



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

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Judgment No. 2017-UNAT-739

**Fayek  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Deborah Thomas-Felix, Presiding Judge John Murphy Judge Sabine Knierim
Case No.:	2016-957
Date:	31 March 2017
Registrar:	Weicheng Lin

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Counsel for Ms. Fayek:	Joseph Grinblat
Counsel for Secretary-General:	Nathalie Defrasne

**JUDGE DEBORAH THOMAS-FELIX, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/103, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 28 July 2016, in the case of *Fayek v. Secretary-General of the United Nations*. Ms. Maha Fayek filed the appeal on 8 August 2016, and the Secretary-General filed his answer on 6 October 2016. On 7 October 2016, Ms. Fayek filed a motion seeking leave to file a reply to the Secretary-General's answer and on 19 October 2016, the Secretary-General filed his response to the motion.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... The Applicant joined the Organization on 1 August 2000 as a Radio Producer at the P-3 level in the French Language Unit, Radio Section, Radio and Television Service, News and Media Division, Department of Public Information (DPI). At the time of the ... application [before the UNDT], she [wa]s serving as Chief, UN Radio Guira FM at the P-4 level at [the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA)].

... On 4 April 2013, the Applicant filed a complaint of prohibited conduct against the Chief of the French Language Radio and the then Director of the News and Media Division of DPI.

... On 9 April 2014, a fact-finding panel was established to review the Applicant's allegations. On 17 March 2015, the panel submitted its report with the outcome of the investigation.

... By letter dated 11 April 2016, the Under-Secretary-General for Communications and Public Information informed the Applicant of the conclusion of the investigation and the actions taken by the Office of Human Resources Management (OHRM) in relation to her allegations. The case in relation to the Applicant's allegations was closed.

... On 10 July 2016, the Applicant filed an application with the [Dispute] Tribunal ... contesting the decision to close the case after investigation of her complaint against her supervisor and the then Director of the News and Media Division of [DPI] for prohibited conduct under ST/SGB/2008/5 (prohibition of discrimination, harassment

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<sup>1</sup> Impugned Judgment, paras. 3-7 (paragraph 7 incorporating part of paragraph 1).

including sexual harassment, and abuse of authority). The Applicant also contest[ed] the decision not to grant her compensation for the damages that she allegedly suffered.

3. On 28 July 2016, the UNDT issued Judgment on Receivability No. UNDT/2016/103 dismissing Ms. Fayek's application as not receivable. The UNDT found that requesting management evaluation was a mandatory first step in the judicial process. The contested decision to close Ms. Fayek's case concerning allegations of prohibited conduct did "not fall under any of the two categories of decisions for which a management evaluation is not required under [S]taff [R]ule 11.2(b), to wit, decisions taken pursuant to advice from technical bodies and the imposition of measures pursuant to [S]taff [R]ule 10.2 following a disciplinary process".<sup>2</sup> Since Ms. Fayek failed to request management evaluation, the UNDT dismissed the application as not receivable.

### **Submissions**

#### **Ms. Fayek's Appeal**

4. The UNDT erred in law in finding that her application was not receivable because she failed to request management evaluation. The contested decision was taken based on the report of a fact-finding panel which qualifies as a technical body. She was thus not required to request management evaluation. Moreover, the Department of Management had determined that Ms. Fayek's supervisor was guilty and reprimanded him.

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

5. Contrary to Ms. Fayek's claim, fact-finding panels do not fall in the category of technical bodies under Staff Rule 11.2(b). Decisions based on conclusions of fact-finding panels are to be challenged via management evaluation and before the Tribunals. Moreover, the Secretary-General has not designated fact-finding panels established under ST/SGB/2008/5 as technical bodies. The UNDT therefore correctly concluded that in the absence of a request for management evaluation, the application was not receivable.

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<sup>2</sup> *Ibid.*, para. 14.

### Considerations

#### *Ms. Fayek's motion for additional pleadings*

6. In her motion, Ms. Fayek contends that there is no exhaustive list published of what is considered a “technical body” in the context of exempting a decision from management evaluation and therefore she was justified in not seeking management evaluation for the contested decision.

7. Neither the Appeals Tribunal Statute nor the Appeals Tribunal Rules of Procedure (Rules) provide for an appellant to file an additional pleading after the respondent has filed his answer. Nevertheless, Article 31(1) of the Rules and Section II.A.3 of Practice Direction No. 1 of the Appeals Tribunal allow the Appeals Tribunal to grant a party’s motion to file additional pleadings if there are exceptional circumstances justifying the motion.<sup>3</sup>

8. In the present case, Ms. Fayek’s motion merely reiterates the arguments made in her appeal. She has failed to demonstrate exceptional circumstances to file additional pleadings and her motion is denied.

#### *Ms. Fayek's appeal*

9. Turning to Ms. Fayek’s appeal, the Appeals Tribunal recalls that Article 8 of the Dispute Tribunal Statute provides *inter alia* that an application shall be receivable if:

- (a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;
- (b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;
- (c) An applicant has previously submitted the contested administrative decision for management evaluation, where required[.]

10. Staff Rule 11.2 provides *inter alia* that:

- (a) A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1 (a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

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<sup>3</sup> *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 36.

(b) A staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, or of a decision taken at Headquarters in New York to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 following the completion of a disciplinary process is not required to request a management evaluation.

11. Ms. Fayek argues that the contested decision was taken as a result of the report of a fact-finding panel and that a fact-finding panel qualifies as a technical body pursuant to the provisions of Staff Rule 11.2. She therefore argues that she was not required to request management evaluation.

12. Contrary to Ms. Fayek's reasoning, fact-finding panels do not fall in the category of technical bodies under Staff Rule 11.2(b) nor has the Secretary-General designated fact-finding panels established under ST/SGB/2008/5 as technical bodies.<sup>4</sup>

13. In the circumstance, we uphold the UNDT's finding that the request for management evaluation is a mandatory first step in the judicial process. Ms. Fayek did not apply for management evaluation as required and, as a result, her application is not receivable.

### **Judgment**

14. The appeal is dismissed and Judgment No. UNDT/2016/103 is upheld.

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<sup>4</sup> *Faust v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-695, para. 39.

Original and Authoritative Version: English

Dated this 31<sup>st</sup> day of March 2017 in Nairobi, Kenya.

*(Signed)*

Judge Thomas-Felix,  
Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Knierim

Entered in the Register on this 26<sup>th</sup> day of May 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar