



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

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Judgment No. 2015-UNAT-566

**Terragnolo  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Rosalyn Chapman, Presiding Judge Inés Weinberg de Roca Judge Mary Faherty
Case No.:	2014-660
Date:	2 July 2015
Registrar:	Weicheng Lin

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Counsel for Mr. Terragnolo:	Self-represented
Counsel for Secretary-General:	John Stompor

**JUDGE ROSALYN CHAPMAN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2014/107, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 25 July 2014, in the case of *Terragnolo v. Secretary-General of the United Nations*. On 23 September 2014, Mr. Julien Terragnolo filed his appeal and on 24 November 2014, the Secretary-General filed his answer.

**Facts and Procedure**

2. The Appellant was initially hired on 27 June 2009, by the French Text Processing Unit, Department of General Assembly and Conference Management, as an Editorial and Desktop Publishing Assistant at the G-3 level and he was promoted to the G-4 level on 27 June 2010.<sup>1</sup> As of 18 June 2013, he received Special Post Allowance as an Administrative Assistant at the G-5 level.

3. On 30 December 2013, and again on 15 January 2014, the Appellant made a request to the Office of Human Resources Management (OHRM), pursuant to Section 6.1 of Administrative Instruction ST/AI/2010/3 (Staff Selection System), for an exception to the rule limiting a staff member to applying for a position one level higher than his or her current grade.

4. On 20 January 2014, OHRM denied his request, advising him he was eligible to apply for job openings up to the G-5 level in the Secretariat.

5. On 6 February 2014, the Appellant requested management evaluation of the decision to deny his request for an exception under Section 6.1 of ST/AI/2010/3. In his request, he also complained of abuse of authority and bias against him in the denial of his request for an exception and requested an investigation into that complaint under Secretary-General's Bulletin ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

6. On 11 March 2014, the Management Evaluation Unit (MEU) advised the Appellant that the denial of his request for an exception under Section 6.1 of ST/AI/2010/3 had been upheld and that his request for an investigation into his complaint of abuse of authority was not receivable since the MEU had no authority to investigate claims under ST/SGB/2008/5.

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<sup>1</sup> See *Terragnolo v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-445 and Judgment No. 2014-UNAT-447.

7. On 14 March 2014, the Appellant sent an e-mail request to the Office of the Assistant Secretary-General for Human Resources Management (ASG/OHRM) claiming the handling of his request for an exception under Section 6.1 of ST/AI/2010/3 was tainted by bias and was part of a pattern of systematic retaliation and retribution for protected activities, including past staff representation. He requested an investigation of his complaint under ST/SGB/2008/5.

8. The same day, the Appellant received an automatic e-mail response advising him that the recipient of his e-mail was out of the office until 17 March 2014, and urgent matters could be referred to two other individuals. The Appellant resubmitted his request of 14 March 2014 to one of the other individuals, and received another automatic e-mail response notifying him that this recipient was out of the office until 24 March 2014.

9. On 28 March 2014, prior to receiving any response from the ASG/OHRM, the Appellant made a request for management evaluation of the “non-decision for an investigation”.

10. On 25 April 2014, the ASG/OHRM responded to the Appellant’s request for an investigation under ST/SGB/2008/5 into the handling of his request for an exception under Section 6.1 of ST/AI/2010/3 and advised him that “an investigation into this matter [was] not warranted” as there was no indication that the handling of the request was tainted by extraneous considerations. The ASG/OHRM further noted that the decision not to grant him an exception was sound given that “eligibility requirements recognize the interest of the Organization and its staff members in an orderly career progression through the grades of each category of staff[.]” and benefit “the Organization by ensuring that staff members [...] have well-rounded experience”. Moreover, the ASG/OHRM noted “the negative impact an exception may have on other staff members [...] who may meet the requirements of the job opening [...] or] who have gained progressively responsible experience in compliance with the eligibility requirements”.

11. On 29 April 2014, the MEU advised the Appellant that his request of 28 March 2014 for management evaluation was not receivable “as there had not been an administrative decision which may be subject to management evaluation”.

12. On 31 May 2014, the Appellant attempted to file an 800-page application (including annexes) in the Dispute Tribunal, which the Registry did not accept due to its size. On 7 June 2014, at the request of the Registry to re-file in accordance with the UNDT’s requirements, the Appellant split his application into two claims. The Registry assigned

Case No. UNDT/NY/2014/046 to the Appellant's claim challenging the ASG/OHRM's decision not to conduct an investigation under ST/SGB/2008/5. The Secretary-General filed his reply on 9 July 2014.

13. On 25 July 2014, the Dispute Tribunal issued Judgment No. UNDT/2014/107, in which it determined that the application was not receivable *ratione materiae* as the absence of a response from OHRM within ten working days did not constitute an appealable administrative decision. Further, the UNDT found that the Appellant had failed to request management evaluation of the ASG/OHRM's decision of 25 April 2014. Additionally, the UNDT awarded costs against the Appellant in the amount of USD 1,500 for abuse of process.

14. On 23 September 2014, the Appellant filed an appeal of Judgment No. UNDT/2014/107, and the Secretary-General filed his answer on 24 November 2014.

### **Submissions**

#### **Mr. Terragnolo's Appeal**

15. The UNDT erred in finding the application was not receivable since the Appellant did comply with Article 8(1)(c) and (d) of the UNDT Statute and had sought management evaluation. The fact that the MEU found the Appellant's request was not receivable was irrelevant to the UNDT's jurisdiction.

16. The Administration has an explicit obligation to *promptly* respond to a staff member's request for an investigation under ST/SGB/2008/5. The Appellant could reasonably consider that OHRM's failure to promptly respond to his request was an implicit denial of the request. Thus, the Appellant did not act in bad faith by seeking management evaluation after two weeks of silence had passed. To the contrary, "it was utterly clear to the Appellant that the Administration [...] was not intent to conduct the requested investigation when he submitted the request for management evaluation".

17. The UNDT erred on fact and law in holding that the application was frivolous and in relying on *Ishak*<sup>2</sup> to award costs. The staff member in *Ishak* made baseless charges against the UNDT, whereas the Appellant did not. The Internal Justice Council has clarified that

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<sup>2</sup> *Ishak v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-445 and Judgment No. 2011-UNAT-152.

frivolous proceedings are “those claiming trivial reliefs”, which is not the Appellant’s situation. The Appellant also did not abuse process in that his application did not contain claims for which no basis existed in law and fact.

18. Moreover, the Dispute Tribunal erred in law by awarding costs against the Appellant when the Respondent had not requested costs and had not suffered any economic loss. The Respondent cannot be compensated for the burden on the UNDT’s case load. Further, the UNDT erred in awarding costs without giving a “prior warning” to the Appellant that it was considering an award of costs.

19. The Appellant seeks to vacate the UNDT Judgment *in toto*. He also seeks to remand the case to the UNDT for determination on the merits or, alternatively, to award him “compensation for emotional injury, breach of protected status and procedural rights, and an order that those apprehended retaliators in OHRM be dissociated from decisions on his future career applications”.

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

20. The Dispute Tribunal correctly concluded that the application was not receivable because: (a) the Administration had not yet responded to the Appellant’s request for an investigation under ST/SGB/2008/5 at the time he sought management evaluation; and (b) the Appellant failed to request management evaluation after he received the Administration’s written response to his request for investigation, as required by Staff Rule 11.2(a).

21. The UNDT correctly found that there was no implied decision concerning the Appellant’s request for an investigation at the time he sought management evaluation as the complaint of bias and the request for an investigation had been pending for only two weeks. While Section 5.14 of ST/SGB/2008/5 requires a “prompt review” of a staff member’s complaint, two weeks is an unreasonably short time to expect a review of a complaint and a response.

22. The Appellant’s claim that his request for management evaluation was not premature is without merit. First, the MEU’s response of 11 March 2014 did not show an unwillingness to investigate his claims of bias or abuse of authority. The MEU merely advised the Appellant that it had no authority to conduct an investigation under ST/SGB/2008/5. Second, the MEU and the ASG/OHRM are not the same entity and a request made to one entity cannot foreshadow a

response from the other. Third, the Appellant's reliance on *Tabar*<sup>3</sup> is misplaced since the Administration's delay in responding to a staff member's request in that case was two months, not two weeks.

23. The Appellant has failed to demonstrate that the UNDT erred in awarding costs against him for abuse of the proceedings. The UNDT correctly found that the Appellant knew or reasonably should have known that management evaluation is an essential step in the appeals process and could not have reasonably believed that it was proper to request management evaluation of an allegedly implied decision after a delay of only ten work-days.

24. The Appellant's claims as to errors in law in relation to the UNDT's award of costs also have no merit given that there is no requirement that: (a) a party must request an award of costs before the UNDT can award costs against the other party, (b) the UNDT is limited to awarding costs only when a party attacks the UNDT, (c) the UNDT must warn a party before it can award costs against them, and (d) costs can only be awarded against a party who incurs costs as a result of litigation or who ignores orders of the Tribunal. The Appeals Tribunal has affirmed several awards of costs by the Dispute Tribunal and has itself awarded costs against staff members whose applications and appeals were frivolous.

25. The Secretary-General seeks to affirm the UNDT Judgment and to dismiss the appeal. However, if the Appeals Tribunal determines that the UNDT erred in not receiving the application, the case should be remanded to the UNDT for adjudication on the merits.

### **Considerations**

#### *Preliminary Matters*

26. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). Under Article 18(1) of the Rules, a request for an oral hearing may be granted when it would "assist in the expeditious and fair disposal of the case".

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<sup>3</sup> *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-030 and Judgment No. 2011-UNAT-177.

27. The Appellant requests an oral hearing because “[t]he scope of unresolved issues in the lower court warrants a hearing”. This request misses the mark. There are no unresolved issues on appeal before us. The sole issue is whether the UNDT erred in not receiving the application. The Appeals Tribunal does not find that an oral hearing would assist it in resolving the issue on appeal. Thus, the Appellant’s request for an oral hearing is denied.

*Did the Dispute Tribunal err in concluding the application was not receivable?*

28. The Dispute Tribunal found that the application was not receivable *ratione materiae* on two grounds. First, the Appellant had “failed to comply with the mandatory requirement of article 8.1(c) of the [Dispute] Tribunal’s Statute and staff rule 11.2(a)” to request management evaluation of the 25 April 2014 decision. Second, it was not reasonable for “a delay of ten working days” to be “considered as an implied unilateral decision”; thus, there was no implied decision for the Dispute Tribunal to review.

29. Article 8(1)(c) of the UNDT Statute provides that an application shall be receivable if “[a]n applicant has previously submitted the contested decision for management evaluation, where required”. Further, Article 8(3) of the UNDT Statute prohibits the Dispute Tribunal from “suspend[ing] or waiv[ing] the deadlines for management evaluation”.

30. Staff Rule 11.2(a), which was in effect in 2014, required that “[a] staff member wishing to formally contest an administrative decision [...] shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision”. This means that a request for management evaluation of a claim raised in an application must be submitted for management evaluation by the staff member *prior* to bringing an application before the Dispute Tribunal.<sup>4</sup>

31. The following facts are undisputed: on 25 April 2014, the ASG/OHRM issued a written decision denying the Appellant’s request for an investigation under ST/SGB/2008/5 of his claims of abuse of authority and bias in the denial of his request for an exception to Section 6.1 of ST/AI/2010/3; and the Appellant did not seek management evaluation of that written decision prior to filing his application for judicial review.

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<sup>4</sup> *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349.

32. The Appeals Tribunal has previously noted that a staff member must be familiar with the Staff Rules and understand his or her obligation to act in conformance with those rules.<sup>5</sup> By his conduct in this case, it is clear that the Appellant knows of the requirement for management evaluation of a decision before seeking judicial review. Yet, the Appellant did not afford the Administration an opportunity to resolve his complaints before bringing legal action, as required by Staff Rule 11.2(a).

33. Thus, the Appeals Tribunal determines that the UNDT did not make an error of law in concluding that the Appellant had not complied with Article 8(1)(c) and Staff Rule 11.2(a) and, thus, his application was not receivable *ratione materiae*.

34. However, our jurisprudence also allows a staff member, in certain circumstances, to seek judicial review of an implied decision, which stems from the Administration's silence in response to a staff member's complaint or request. On 14 March 2014, the Appellant sent an e-mail requesting an investigation under ST/SGB/2008/5 of his abuse of authority and bias complaint about the handling of his request for an exception to Section 6.1 of ST/AI/2010/3; however, he did not receive a response by 28 March 2014, the date he made a request for management evaluation. The Appellant contended before the UNDT that the Administration's failure to respond by that date amounted to an implied decision that could be judicially reviewed – especially since he had sought management evaluation of that implied decision.

35. The UNDT found the Appellant's contention to have no merit, concluding that “at the time of [the Appellant's] request for management evaluation, there was no [implied] decision against which an appeal could have been filed”. The UNDT found that the application also was not receivable on this ground, stating:<sup>6</sup>

... [...] an applicant may not unilaterally determine the date of the decision when faced with the silence of the Administration.

... The question to be considered by the Tribunal is whether the delay of ten working days on the part of OHRM in communicating a decision to the [Appellant] could reasonably and sensibly be construed as an implied decision on the part of the Administration to deny the [Appellant's] request. [...]

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<sup>5</sup> *Ibid*, citing *Jennings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-184, para. 26 and *Diagne et al. v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-067, para. 22.

<sup>6</sup> Impugned Judgment, paras. 11-16 (internal cites omitted; original emphasis).



... Section 5.14 of ST/SGB/2008/5 [...] states that “[u]pon receipt of a formal complaint or report, the responsible official will *promptly* review the complaint or report to assess whether it appears to have been made in good faith and whether there are sufficient grounds to warrant a formal fact-finding investigation” [...].

... What constitutes a prompt reply is not defined but common sense dictates that it must refer to a reasonable period in the circumstances of a particular complaint. Having received two out of office notifications in relation to his email to OHRM dated 14 March 2014, the [Appellant] filed a request for management evaluation on 28 March 2014.

... The absence of a response by OHRM, during a delay of ten working days between the [Appellant’s] request of 14 March 2014 to carry out an investigation and his request for management evaluation on 28 March 2014, could not reasonably and sensibly be considered as an implied unilateral decision. It could also not be construed as a failure to act promptly in accordance with ST/SGB/2008/5. [...]

... The Tribunal finds that the absence of a response within ten working days does not constitute an appealable administrative decision and that the request for management evaluation was premature. There was in fact no decision at the time.

36. The Appeals Tribunal has held that “[t]he date of an [implied] administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine”.<sup>7</sup> As the UNDT found, it was unreasonable for the Appellant to assume that a decision regarding his request for an investigation could have been reached within fourteen days from his request – especially when he was not prejudiced or harmed in the interim. A staff member “may not unilaterally determine the date of the administrative decision for the purpose of challenging it”.<sup>8</sup> Yet, that is what the Appellant attempts to do. Thus, the Appeals Tribunal determines that the UNDT correctly concluded that there was no implied administrative decision to challenge at the time the Appellant filed his judicial review application and that his application was also not receivable on this ground.

*Did the UNDT err in awarding costs?*

37. The Dispute Tribunal awarded costs against the Appellant in the amount of USD 1,500, pursuant to Article 10(6) of the UNDT Statute. That provision provides: “Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before it, it may

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<sup>7</sup> *Rabee v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2013-UNAT-296, para. 19, citing *Rosana v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-273, para. 25.

<sup>8</sup> *Rabee, ibid*, para. 19, citing *Rosana, ibid*, para. 24.

award costs against that party.” “In view of this limitation, it is incumbent on ... [the Dispute] Tribunal awarding costs to state the reasons on which its award of costs is based.”<sup>9</sup>

38. The UNDT stated its reasons for awarding costs against the Appellant, as follows:<sup>10</sup>

... Costs may be awarded against an applicant who presents a frivolous claim before the Tribunal.

... In assessing whether the [Appellant’s] claim is frivolous and, if so, whether the making of such a claim amounts to an abuse of process, the Tribunal takes note of the fact that the [Appellant] is no stranger to the [Dispute] Tribunal’s procedures, having filed five applications before the Dispute Tribunal [...] in the past 36 months.

... By no stretch of the imagination could [the Appellant] reasonably have construed the Appeals Tribunal’s ruling in *Tabari*<sup>11</sup> as sanctioning the filing of a request for management evaluation, followed by a claim to the [Dispute] Tribunal, on the basis of an implied decision after a delay of only ten working days.

... The [Appellant] has filed a huge volume of unnecessary documents and has taken up time and resources which could have been expended in dealing with the cumulative backlog of cases. Such conduct amounts to an improper use of the proceedings before the court. There can be no doubt that the [Appellant] knew or ought reasonably to have known that step one in the process is to receive an administrative decision. Step two is to submit that decision, where appropriate, to a management evaluation. Step three is to file a reasoned application before the [Dispute] Tribunal within the applicable time limit.

... On 29 April 2014, the [MEU] informed the [appellant] that his previous request for management evaluation of the implied refusal of OHRM was not receivable as there had not been an administrative decision which may be the subject of management evaluation. Notwithstanding this clear indication, the [Appellant] filed his application, without complying with step two of the process [...].

... The [Appellant] has filed a huge volume of documents in support of a claim that is frivolous. The [Dispute] Tribunal finds that the manner in which the [Appellant] has conducted these proceedings amounts to an abuse of process [...].

39. The Appeals Tribunal finds no errors of fact or law by the UNDT in awarding costs against the Appellant. The Appellant was well-aware of his obligation to comply with Staff Rule 11.2(a), yet he: (a) intentionally failed to seek management evaluation of a written decision and, nevertheless, filed an application for judicial review; and (b) filed an application for

<sup>9</sup> *Machanguana v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-476, para. 12 (internal cites omitted).

<sup>10</sup> Impugned Judgment, paras. 22-27 (internal cites omitted).

<sup>11</sup> *Tabari v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-030 and Judgment No. 2011-UNAT-177.

judicial review when it was unreasonable for him to assume there was an implied decision – especially after being advised by the MEU on 29 April 2014 that there was no decision for it to review.

40. The filing of a frivolous application that was clearly not receivable by a staff member who has prior experience before the tribunals of the United Nations' internal justice system is a manifest abuse of the Dispute Tribunal's process. As we held in *Mosha*, it is not an error for the UNDT to award costs against a party filing a frivolous application, which is an abuse of process.<sup>12</sup>

41. Further, the Appeals Tribunal finds the UNDT did not err when it also considered the huge volume of unnecessary documents filed to support the frivolous application as another factor supporting its conclusion that the Appellant manifestly abused the proceedings.

42. Finally, there is no merit to the Appellant's several claims that the UNDT cannot legally award costs unless: (a) the application seeks frivolous relief, (b) the other party has requested costs, (c) prior notice is given to the party against whom costs may be awarded, or (d) a party has criticized the Tribunal or refused to comply with its orders. None of these are requirements or limitations set forth in either Article 10(6) of the UNDT Statute or the Appeals Tribunal's jurisprudence.

### **Judgment**

43. The appeal is denied and Judgment No. UNDT/2014/107 is affirmed.

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<sup>12</sup> *Mosha v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-446.

Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of July 2015 in Geneva, Switzerland.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Faherty

Entered in the Register on this 20<sup>th</sup> day of August 2015 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar