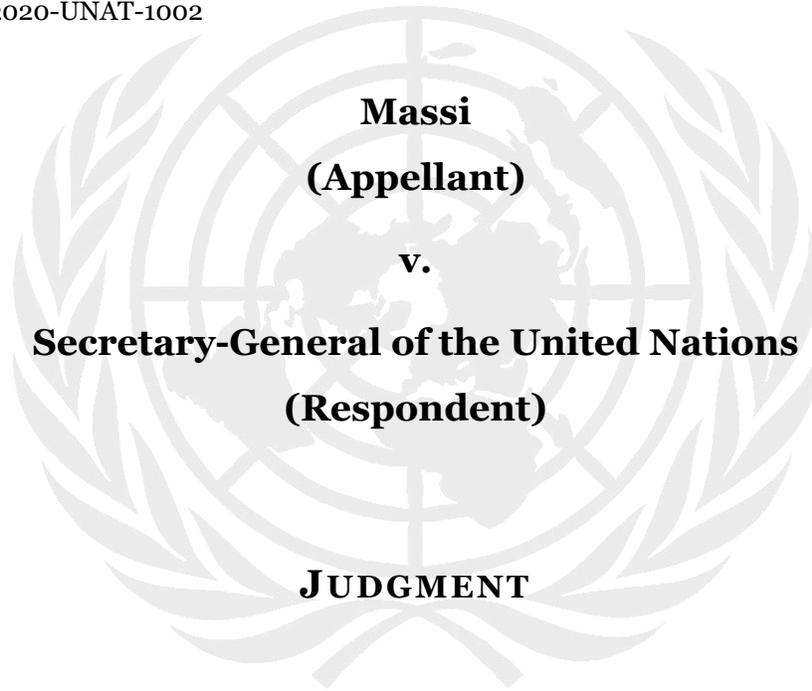




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1002



**Massi
(Appellant)**

v.

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

JUDGMENT

Before:	Judge John Raymond Murphy, Presiding Judge Graeme Colgan Judge Kanwaldeep Sandhu
Case No.:	2019-1316
Date:	27 March 2020
Registrar:	Weicheng Lin

Counsel for Mr. Massi:	Self-represented
Counsel for Secretary-General:	Patricia C. Aragonés

JUDGE JOHN RAYMOND MURPHY, PRESIDING.

1. Mr. Primo Massi, a former staff member, filed an application before the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) challenging a 2019 letter he received from the Administration indicating that payments for compensation awarded to him under Appendix D of the Staff Rules would cease upon his retirement at the age of 62. The UNDT held that the application was not receivable on grounds that the 2019 letter was a mere reiteration of an administrative decision taken in 2015, that Mr. Massi had not first filed a management evaluation request, and that in his application he sought execution of a previous judgment rendered by the UNDT in 2016, but did not indicate which operable part of that Judgment was not executed. Mr. Massi appeals to the United Nations Appeals Tribunal (Appeals Tribunal), and for the reasons that follow, his appeal is dismissed.

Facts and Procedure

2. Mr. Massi, a former Security Officer at the United Nations Office at Geneva (UNOG), was injured while on duty in 1995 during a protest on UNOG grounds. In February 1999, Mr. Massi was awarded a lump sum of USD 224,726.08 as compensation under Article 11.3 of Appendix D of the Staff Rules¹ (Appendix D) for permanent loss of function of the whole person of 72 per cent. In April 1999, Mr. Massi separated from the Organization for health reasons and was granted a disability benefit under Article 33 of the Regulations of the United Nations Joint Staff Pension Fund (UNJSPF).²

3. In 2000, Mr. Massi was awarded compensation under Article 11.2(d) of Appendix D for loss of earning capacity effective 1 May 1999, which was extended in 2002 and again in 2010 until 30 April 2012. Article 11.2(d) provides that when upon separation it is determined that a staff member is partially disabled as a result of injury or illness in a manner which adversely affects his earning capacity, he shall be entitled to compensation in accordance

¹ Appendix D of the Staff Rules are “Rules governing compensation in the event of death, injury or illness attributable to the performance of official duties on behalf of the United Nations”.

