, confirming the parameters of Order No. 74 (NY/2013), falls within the category of “evidence, procedure, and trial conduct”<sup>10</sup> which the Appeals Tribunal has stated are not subject to an interlocutory appeal. Mr. Bastet has not established an excess of competence or jurisdiction on the part of the Dispute Tribunal such as to bring this interlocutory decision within the remit of the Appeals Tribunal.

18. Consequently, Mr. Bastet’s appeal on this ground is not receivable.

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<sup>7</sup> *Khambatta v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-252, para. 15, citing to *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062. See also *Wamalala v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-300.

<sup>8</sup> *Gehr v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-234, para. 51, referring to *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-101.

<sup>9</sup> *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062.

<sup>10</sup> *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005, para. 11.

*Mr. Bastet's Appeal of Order No. 58 (GVA/2013)*

19. Following the transfer of Mr. Bastet's case to Geneva, the UNDT in Geneva issued Order No. 58 (GVA/2013) (Order on Case Management). That Order, *inter alia*, rejected Mr. Bastet's motion for disclosure whereby he asked the Dispute Tribunal to request the Secretary-General to provide additional documents and that the proceedings be stayed; and Mr. Bastet's motion that travel costs be granted to him and his counsel.

20. Of its own volition the Dispute Tribunal also concluded that contrary to what had been ordered by the Judge previously in charge of the case, there was no need to call any witnesses to the oral hearing. It went on to state that "should the Tribunal decide, having conducted the hearing on the merits, that another hearing is necessary, particularly to hear any witnesses, the parties will be informed accordingly".<sup>11</sup>

21. The UNDT went on to direct "(f)or a fair disposal of the case, and in application of art. 18, para. 2 of its Rules of Procedure" that Mr. Bastet provide the Dispute Tribunal with certain documentation, as outlined at paragraph 12 of the Order.<sup>12</sup>

22. In his grounds of appeal Mr. Bastet argues that Order No. 58 (GVA/2013) violates the UNDT Statute and Article 2(1) of the Statute of the Appeals Tribunal and contends that the UNDT has made numerous errors of fact, law and procedure.

23. On behalf of the Secretary General, it is argued that Mr. Bastet's appeal, being an appeal against an interlocutory order, is not receivable and the Secretary General contends that the appeal makes no attempt to advance any excess of jurisdiction on the part of the UNDT, save for a single claim that the UNDT so erred "claiming to exercise jurisdiction over non-existent administrative decisions and over non-existent disciplinary proceedings". The Secretary General submits that it is unclear whether this claim is even applicable to Order No. 58 (GVA/2013) under appeal here because Mr. Bastet references this ground of appeal under the heading "Grounds for appeal of UNDT Order. No. 96 [(2013/NY)]" being an order (as set out above) under separate appeal to this Tribunal.

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<sup>11</sup> Order No. 58 (GVA/2013), para. 11.

<sup>12</sup> *Ibid*, para. 12.

24. The Appeals Tribunal considers the exercise carried out by the Dispute Tribunal by virtue of Order No. 58 (GVA/2013) as no more than a case management exercise well within its competence and jurisdiction. We have already, in the course of this Judgment, outlined the exceptional circumstances which permit a party to appeal an interlocutory order of the Dispute Tribunal. On any reading of Mr. Bastet's grounds of appeal, he has not established any excess of competence or jurisdiction on the part of the Dispute Tribunal such as would bring Order No. 58 (GVA/2013) within the remit of the Appeals Tribunal. Insofar as Mr. Bastet alleges errors of law, fact or procedure on the part of the UNDT, these are matters which can, if necessary, be addressed in any appeal against the final UNDT Judgment.<sup>13</sup>

25. In all the circumstances, Mr. Bastet's appeal against Order No. 58 (GVA/2013) is not receivable.

*Mr. Bastet's Appeal of Order No. 160 (GVA/2013)*

26. On 22 October 2013, pursuant to Order No. 160 (GVA/2013), the UNDT directed the Secretary-General to provide it with certain documentation referable to the disciplinary measures, including dismissal, taken against Mr. Bastet in 2010, which the Dispute Tribunal considered necessary for its determination of Mr. Bastet's application before the UNDT challenging his dismissal.

27. While this Order is directed to the Secretary-General, Mr. Bastet appeals it on the grounds that the Dispute Tribunal committed a major error of law and procedure in its decision "to apply" Administrative Instruction ST/AI/371/Amend.1 to the actions and decisions taken by the Administration in relation to his case. *Inter alia*, Mr. Bastet maintains that this administrative instruction, having been promulgated on 11 May 2010, has no application to his case. He also seeks to revisit other claims previously raised by him, namely that the Dispute Tribunal has failed to direct that the Secretary-General disclose key evidence exculpatory of Mr. Bastet.

28. As with the previous two orders dealt with above, Mr. Bastet is appealing an interlocutory order of the Dispute Tribunal. We reiterate that for Mr. Bastet's appeal to be receivable by this Tribunal, the Dispute Tribunal must be shown to have exceeded its competence or jurisdiction in

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<sup>13</sup> See *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062.

making the order it did. Mr. Bastet's appeal grounds do not instance that the UNDT has exceeded its competence or jurisdiction; they refer merely to alleged errors of law and procedure and/or bias on the part of the Dispute Tribunal. Errors of law, fact or procedure or indeed a claim of bias on the part of the Dispute Tribunal are all matters which may be raised by a party on appeal to the Appeals Tribunal. However, they may only be raised once the UNDT has rendered its judgment on the merits and not before. Mr. Bastet has not surmounted the necessary excess of competence and/or jurisdiction on the part of the Dispute Tribunal which is required to bring this appeal within the remit of the Appeals Tribunal at this stage of the proceedings. Hence, this appeal is not receivable.

29. Notwithstanding the foregoing, we note that the Dispute Tribunal issued its judgment in respect of Mr. Bastet's application on 16 December 2013, effectively rendering our ruling on the above receivability issues moot.

### **Judgment**

30. Mr. Bastet's appeals of UNDT Order No. 96 (NY/2013), UNDT Order No. 58 (GVA/2013), and UNDT Order No. 160 (GVA/2013) are not receivable.



Original and Authoritative Version: English

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

*(Signed)*

Judge Faherty, Presiding

*(Signed)*

Judge Weinberg de Roca

*(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