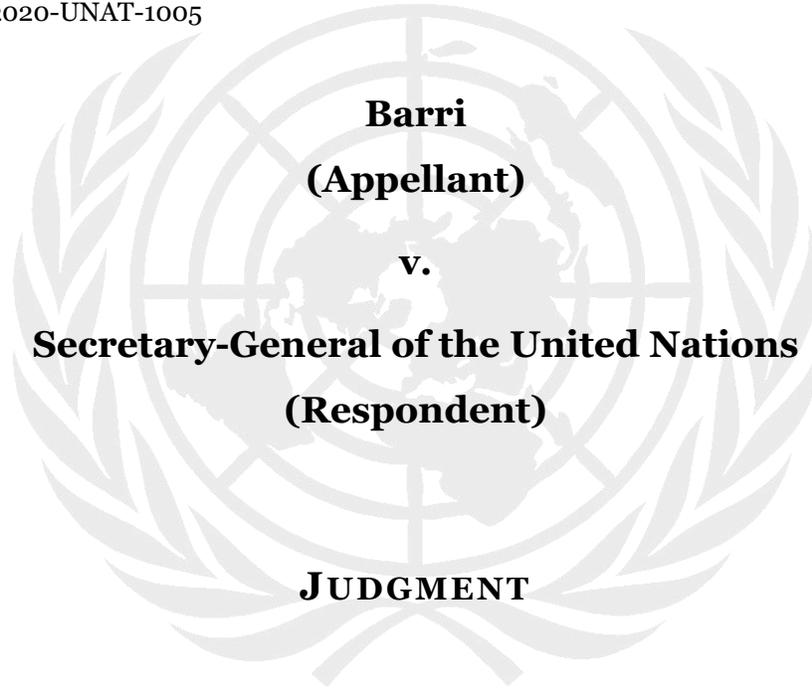




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2020-UNAT-1005



**Barri
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Dimitrios Raikos, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case No.:	2019-1320
Date:	27 March 2020
Registrar:	Weicheng Lin

Counsel for Mr. Barri:	Self-represented
Counsel for Secretary-General:	Maryam Kamali

JUDGE DIMITRIOS RAIKOS, PRESIDING.

1. Mr. Ahmed Mohamed Barri, a former Finance Analyst on a fixed-term appointment with the United Nations Development Programme (UNDP) in Khartoum, Sudan, filed an application with the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi challenging the decision to separate him from service without payment of a termination indemnity. The UNDT dismissed his application by way of Judgment on Receivability No. UNDT/2019/147 having found his application was not receivable because he had not timely requested a management evaluation of the contested decision. Mr. Barri appeals before the United Nations Appeals Tribunal (Appeals Tribunal). This Tribunal dismisses the appeal.

Facts and Procedure

2. Mr. Barri was formally notified that his fixed-term appointment would not be renewed when it expired on 31 December 2018. On 26 November 2018, Mr. Barri inquired whether he would receive a termination indemnity upon his separation. The Administration wrote to Mr. Barri the very next day, on 27 November 2018, and informed him that he was not entitled to a termination indemnity and was not considered a “long serving” staff member. On 27 December 2018, Mr. Barri was informed that, because he had been separated from the Organization in 2010, he did not qualify as a long serving staff member. On 31 December 2018, Mr. Barri was told that what determined his eligibility for a termination indemnity was whether his appointment ended before it expired and, in his case, he was being separated upon, and not before, the expiry of his appointment.

3. On 13 February 2019, the Administration asked Mr. Barri if he wanted to pursue informal resolution or if he wanted to request a management evaluation. On 28 February 2019, Mr. Barri was advised that the process of seeking informal resolution did not suspend the statutory deadline for filing a request for management evaluation per Staff Rule 11.2(c). On 6 May 2019, Mr. Barri informed the Administration that he was not satisfied with the outcome of the attempted informal resolution and wished to request management evaluation. Mr. Barri received a response from the Management Evaluation Unit (MEU) on 25 June 2019, which indicated that his claim before the MEU was time-barred. Mr. Barri filed an application before the UNDT on 11 September 2019.

4. On 20 September 2019, the UNDT issued the impugned Judgment and dismissed his application as not receivable on grounds that he did not timely request a management evaluation of the contested decision. In reaching this conclusion, the UNDT found that the latest date triggering the time limits required for him to request a management evaluation was 31 December 2018, when he was informed that he was not eligible for the payment of a termination indemnity since his appointment was not ending prior to its expiry, but rather he was being separated upon its expiry. Mr. Barri, however, filed a request for management evaluation on 6 May 2019, well outside of the 60-day time limit prescribed by Staff Rule 11.2(c).

5. On 10 October 2019, Mr. Barri filed an appeal of the UNDT's Judgment, and on 20 December 2019, the Secretary-General filed his answer.

Submissions

Mr. Barri's Appeal

6. Mr. Barri requests an oral hearing "to ensure clear understanding of the case points". While he does not expressly request relief in his appeal, Mr. Barri argues that he did meet the filing deadline to request a management evaluation. The outcome of the informal resolution was known on 22 April 2019 and he submitted a request for management evaluation on 6 May 2019. The Secretary-General misled the UNDT as to the timeframe.

The Secretary-General's Answer

7. The Secretary-General requests the Appeals Tribunal to dismiss the appeal and affirm the UNDT's Judgment. The UNDT correctly held that Mr. Barri had received the administrative decision to deny his eligibility for a termination indemnity and the reasons therefor on 27 November 2018 and thus, Mr. Barri's request for management evaluation had been due by 28 January 2019. Even assuming Mr. Barri had received the administrative decision on 31 December 2018, when the Administration reiterated the decision, his request would have been due no later than 1 March 2019. He, however, filed his request for management evaluation on 6 May 2019, well outside of the 60-day time limit. Thus, the UNDT correctly held that his application was not receivable on account of his failure to file a timely request for management evaluation. In addition, Mr. Barri has failed to set forth in his

appeal any errors made by the UNDT and thus, fails to meet his burden of demonstrating appealable errors in the impugned Judgment.

Considerations

Oral hearing before the Appeals Tribunal

8. Mr. Barri requests an oral hearing, which he believes will be of assistance to the Appeals Tribunal. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (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”. As the Appeals Tribunal does not find that an oral hearing would assist it any further in resolving the issues on appeal, the request for an oral hearing is denied.

Merits

9. The issue before this Tribunal is whether the UNDT correctly concluded that Mr. Barri’s application was non-receivable *ratione materiae*, as he had not submitted a timely request for management evaluation of the contested administrative decision before filing his application with the UNDT. This Tribunal determines that the Dispute Tribunal’s conclusions are correct.

10. Under Article 8(1)(c) of the UNDT Statute, an application shall be receivable if the applicant has previously submitted the contested decision for management evaluation where required. This obligation upon the applicant is also prescribed in Staff Rule 11.2(a), which provides 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 management evaluation. Pursuant to Staff Rule 11.2(c), a request for management evaluation is to be submitted to the Secretary-General within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

11. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process.¹ The Appeals Tribunal has noted many times that the requirement of management evaluation assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.²

12. 31 December 2018 is the relevant date triggering the time limit under Staff Rule 11.2(c). On that date, Mr. Barri was informed that he was not eligible for the payment of a termination indemnity. Thus, his request for management evaluation dated 6 May 2019 was filed outside the 60-day statutory time limit. Further, contrary to Mr. Barri's assertion, his request for mediation assistance sent to the United Nations Ombudsman and Mediation Services in February 2019 did not automatically extend the time limit for filing a request for management evaluation. In accordance with Staff Rule 11.2(c), the Secretary-General has discretion to extend the management evaluation deadlines "pending efforts for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General".

13. In the present case, there is no evidence that the Secretary-General indeed extended the management evaluation deadline or specified the conditions for extending it. While this Tribunal has found in *Wu*³ that under certain circumstances the Secretary-General's participation in settlement negotiations through the Ombudsman's Office may amount to an implicit extension of the time limit to seek management evaluation, it did not establish a general principle to this effect.⁴ Usually, an explicit decision of the Secretary-General in favour of the staff member is necessary before the Dispute Tribunal, which itself "shall not suspend or waive the deadlines for management evaluation" per Article 8(3) of the UNDT Statute, may conclude that the deadlines for management evaluation have been extended by the Secretary-General. Further, in the case at hand, there is no indication that settlement negotiations actually took place. A mere request for assistance from the Ombudsman's Office is not sufficient in this regard.

¹ *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13; *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

² *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and cites therein.

³ *Wu v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-306, para. 25.

⁴ *Ngoga v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-823, para. 36.

Judgment

14. The appeal is dismissed and Judgment No. UNDT/2019/147 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of March 2020.

(Signed)

Judge Raikos, Presiding
Athens, Greece

(Signed)

Judge Halfeld
Bournemouth, United Kingdom

(Signed)

Judge Murphy
Cape Town, South Africa

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

(Signed)

Weicheng Lin, Registrar