



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

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Judgment No. 2016-UNAT-694

**Monarawila  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge John Murphy, Presiding Judge Richard Lussick Judge Martha Halfeld
Case No.:	2016-924
Date:	28 October 2016
Registrar:	Weicheng Lin

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Counsel for Ms. Monarawila: Ibrahim Faye

Counsel for Secretary-General: Wambui Mwangi

**JUDGE JOHN MURPHY, PRESIDING.**

1. The United Nations Appeals Tribunal (UNAT) has before it an appeal against Judgment on Receivability No. UNDT/2016/019, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 10 March 2016, in the case of *Monarawila v. Secretary-General of the United Nations*. Ms. Dayanthi Monarawila filed the appeal on 29 April 2016, and the Secretary-General filed an answer on 1 July 2016.

**Facts and Procedure**

2. On 23 January 2015, the Appellant submitted a request for management evaluation of abuse of authority, harassment and discrimination which she alleged she had been subjected to between 2009 and the date of the request. She referred to “various decisions” taken by the Investment Management Division (IMD) of the United Nations Joint Staff Pension Fund (UNJSPF) during the specified time period and attached a document titled “Sequence of Events”, which set out her concerns and contentions in further detail.

3. The Management Evaluation Unit (MEU) responded to the Appellant’s request in a letter dated 20 February 2015, in which it informed her that her request was not receivable principally on the ground that she had failed to precisely identify the contested administrative decisions, noting that the purpose of management evaluation under the Staff Rules was limited to reviewing specific administrative decisions. The MEU also was of the view that her request was not receivable *ratione temporis*, because her request for management evaluation of the various decisions taken since 2009 was time-barred, as it was not sent within 60 calendar days from the date of her receipt of the notification of any contested decision.

4. Despite the fact that the Appellant had not specified any contested decision with precision, the MEU, in its letter of 20 February 2015, identified five possible decisions in issue, namely: (a) a rejected request for annual leave in August 2010; (b) reassignment to cover a colleague on maternity leave in European Equities in April 2012; (c) reassignment to work with travel processing in July 2012; (d) lack of official reassignment from Administration to Investment since 2012; and (e) non-selection for the position of Senior Investment Assistant at the G-7 level in June 2014.

5. The MEU further stated that the Appellant's request was not receivable because complaints regarding abuse of authority, harassment and discrimination should be addressed using the procedure described in Secretary-General's Bulletin ST/SGB/2008/5 titled "Prohibition of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority".

6. On 16 April 2015, the Appellant filed her application with the Dispute Tribunal. In the relevant part of the *pro forma* application form requiring details of the contested decision, she wrote:

I have been exposed to unfriendly working environment that resulted in the gradual deterioration of my health and wellbeing in connection with improper administrative decisions.

7. The application form contained insufficient information in relation to the other details of the contested decision. In the space for indicating the name and title of the official who made the decision(s), the Appellant merely stated "UNJSPF/IMD Management". While in the space for indicating the date on which the decision(s) were made, the Appellant wrote: "Several decisions imposed on me from May 2009 till April 2015".

8. In the body of the application, the Appellant expounded at some length about difficulties and grievances she had experienced in the work environment after her return to UNJSPF from mission assignments in 2009.

9. The application sets out a chronology of alleged conduct by her supervisors and others from May 2009 to February 2014 regarding various matters, but in the main related to work assignments and requests for annual leave. One issue to which the Appellant attached much significance was the refusal of her request for annual leave for the period from 19 August 2010 to 10 September 2010 so that she could care for her ailing, elderly mother for whom she was the primary caregiver. A few days after her request for leave was refused, she fainted and fell on the train on her way home. She suffered a concussion and had medical and psychological complaints thereafter. In the concluding paragraph of the body of the application she stated:

The foregoing is to demonstrate the physical and mental pain I endured over time and the damage it has caused from the breakdown in 2010 and the consequent head injury that culminated from an overworked situation with extreme stress, lack of rest and recuperation for one year, negligence and a hostile work environment together with

lack of consideration of well[-]being of its staff by IMD Administration. The tension and distress from an administrative decision to deny annual leave left me helpless and abandoned. I was unable to help my mother. Add to my misfortune, symptoms relating to post-concussion syndrome did not surface within the prescribed 60-day period after the injury to facilitate the course of action through MEU for management evaluation which was rejected as time barred and “non receivable” when I finally presented my case.

