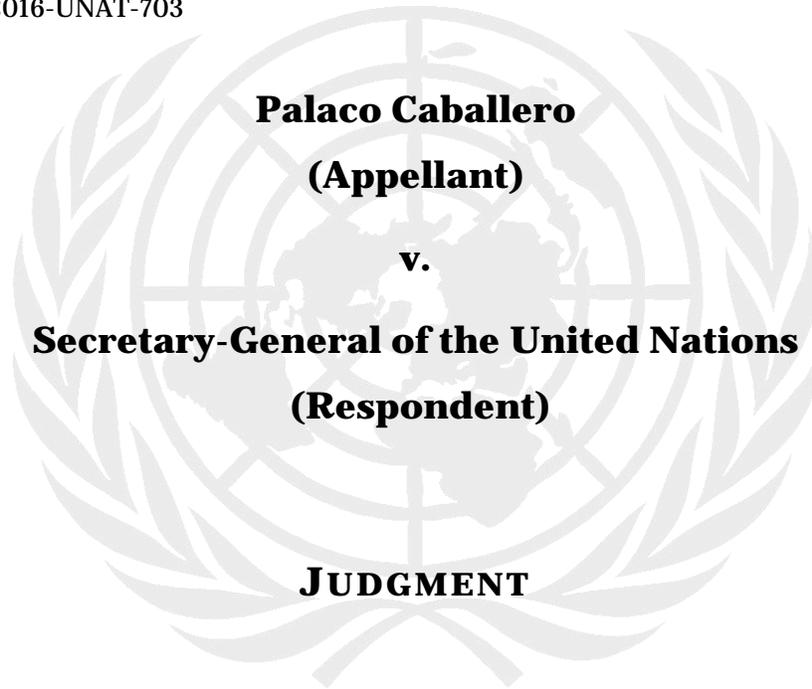




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-703



Before: Judge Deborah Thomas-Felix, Presiding
Judge Dimitrios Raikos
Judge Sabine Knierim

Case No.: 2016-934

Date: 28 October 2016

Registrar: Weicheng Lin

Counsel for Ms. Palaco Caballero: Self-represented

Counsel for Secretary-General: Ernesto Bondikov

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Summary Judgment No. UNDT/2016/061, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 19 May 2016, in the case of *Palaco Caballero v. Secretary-General of the United Nations*. Ms. Flor de Maria Palaco Caballero filed her appeal on 25 May 2016, and the Secretary-General filed his answer on 21 July 2016.

Facts and Procedure

2. The following facts as found by the Dispute Tribunal are undisputed:¹

... The Applicant [was] employed as Associate Legal Officer (P-2) at the Registry of the International Criminal Tribunal for the Former Yugoslavia (“ICTY”), on the basis of a temporary contract.

... By e-mail dated 2 February 2016, a human resources clerk at the Registry informed an employee of the Chambers Legal Support Section that in light of the exhaustion of all other benefits to which the Applicant was entitled, she was placed on special leave without pay during the period from 27 January 2016 to 14 February 2016. The Applicant was copied on the e-mail.

... By memorandum dated 2 March 2016, the Applicant contested before the Registrar of the ICTY, the decision to place her on special leave without pay, which “was notified to her by a staff member from Human Resources by e-mail dated 2 February [2016]”. In her memorandum, the Applicant also referred to a memorandum dated 4 February 2016 by which the Registrar, responding to a request from the Applicant, would have informed the latter that, until she resumed work, the Human Resources Section would continue to consider her to be on special leave without pay.

... By memorandum of 16 March 2016, the Registrar of the ICTY informed the Applicant that, if she wished to formally contest the decision to place her on special leave without pay, she would have to submit, in the first place, a request for management evaluation to the Management Evaluation Unit [(MEU)].

... The Applicant filed [an] application [with the Dispute Tribunal] on 11 May 2016, stressing that she had not requested a management evaluation.

¹ Impugned Judgment, paras. 2-6.

3. As summarized by the UNDT, Ms. Palaco Caballero's principal contentions before the UNDT were that the "absence of formal administrative action on the part of the Registrar of the ICTY ha[d] deprived her of her right to contest the decision by way of management evaluation; and her placement on special leave without pay [was] unlawful because of the lack of administrative action".² She sought Euros 10,000 in compensation.

4. On 19 May 2016, the UNDT summarily rejected Ms. Palaco Caballero's application as non-receivable *ratione materiae* as she had not previously submitted the contested decision for management evaluation, as required by Article 8 of the Statute of the Dispute Tribunal (UNDT Statute) and Staff Rule 11.2(a) and (c). In reaching its decision, the UNDT noted:³

... [T]he Applicant acknowledged in her application and, prior to that, in her memorandum of 2 March 2016 addressed to the Registrar of the ICTY, that she was informed of the decision to place her on special leave without pay by notification of 2 February 2016. Therefore, there can be no doubt that, in accordance with the [provisions of Article 8 of the Statute of the Dispute Tribunal and Staff Rules 11.2(a) and (c)], to allow the [Dispute] Tribunal to declare the application receivable, the Applicant should have submitted the contested decision for management evaluation within the prescribed deadline.

The UNDT further found that in the absence of a timely request for management evaluation, the application was irreceivable *ratione materiae*. It noted that, the statutory time limits had expired so that any potential request by Ms. Palaco Caballero for management evaluation would be time-barred.

5. In her appeal, filed on 25 May 2016, Ms. Palaco Caballero presents a copy of a letter dated 24 May 2016 entitled "Application to the MEU for review of the decision of 16 March 2016 by the Registrar of the [ICTY]". Ms. Palaco Caballero submits that in this letter, she had requested that the MEU take into account "various factors that warrant fairer treatment of [her] case and of her reasons for not observing the established deadlines".

² *Ibid.*, para. 7.

³ *Ibid.*, para. 11.

Submissions

Ms. Caballero's Appeal

6. Ms. Palaco Caballero was hospitalized on the night of 8-9 December 2015 “[f]ollowing a disagreement that took place at the [ICTY]”. In connection with that hospitalization, she was absent from work and subsequently placed on leave without pay for the period from 27 January 2016 to 14 February 2016. On 2 March 2016, Ms. Palaco Caballero wrote to the ICTY Registrar challenging the lawfulness of the decision to put her on special leave without pay, a point she made in her earlier letter to him on 4 February 2016 in connection with her request for compensation pursuant to Appendix D to the Staff Rules. On 7 March 2016, the ICTY Judge for whom Ms. Palaco Caballero worked wrote to the ICTY Registrar requesting “prompt and effective action to respond to the legal questions raised by [Ms. Palaco Caballero] and to enable her to be given fair treatment”.

7. On 16 March 2016, the Registrar replied to Ms. Palaco Caballero, which constituted the “formal notification ... that[,] because of her absence from work and the nature of her temporary appointment, she had been placed on special leave without pay ... [having] exhausted all her sick leave and annual leave”. Pursuant to Article 8 of the UNDT Statute, Ms. Palaco Caballero submits that given the 16 March 2016 notification, “the time frame for consideration by the Tribunal runs until 16 June 2016. Thus, on the basis of the [MEU]’s conclusions, the ... Appeals Tribunal w[ould] have competence to pass judgment on the present application” and “[s]hould the [MEU] find that it is competent to take a decision on [her] request for review, the ... Appeals Tribunal would have before it a new basis for jurisdiction”.

8. Ms. Palaco Caballero requests *inter alia* that the Appeals Tribunal “[s]uspend judgment pending the conclusions of the [MEU]”; [f]ind that [the Appeals Tribunal] is competent, should the [MEU] take a decision on [her] application contesting the administrative decision”; [r]econsider [her] case ...”; and [f]ind that [she] was a victim of [the Administration’s] failure to act and that, consequently, [award] ... damages in the amount of 5,000 euros”.

The Secretary-General's Answer

9. The UNDT correctly dismissed Ms. Palaco Caballero’s application as non-receivable *ratione materiae*. Ms. Palaco Caballero has failed to demonstrate any reversible error by the UNDT and, in fact, is not challenging the UNDT Judgment itself; rather, she is effectively asking

the Appeals Tribunal to assume jurisdiction over her case in an attempt to have her case tried on the merits.

10. Ms. Palaco Caballero may not “cure” her failure to timely request management evaluation. Her attempt to “reset the clock” by claiming that her management evaluation request dated 24 May 2016 was timely based on the Registrar’s 16 March 2016 “formal” response lacks merit and should be rejected. Moreover, her claim neither negates the UNDT’s findings (and her own prior submissions) identifying 2 February 2016 as the date upon which she received notice of the contested decision, nor the holding that her failure to timely seek management evaluation rendered her application irreceivable *ratione materiae*.

11. The Secretary-General submits the appeal should be rejected in its entirety.

Considerations

12. As a preliminary matter, Ms. Palaco Caballero filed a request for an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal’s Statute and Article 18(1) of the Appeals Tribunal’s Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. Moreover, we do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules. Thus, the request for an oral hearing is denied.

13. It is established jurisprudence that Article 8(1)(c) of the UNDT Statute provides for the submission of contested administrative decisions for management evaluation, as a mandatory first step prior to filing an application before the Dispute Tribunal, and that the Dispute Tribunal is not empowered to suspend or waive the deadlines for management evaluation.⁴

14. We agree with the findings of the UNDT that Ms. Palaco Caballero did not submit the contested decision for management evaluation prior to filing her application before the UNDT, as required by the provisions of Article 8 of the UNDT Statute and Staff Rules 11.2 (a) and (c). Indeed, this fact is undisputed.

⁴ *Gehr v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-613, paras. 10-12 (and cases cited therein).

15. Even if we were to accept Ms. Palaco Caballero's assertion that 16 March 2016 is the date upon which she received formal notification, she would also be time-barred as the deadline for filing a request for management evaluation, pursuant to Staff Rule 11.2(c), would have been 15 May 2016. As the UNDT observed in its Judgment issued on 19 May 2016, Ms. Palaco Caballero "ha[d] until today not yet submitted a request for management evaluation of the contested decision".⁵

16. Further, we agree that in the absence of a request for management evaluation of the contested decision, "the [Dispute] Tribunal cannot but declare the application irreceivable, *ratione materiae*".⁶

17. We have examined Ms. Palaco Caballero's appeal and find it to be without merit. Her assertions and the relief she requests in connection with her tardy request for management evaluation submitted on 24 May 2016 reflect a misunderstanding of the applicable rules as well as the competence of this Tribunal.

18. In the absence of a timely management evaluation request, we find no error in the UNDT's Judgment summarily dismissing Ms. Palaco Caballero's application as non-receivable *ratione materiae*. As we have stated before, "summary judgment is an appropriate tool to deal with issues of receivability in the United Nations internal system of administration of justice".⁷

Judgment

19. The appeal is dismissed and Summary Judgment No. UNDT/2016/061 is hereby affirmed.

⁵ Impugned Judgment, para. 12.

⁶ *Ibid.*

⁷ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 41.

Original and Authoritative Version: English

Dated this 28th day of October 2016 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

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

(Signed)

Weicheng Lin, Registrar