² Article 33 of the UNJSPF provides that a disability benefit is payable to a participant who is found to be incapable for further service reasonably compatible with his or her abilities, due to injury or illness constituting an impairment to health which is likely to be permanent or of long duration.

with the prescribed formula in Appendix D. Compensation under Appendix D is intended to supplement benefits awarded under the Regulations of the UNJSPF.³

4. Between 2000 and 2015, disputes arose about the calculation of the amounts payable to Mr. Massi. In May 2015, the Advisory Board on Compensation Claims (ABCC) discovered a miscalculation and determined that Mr. Massi was owed USD 72,226.46 in respect of compensation payable until 30 April 2012. Mr. Massi disagreed with this calculation and refused to accept that payment of that amount would settle all claims that he had in connection with the compensation due to him under Appendix D.

5. On 9 June 2015 the ABCC also decided to reassess Mr. Massi's entitlement to compensation for loss of earning capacity after 30 April 2012 but deferred consideration of the extension of his compensation pending further medical review.

6. Mr. Massi submitted a request for management evaluation before the Management Evaluation Unit (MEU) challenging the amount offered to him as settlement of his compensation claim until 30 April 2012 and the decision to reassess his entitlement. The MEU held that the request was moot because the payment of USD 72,226.46 had been implemented and that the request in relation to the reassessment of his entitlement was not ripe as no decision had been made regarding it. In July 2015, Mr. Massi filed an application with the UNDT challenging the decisions.

7. On 29 October 2015, the Secretary-General decided to extend Mr. Massi's entitlement to receive compensation for loss of earning capacity under Article 11.2(d) of Appendix D retroactively from 1 May 2012 until 31 May 2019, the date for Mr. Massi's normal retirement age of 62 (the 2015 decision).

8. On 19 July 2016, the UNDT issued Judgment No. UNDT/2016/100 (the 2016 Judgment) in relation to Mr. Massi's application filed in July 2015 and awarded him compensation for the loss he had incurred as a result of delayed payments and moral damages for the Organization's failure to timely pay his compensation for various periods from 2005 to 2015. The UNDT ordered the Organisation to pay damages in the amount of USD 29,261.86 plus CHF 10,544.50; the reimbursement of taxes paid by Mr. Massi to the Swiss tax authorities on the payment of USD 72,266.46, any costs in ascertaining the due

³ Article 4 of Appendix D.

compensation, moral damages in the amount of USD 9,000, and interest. Neither party appealed this Judgment.

9. On 29 April 2019, the Administrator of the Compensation Claims Service of UNOG wrote to Mr. Massi informing him that his compensation for loss of earning capacity under Article 11.2(d) of Appendix D of the Staff Rules would cease on 31 May 2019 as per the 2015 decision (the 2019 letter).

10. On 17 July 2019, Mr. Massi filed an application with the UNDT requesting execution of the 2016 Judgment and also identified the decision he was contesting as the decision of 29 April 2019 to discontinue his compensation. On 9 September 2019, the UNDT issued its Judgment on Receivability No. UNDT/2019/138 (the impugned Judgment) and dismissed the application as not receivable. The UNDT held that the application was not receivable as a request for execution because no part of the 2016 Judgment had not been executed. The 2016 Judgment had addressed the compensation payable in the period between 2005 and 2015 but did not address any entitlements beyond 2015. The UNDT also found that Mr. Massi's application was not receivable in so far as it sought to challenge the 29 April 2019 letter since Mr. Massi had not first requested a management evaluation as required by Article 8(1)(c) of the UNDT's Statute or Article 5.2 of Appendix D of the Staff Rules. The UNDT held further that the communication in the letter of 29 April 2019 did not constitute a new administrative decision but was merely a reiteration of the 2015 decision, which Mr. Massi had not challenged.

11. On 2 October 2019, the Appeals Tribunal received Mr. Massi's appeal. The Secretary-General filed his answer on 5 December 2019.

12. On 13 December 2019, Mr. Massi filed a motion for leave to file additional pleadings and the Secretary-General filed his comments on the motion on 20 December 2019.

Submissions

Mr. Massi's Appeal

13. Mr. Massi requests the Appeals Tribunal to order payments from 1 June 2019 onward in accordance with Article 11.1 and 11.2 of Appendix D in either monthly payments or a lump sum based on his life expectancy. He also requests compensation for moral and material damages as well as for costs.

14. Mr. Massi argues that the UNDT erred in finding that he had to first seek a management evaluation as the “judgment which required force of law based on the advice of medical practitioners” falls into the same category as those not requiring a management evaluation. He also argues that he had requested a management evaluation of the same identical issue on 22 June 2015 as referenced in the 2016 Judgment.

15. In addition, Mr. Massi argues that he has not been provided with any provisions that indicate that disability ends at the normal age of retirement. By decision of 29 October 2010, the Secretary-General combined the compensation awarded to him under Article 11.2(d) of the Appendix D with the disability benefit granted to him under the UNJSPF Regulations and Rules. In 2012, the United Nations Joint Staff Pension Committee decided to maintain his disability benefit with no further review. The 2016 Judgment indicated that the Organisation was bound by the same rules as the United Nations Joint Staff Pension Committee and stated that his compensation under Article 11.2(d) of Appendix D should have automatically continued after 30 April 2012 without the need to request an updated medical report and without the need to submit a claim for review to the ABCC. Mr. Massi remains permanently disabled and there is no reason to discontinue payment of his compensation. Disability does not vanish because one reaches the age of 62.

16. Mr. Massi argues that he did contest the 29 April 2019 letter when he sent a letter to the Secretary-General on 25 May 2019. He did not receive a reply.

17. Mr. Massi further argues that the decision of 29 April 2019 was taken unilaterally and not upon advice of the ABCC pursuant to Articles 11.1 and 11.2 of Appendix D. The decision had been taken without consideration of three medical reports of 2012, 2015, and 2018. He argues that, if payments for his loss of earning capacity cease, his disability benefits should

increase to compensate for the loss and even more so since he has received compensation for 72 per cent whereas he should have been receiving payment for 84 per cent.

18. Mr. Massi also filed a motion for additional pleadings. In the attached pleadings Mr. Massi argues the Secretary-General's answer to his appeal does not provide a legal basis for suddenly interrupting his payments. If the ABCC had already decided back in 2015 to cease his payments in 2019, then why would he be requested in 2019 to complete a form for the continuation of the entitlement? The Secretary-General has failed to identify which article in Appendix D states that a disability ends when one reaches retirement age. The UNDT Judge in 2016 ruled that there was no further need for medical examination as he is permanently disabled and that the ABCC acted in its own volition to interpret the rules, namely that the payment for disability should cease when he reaches the age of 62. The MEU and the ABCC are not technical bodies and cannot themselves decide on a medical issue.

The Secretary-General's Answer

19. The Secretary-General requests this Tribunal to uphold the impugned Judgment and dismiss the appeal.

20. The Secretary-General argues that the UNDT correctly dismissed Mr. Massi's application as not receivable as a request for execution of judgment due to his failure to identify any part of that Judgment for which he sought execution. Nothing in paragraph 62 of the 2016 Judgment provides a reasonable basis to conclude that the UNDT had ordered compensation for loss of earning capacity beyond Mr. Massi's normal retirement age.

21. The UNDT correctly dismissed the application as not receivable as a challenge to the 2019 letter because Mr. Massi had not requested a management evaluation of the "decision" as required by Article 8(1)(c) of the UNDT Statute, and as required by Article 5.2 of Appendix D. The decision was not exempt from the requirement as it had not been made pursuant to the advice of a technical body within the meaning of Staff Rule 11.2(d).

22. Mr. Massi's argument that he was not required to file a management evaluation request because he is a former staff member is erroneous as the relevant provisions are applicable to former staff members. Even assuming *arguendo* that the letter Mr. Massi sent to the Secretary-General is construed as requesting management evaluation, the application is still not receivable as the 2019 letter did not constitute a new administrative decision

subject to judicial review. The UNDT correctly held that the 2019 letter did not constitute a new administrative decision but was a mere reiteration of the original decision that had been taken in 2015.

23. The Secretary-General further submits that Mr. Massi's complaint that he has not been informed as to which Appendix D provision stipulates that compensation for loss of earning capacity ceases upon retirement is irrelevant to the issue of receivability.

24. The Secretary-General finally contends that Mr. Massi's motion to file additional pleadings and his submission of additional documentary evidence are irregular.

Considerations

25. A motion to file an additional pleading may be granted by the Appeals Tribunal if there are exceptional circumstances justifying the motion.⁴ Mr. Massi fails to identify any exceptional circumstances warranting his additional pleading. In any event, the additional pleading simply reargues certain legal aspects of his appeal and adds nothing to the arguments on receivability. The motion is accordingly dismissed.

26. Mr. Massi has sought to introduce additional evidence on appeal in the form of four documents that were not part of the record before the UNDT. The documents consist of a response from the MEU in 2015 relating to his claims addressed by the UNDT in the 2016 Judgment and three documents regarding a request from the ABCC that Mr. Massi complete the annual declaration of status for monthly compensation.

27. Article 2(5) of the Appeals Tribunal's Statute provides that additional evidence may be received on appeal only in exceptional circumstances, if it is in the interest of justice and the efficient and expeditious resolution of the appeal, provided that such evidence was not known to the parties at the time of the UNDT proceedings. Article 10 of the Appeals Tribunal's Rules of Procedure requires a party seeking to introduce additional evidence on appeal to seek leave from the Appeals Tribunal to do so. Not only did Mr. Massi fail to request leave, but he has adduced no evidence that there were exceptional circumstances for the introduction of these documents or how their admission would serve the interest of justice or the efficient and expeditious resolution

⁴ Appeals Tribunal Practice Direction No. 1, Section II.A.3.

of the appeal. The documents in any event have no bearing on the issue of receivability, which forms the basis of the decision in the impugned Judgment.

28. Mr. Massi's contention that his application merely sought execution of the 2016 Judgment is without merit. Article 12(4) of the UNDT Statute provides that once a judgment is executable under Article 11(3) of the UNDT Statute either party may apply to the UNDT for an order for execution of the judgment if execution has not been carried out. Mr. Massi is seeking payment of compensation in terms of Appendix D subsequent to 31 May 2019 on an ongoing basis. The 2016 Judgment made no order with respect to any payment or entitlement to compensation in terms of Appendix D beyond 2015. In the 2016 Judgment, the UNDT ordered the Organisation to pay damages, the reimbursement of taxes, costs incurred in ascertaining the due compensation, moral damages and interest. As the UNDT correctly held, all these orders in the 2016 Judgment dealt with the calculation and timing of compensation for loss of earning capacity due to Mr. Massi from 14 May 2005 until 31 December 2015. There is no evidence that any of these orders were not executed. Mr. Massi's second application to the UNDT is in respect of compensation allegedly owing after the 2016 Judgment and thus raises a different cause of action unrelated to any of the remedies granted in that judgment. The UNDT accordingly did not err in concluding that the application was not receivable as a request for execution in terms of Article 12(4) of the UNDT Statute.

29. The UNDT likewise did not err in its conclusion that the 2019 letter did not constitute a new administrative decision. That letter was a mere reiteration of the administrative decision taken on 29 October 2015 to extend Mr. Massi's entitlement to his normal retirement age. The 2019 letter simply reminded Mr. Massi that the time for cessation of the benefit was approaching. The 2019 letter made no other decision and enclosed a copy of the 2015 decision. In the premises, the application challenging the 2019 letter was not receivable by the UNDT because the communication contained therein did not constitute a new administrative decision. The reiteration of an original administrative decision does not constitute a new decision or reset the clock with respect to the applicable statutory deadlines. Rather, the time starts to run from the date on which the original decision was

made,⁵ which in this case was 29 October 2015, and in respect of which no management evaluation was sought in terms of Article 8(1)(c) of the UNDT Statute.

30. Article 8(1)(c) of the UNDT Statute provides that an application to the UNDT shall be receivable if the “applicant has previously submitted the contested administrative decision for management evaluation, where required”. Article 5.2 of Appendix D (applicable at the time of the 2019 letter) provided that “claimants wishing to contest a decision taken on a claim under [Appendix D], to the extent that the decision was based on considerations other than a medical determination, shall submit to the Secretary-General a written request for management evaluation in accordance with staff rule 11.2”. Staff Rule 11.2(a) provides that 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. Staff Rule 11.2(b) introduces an exception to the requirement. It *inter alia* provides that a staff member wishing to formally contest an administrative decision taken pursuant to advice obtained from technical bodies, as determined by the Secretary-General, is not required to request a management evaluation.

31. The 2015 decision clearly and unambiguously informed Mr. Massi that his compensation in terms of Article 11.2(d) of Appendix D would cease on 31 May 2019 when he reached normal retirement age. As just mentioned, Mr. Massi did not challenge the 2015 decision, nor did he seek management evaluation of it within the applicable time period. A request for a management evaluation must be made within 60 calendar-days from the date on which the staff member received notification of the administrative decision to be contested. The UNDT has no jurisdiction to waive the deadlines for management evaluation and importantly an application is not receivable by the UNDT if it is filed more than three years after the contested administrative decision.⁶

⁵ *Mbok v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-824.

⁶ See Article 8(3) of the UNDT Statute, which indicates that the Tribunals may not extend time limits for management evaluations. See also Staff Rule 11.2 which indicates the deadline for management evaluation may be extended only by the Secretary-General pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General.

32. Even were the 2019 letter to be construed as a new administrative decision, Mr. Massi's challenge to it would not have been receivable because he also did not request management evaluation of it in terms of Article 8(1)(c) of the UNDT Statute and Article 5.2 of Appendix D.

33. Mr. Massi claims he was exempt from submitting a request for management evaluation in terms of Staff Rule 11.2(b) in that the administrative decision was taken pursuant to advice obtained from a technical body. Section 2 of ST/AI/2018/7, the Administrative Instruction on Technical bodies, provides that medical boards or independent medical practitioners duly authorized to review medical decisions or medical recommendations, including reconsiderations under Article 5.1 of Appendix D, are included as technical bodies under Staff Rule 11.2(b). However, even if it were to be accepted that the 2019 letter was an administrative decision, which it was not, the underlying decision was not based on a medical determination. It was a decision that irrespective of the enduring nature of any disability or injury the entitlement to compensation would end on Mr. Massi reaching normal retirement age on account of the entitlement being perceived as a substitute for salary due to the loss of earning capacity. The (purported) administrative decisions (both the 2015 decision and the 2019 letter) were not taken pursuant to advice obtained from a medical technical body. Accordingly, Mr. Massi could not benefit from the exception provided in Staff Rule 11.2(b) and was, therefore, obliged to submit a request for management evaluation. Thus, even were we to accept his submission that the 2019 letter was the relevant administrative decision the application in any event would not have been receivable.

34. Mr. Massi's contention that, as a former staff member, he is exempt from submitting a request for management evaluation is equally misconceived. Article 2 of the UNDT Statute confers jurisdiction on the UNDT to hear and pass judgment on an application filed by an individual, as provided for in Article 3(1) of the UNDT Statute. The latter provision provides for applications to be made solely by staff members, former staff members and representatives of incapacitated or deceased staff members. The requirement in Article 8(1)(c) is to the effect that an application (irrespective of the category of applicant making it) shall be receivable only if a request for management evaluation has been submitted, where required, and there is nothing in any other provision suggesting that

former staff members should be treated differently to staff members or representatives of incapacitated or deceased staff members.⁷

35. Mr. Massi finally contends that a letter he wrote to the Secretary-General on 25 May 2019 should be construed as a request for management evaluation. Again, this contention would only be relevant if we had accepted that the 2019 letter was the relevant administrative decision, which we have not. However, in the interests of completeness, we simply say that the letter makes no explicit request for management evaluation and there is no basis to construe it as requesting such.

36. The UNDT accordingly did not err in any respect with regard to the issue of receivability. There is consequently no need to deal with the various submissions made by Mr. Massi pertaining to the merits of his complaint.

37. In the result, the appeal must be dismissed.

⁷ *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293.

Judgment

38. The appeal is dismissed and Judgment No. UNDT/2019/138 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of March 2020.

(Signed)

Judge Murphy, Presiding
Cape Town, South Africa

(Signed)

Judge Colgan
Auckland, New Zealand

(Signed)

Judge Sandhu
Vancouver, Canada

Entered in the Register on this 19th day of June 2020 in New York, United States.

(Signed)

Weicheng Lin, Registrar