10. Many of the averments made by the Appellant in the application are of a general nature and consist *inter alia* of allegations of being overworked and subjected to unfounded accusations, derogatory comments and an unhealthy work environment. She also referred to the ailments suffered by her for which she received medical and psychological treatment, the details of which are set out in the application. She complained essentially that her health issues and personal family pressures had not received sympathetic consideration and this had added to the deterioration of her professional and personal life. In the part of the application requiring her to identify the remedy she was seeking, the Appellant wrote:

I request this Tribunal to assess the damages and reliefs appropriate in regards to the extent to which my wellbeing and health has been diminished as a result of the Administration’s violation of my rights under the Staff Regulations and Rules.

11. On 18 May 2015, the Respondent filed a reply limited to receivability, submitting that the application was not receivable because the Appellant had failed to submit a timely request for management evaluation and did not identify a reviewable administrative decision. Moreover, some of the alleged decisions were taken more than three years prior to the date of the application and thus the Respondent contended that the application was not receivable in terms of Article 8(4) of the UNDT Statute. The Respondent accordingly maintained that the UNDT did not have jurisdiction to hear the application.

12. By Order No. 90 (NY/2015), dated 19 May 2015, the UNDT directed the Appellant to file a response, if any, to the receivability issues raised in the Respondent’s reply. On 26 May 2015, the Appellant filed a response to Order No. 90 (NY/2015) and annexed medical reports in support of her claim. She claimed that the Respondent was confused about the nature of the contested decision. She said:

The overall situation as chronologically described in the Application on Merits, established the causation connecting the Administration’s full responsibility for improper administrative actions that caused detrimental and irreversible damage to

[her] current and future physical and mental wellbeing. ... The denial of an earned entitlement of annual leave is an “administrative decision” that violated the [Appellant’s] rights, which subsequently lead [sic] to a series of unfortunate events having a lifelong detrimental impact to the [Appellant].

13. The decision denying the Appellant annual leave in 2010 for the full period that she had requested is clearly at the core of her complaint. She did not identify the exact date of the decision. The denial of leave, she said, contributed to an unfriendly work environment. The denial of her request, coupled with an overwhelming workload and a lack of rest and recuperation for over one year between 2009 and 2010, had taken a toll on her wellbeing and resulted in serious health problems. The Appellant requested the UNDT to give due consideration to the chain of events described in her submissions and the resulting harm. She submitted that statutory time limits and deadlines should not apply and that, considering the unique nature of the events set forth in the application, her application should be regarded as a case “out of the ordinary”.

14. The broad formulation of the claims prompted the UNDT to elicit from the Appellant further details of the precise acts and/or omissions which she alleged were in non-compliance with the terms of her appointment or contractual entitlements so that any justiciable claim, as contemplated in Article 2(1)(a) of the UNDT Statute, was clearly identified. To that end, the Dispute Tribunal held two case management discussions (CMD) and issued a number of orders with the purpose of eliciting the necessary details from the Appellant, in order to ascertain whether there had been compliance with the technical requirements for filing a claim under its Statute, to explore the underlying workplace issues, and to explore whether alternative dispute resolution offered the parties a constructive outcome.

15. At the first CMD on 23 July 2015, the Appellant was informed that, in accordance with Article 8(4) of its Statute, the UNDT could not review decisions notified to a staff member more than three years prior to the filing of an application. The Appellant’s attention was also drawn to the provisions of Appendix D to the Staff Rules (Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations), which is the Organization’s specific procedure and rules to be followed in respect of a claim for service-incurred injury or illness. The Appellant was further informed of the need for her to rebut the Respondent’s contentions on receivability. By Order No. 161 (NY/2015) dated 23 July 2015, the UNDT granted the Appellant leave to file concise submissions,

not exceeding three pages, identifying and prioritizing the core issues in her case by 30 July 2015 and ordered the parties to attend a second CMD, on 31 July 2015.

16. The second CMD was rescheduled to take place on 29 July 2015 at which the parties agreed that a stay of proceedings for 30 days would facilitate further discussion towards a possible resolution. By Order No. 171 (NY/2015) dated 30 July 2015, the UNDT ordered a stay of proceedings for a maximum period of 30 days and directed the Appellant to particularize the several discrete claims, indicating the dates when each relevant decision was taken and identifying, if possible, the decision-maker(s).

17. On 26 August 2015, the Appellant filed a submission confirming that she sought a judicial determination of the merits of her claim and provided clarification as to the nature of her case. She stated that she had informed Mr. Ernest Hunt, a Senior Investment Officer at UNJSPF involved in her supervision, of her health issues in April 2014 and informed the Executive Office of UNJSPF in August and October 2014. The Appellant also noted that she had requested a job description “over one year ago” and it had not, at the time of the submission, been finalized. From her submissions, it appeared that she was contesting: (a) an increase in her workload on a “continual” basis from 2012 through to 2015 despite her known debilitating health condition; (b) not being informed of her rights to file an application under Appendix D to the Staff Rules; (c) failure of the Ombudsman Office and the Ethics Office “to provide constructive assistance to remedy the situation”; (d) exposure to a hostile working environment which seriously compromised her health; and (e) failure of the Medical Service to take proper action in light of her submitted medical reports. She requested the UNDT to assess and award compensation as appropriate.

18. On 3 September 2015, the Respondent filed a response to the Appellant’s submission, stating that the Appellant had not identified any administrative decision that fell within the UNDT’s competence and reiterated that the application was not receivable. Attempts to resolve and narrow the issues by further case management were not successful.

19. By Order No. 215 (NY/2015) dated 4 September 2015, the Dispute Tribunal ordered the Respondent to file a submission stating whether it was its case that the issues raised by the Appellant had, in effect, been settled by reassigning her to new duties and responsibilities and, if so, to state the date of the said reassignment, giving sufficient particulars thereof. The Respondent was directed to explain what other steps, if any, had been taken prior to the

reassignment of the Appellant to deal with her complaints about an excessive workload given her medical condition. The Respondent was required to file its response by 11 September 2015 and the Appellant was given until 17 September 2015 to reply. On 11 September 2015, the Respondent filed a response to Order No. 215 (NY/2015) stating that, while he was not aware of the precise administrative decision at issue in the case, he submitted that any dispute with the Appellant regarding her workplace grievances had been settled by reassigning her to new duties and responsibilities. On 15 September 2015, the UNDT, without waiting for the Appellant's reply, issued Order No. 229 (NY/2015), which noted the absence of precise particulars regarding any outstanding issues in relation to which it had jurisdiction, and ordered the Appellant to file a submission identifying the precise dates and particulars of the administrative decision or decisions being challenged, indicating the date when each decision had been the subject of a request for management evaluation.

20. On 16 September 2015, the Appellant filed a motion for recusal of the Presiding Judge (Judge Meeran). The UNDT, on 16 September 2015, ordered a stay of proceedings (Order No. 231 (NY/2015)) pending the outcome of the motion for recusal. The motion for recusal complained, amongst other things, about certain remarks made by the Presiding Judge during the CMDs, in particular that he said the case could have been thrown out early or pended for a few years and that he had more important cases to deal with. The Appellant also complained that Order No. 229 (NY/2015) did not give her any opportunity to challenge, confirm or otherwise refute the Respondent's averments in the submission it filed on 11 September 2015. She complained further that despite Judge Meeran in Order No. 215 (NY/2015) requiring the Respondent to limit its response to three pages the Respondent had filed a ten-page submission, while she was limited to a three-page reply, later reduced to two pages. And finally, she complained about the presence of certain officials of IMD, Ms. Boykin and Mr. Hunt, at the CMDs. These issues and the manner in which she perceived the case to have been handled led the Appellant to doubt the ability of the Presiding Judge to make a fully independent and impartial decision with respect to the merits of her application and gave rise to a reasonable suspicion of bias.

21. By Order No. 33 (NBI/2016) dated 26 February 2016, the President of the UNDT, acting in accordance with Article 28(2) of its Rules of Procedure, rejected the Appellant's motion for recusal. The President of the UNDT was not convinced that the exchanges upon which the Appellant relied gave rise to a reasonable apprehension of bias or that there was a real possibility

that the Presiding Judge would be biased in determining the merits of the case. In his view, the Presiding Judge merely explained the status of the Appellant's case to her and no sinister motive could be attributed to his comment that the case would take time to be resolved. The Presiding Judge was merely seeking to convey that if no amicable resolution was reached the case might have to wait a while for its turn on the docket. The primary aim of a CMD was for the judge and the parties to identify the issues for trial and this could not be achieved without the active participation of the judge, which may at times involve vigorous questioning or suggestions from the judge. The expression of views by a judge at any stage of the proceedings did not, on that account alone, indicate prejudgment. Tentative expressions of judicial opinions in the course of a matter were intended to assist litigants by giving them an opportunity to deal with them. The UNDT President also appears to have accepted Judge Meeran's explanation that the presence of the IMD officials at the CMDs was desirable as they could possibly be constructive in finding solutions to the problems. There is no formal appeal against the 26 February 2016 Order of the President of the UNDT rejecting the motion for recusal, although the Appellant reiterates the complaints made in the recusal motion alleging bias and procedural unfairness.

22. Shortly after the motion for recusal was dismissed on 26 February 2016, the UNDT handed down its Judgment on Receivability on 10 March 2016. In that Judgment, the UNDT analysed the Appellant's wide-ranging grievances generously and accepted that the Appellant had identified three decisions for consideration by it, namely: (a) a decision taken in 2010, in which she was denied the full period of annual leave that she had requested; (b) an implied decision or decisions not to provide her with a job description in a timely manner; and (c) an implied decision or decisions not to reduce her workload despite awareness on the part of management that she was suffering from health issues. The ultimate issue then was whether the Appellant should be awarded compensation for the effect of those decisions on her health. The primary question, though, was whether the application was receivable. Article 2(1)(a) of the UNDT Statute provides that the UNDT shall be competent to hear and pass judgment on an application "[t]o appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". 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". Furthermore, Article 8(4) of the said Statute provides that an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision.

23. With regard to the decision concerning the Appellant's annual leave, the UNDT noted that the Appellant had submitted a request and a revised request for leave in August and September 2010, in early August 2010. There was a response to her first request on 6 August 2010 asking her to revise her request having regard to the requirements of the office. There was no response on record to her revised request. Considering the circumstances, the UNDT was of the view that the Appellant knew or ought reasonably to have known in September 2010 of the contested decision, effectively refusing her revised request. The Appellant filed her application to the UNDT in April 2015, more than three years after her receipt of the contested decision, and hence the UNDT held that the application concerning the denial of the request for annual leave was not receivable in terms of Article 8(4) of the UNDT Statute.

24. As for the implied decisions in relation to her job description and workload, the UNDT held that the Appellant had not clearly identified them in her request for management evaluation. The purpose of management evaluation was to afford the Administration an opportunity to correct errors in the hope of avoiding judicial review. It was therefore essential to clearly identify the contested decisions. The Appellant failed to do this, and accordingly the elements of the application regarding these decisions were not receivable in accordance with Article 8(1)(c) of the UNDT Statute. The application was therefore dismissed on the grounds that the Appellant failed to identify any reviewable administrative decisions. The Dispute Tribunal also ordered costs in the amount of USD 500 against the Appellant, in terms of Article 10(6) of the UNDT Statute, on the ground that she manifestly abused the proceedings by her persistence in advancing legally unsustainable contentions, despite guidance offered at the CMDs.

### **Submissions and Considerations**

25. In her appeal before us, the Appellant relies on three general grounds of appeal within the framework of Article 2(1) of the Statute of the Appeals Tribunal. She maintains firstly that the UNDT committed an error of procedure, such as to affect the decision of the case. In this regard, she alleges that her due process rights were violated on a number of occasions during the proceedings and that the President of the UNDT erred in not upholding her recusal motion. Aligned to this ground is a submission that the UNDT acted inappropriately in granting a summary judgment. Secondly, the Appellant contends that the UNDT erred on a question of fact, resulting in a manifestly unreasonable decision. Here, the criticism of the UNDT is that it applied too narrow a definition of what constitutes an appealable administrative decision. And finally, she alleges that the UNDT exceeded its jurisdiction or competence in awarding costs

against her. The relief claimed was for i) the UNDT's order of costs against her to be vacated; ii) the matter to be remanded to the UNDT for reconsideration on the merits, and iii) an award of an unspecified amount of compensation for the UNDT's violation of her rights to due process.

26. The Appellant's submission that her due process rights were violated rests in part on the fact that the UNDT issued Order No. 229 without waiting for her reply, denying her an opportunity to respond to the diverse assertions in the Respondent's submission of 11 September 2015, strictly contrary to the principle of *audi alteram partem*. The UNDT also reduced the length of her submission to two pages while allowing the Secretary-General to file a five-page submission with numerous annexures. This, in the opinion of the Appellant, indicated that the Judge appeared to have already "made up his mind" about her case, thereby destroying any prospect of "natural justice". The abrupt conclusion of the UNDT proceedings and the move to "summary judgment" on receivability after her motion for recusal was dismissed, she argued, denied her legitimate expectation of the resumption of the UNDT proceedings, and raised the perception that the motion for recusal played an important role in the UNDT's decision to issue a summary judgment. The curtailment of the proceedings as a result of the issuance of a summary judgment deprived the UNDT of the opportunity to assess the evidence provided by the Appellant and unjustly awarded the Respondent a reduced litigation cost.

27. The Respondent did not deal with the Appellant's allegations of procedural unfairness in his answer. Not all procedural errors will justify interfering with a judgment of the UNDT. The error must be shown to have affected the decision of the case. In that sense, it must be material to the outcome.

28. The UNDT's restriction of the number of permitted pages of submissions made during the course of case management did not affect the decision and was not material to the outcome on the question of receivability. Restricting the length of submissions is an appropriate means of case management, aimed at crystallizing the issues for adjudication, and the judge's directions in that regard fall within an acceptable range of conduct in the process of case management. Any excess pages could have been struck out or leave might have been granted to receive the additional pages provided that there was no prejudice. The UNDT has broad discretion with respect to case management and is in the best position to decide what is appropriate for the fair and expeditious disposal of a case and doing justice to the parties. This Tribunal has consistently

held that it will not lightly interfere with the discretion of the UNDT in the management of cases vested in it by its Rules of Procedure.<sup>1</sup>

29. As for the challenge to the UNDT's decision to issue a summary judgment, it is doubtful that it in fact did so. Summary judgment usually occurs prior to the filing of a reply. Nonetheless, even if the manner in which the UNDT Judgment on Receivability was given could be interpreted to be a summary judgment, then it was permissible under Article 9 of the UNDT Rules of Procedure, which permits a party to move for summary judgment when there is no dispute as to the material facts of the case and a party is entitled to a judgment as a matter of law. By the same token, the UNDT may determine, on its own initiative, that a summary judgment is appropriate. Considering the narrow scope and dispositive nature of the receivability issues, it was entirely appropriate, after the case management process had been concluded, for the UNDT to grant a summary judgment; and there can be no legitimate inference that its decision to do so was influenced by any bias or prejudgment on the part of the Presiding Judge.

30. The UNDT, when it issued Order No. 229 (NY/2015), might have done better to have waited for the Appellant's reply. But its error, if such, did not affect the decision of the case. The facts upon which the determination of the questions of receivability rested were essentially common cause and beyond dispute. Additional submissions would not have altered that outcome.

31. There is accordingly no merit in the ground of appeal alleging procedural error.

32. The factual and legal basis upon which the UNDT concluded that the application was not receivable was determined by the administrative decisions it considered at issue. It happens routinely that a UNDT judge may need to identify the existence and date of a contested decision which may be express or implied. This requires adequate interpretation and comprehension of the application and the response submitted by the parties. The judge has an inherent power to define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review. With an implied administrative decision, the UNDT must determine the date on which the staff member knew or reasonably should

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<sup>1</sup> *James v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-600, para. 19, citing *Pérez-Soto v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-329, and *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-354; *Namrouti v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-593, paras. 34-36.

have known of the decision he or she contests, based on objective elements that both parties can accurately determine.

33. The UNDT in this case concluded that the decision denying the Appellant annual leave in August 2010 was both express and implied in that there was no response to the Appellant's revised request for leave which the Administration asked her to submit in its response of 6 August 2010. Having regard to the fact that the request was for leave in September 2010, the UNDT concluded that the Appellant ought reasonably to have known in September 2010 that her request had been refused. Her application to the UNDT was filed on 16 April 2015. And hence it is indisputable that the application in relation to this decision was not receivable *ratione temporis* in terms of Article 8(4) of the UNDT Statute. In addition, Article 8(1)(d) of the UNDT Statute provides that an application must be filed within the stipulated deadlines. In cases where a management evaluation of the contested decision is required, it must be filed within 90 calendar days of the applicant's receipt of the response by management to his or her submission or within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices. In cases where a management evaluation of the contested decision is not required, the application must be filed within 90 calendar days of the applicant's receipt of the administrative decision. The Appellant significantly exceeded these time limits as well and appears not to have applied for the deadlines to be waived or suspended exceptionally as contemplated in Article 8(3) of the UNDT Statute, though this would not have saved her from the provisions of Article 8(4) of the same Statute.

34. The Appellant's contention that the UNDT applied "a very narrow definition of what is an appealable or contestable administrative decision" cannot be sustained. The refusal of her request for leave, albeit in the form of a failure to take a decision, was undoubtedly a decision. The UNDT fully appreciated that and likewise generously considered the failure to resolve her job description or to deal with the Appellant's health issues in relation to her workload as decisions. Its determination of the Appellant's case did not turn on its narrow definition of an administrative decision. It, in fact, took a broad view. Noting that the Appellant had not clearly identified the implied decisions regarding her job description and workload, it nonetheless inferred the existence of the implied decisions as part of a chronology of events occurring over a number of years as set out in the Appellant's document titled "Sequence of Events". Its ultimate

finding, though, was that it lacked jurisdiction *ratione temporis* in relation to the request for leave, and *ratione materiae* in relation to the other decisions, because the Appellant had failed in seeking management evaluation in relation to the latter in January 2015 to clearly identify the decisions that she was contesting when she submitted a request for management evaluation. The filing of a request for management evaluation is a condition *sine qua non* for the jurisdiction of the UNDT to review an administrative decision. Where an applicant has failed to file the statutorily required request for management evaluation, the UNDT lacks jurisdiction *ratione materiae* over the case.<sup>2</sup> The UNDT was accordingly correct in fact and in law in holding that the Appellant's application was not receivable.

35. The Appellant submits that the UNDT exceeded its jurisdiction and abused its power by awarding costs against her because its Judgment on Receivability did not deal with the merits of the case. She denied any bad faith, misrepresentation of facts, delaying tactics or improper intent in her pursuit of litigation. Nor, she said, was the application frivolous or vexatious. She thus requests that the UNDT's order of costs against her be vacated. The Appellant misconstrues the exact reason the UNDT awarded costs against her. It found that she had manifestly abused the proceedings by her persistence in advancing legally unsustainable contentions, despite guidance offered at the CMDs on the applicable legal principles. The UNDT put the Appellant on clear notice that it lacked jurisdiction to review decisions notified to her more than three years prior to filing the application, and that she was required to better identify the decisions she was contesting, their relevant particulars and the remedy she sought. She was further advised that Appendix D to the Staff Rules provided a specific procedure to address claims for service-related injuries and illnesses. For the most part, it is fair to say, she did not heed the advice given to her.

36. The General Assembly, in paragraph 42 of resolution 67/241 of 24 December 2012, has emphasized the importance of effective measures against the filing of frivolous applications and encouraged judges to make use of measures available to them, which include the discretionary power in Article 10(6) of the UNDT Statute to award costs against parties who manifestly abuse the UNDT proceedings. Groundless, frivolous and vexatious applications are, by their nature, an abuse of process. They unduly burden the administration of justice by unnecessarily adding to the caseload and the consequent delay in finalizing legitimate cases, thus impacting adversely on the efficient, cost-effective and expeditious resolution of employment disputes.

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<sup>2</sup> *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, paras. 21-22.

37. The filing of an application which is clearly not receivable and the persistence with it in the face of dependable judicial advice to that effect will ordinarily be considered frivolous and vexatious. Much will depend on the facts and circumstances. Thus, in *Faye*,<sup>3</sup> this Tribunal did not consider the Appellant's persistence as an abuse, particularly where there was no jurisprudence dealing directly with the right of a staff representative to bring an application. The present case is more akin to *Terragnolo*,<sup>4</sup> in which the Appellant was ordered to pay costs of USD 1,500 because he had intentionally failed to seek management evaluation of a decision and filed an application for judicial review when it was unreasonable to assume there was an implied decision – especially after being advised by the MEU that there was no decision to review. In this case, despite it being patently obvious that the decision regarding the Appellant's request for leave was not receivable *ratione temporis*, and her being informed to that effect by the UNDT and the MEU, the Appellant stubbornly and unreasonably persisted with her application. The UNDT therefore reasonably and rationally exercised its discretion in determining that the Appellant abused the process by pursuing the matter after she had been explicitly made aware in the CMDs, more than once, of the problems in the pleading of her case and had been directed by the Judge specifically to better particularize her claims and to address the issues of receivability, which she then failed to do in a meaningful fashion. In making the award it did, the UNDT was guided by similar cases involving manifest abuse of proceedings and the sums awarded in them. In the circumstances, the exercise of the discretion was reasonable and the award proportionate. Hence, the UNDT did not err in ordering the Appellant to pay costs for abuse of the proceedings.

### **Judgment**

38. The appeal is dismissed and Judgment No. UNDT/2016/019 is hereby affirmed.

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<sup>3</sup> *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654.

<sup>4</sup> *Terragnolo v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-566.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of October 2016 in New York, United States.

*(Signed)*

Judge Murphy, Presiding

*(Signed)*

Judge Lussick

*(Signed)*

Judge Halfeld

Entered in the Register on this 20<sup>th</sup> day of December 2016 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar