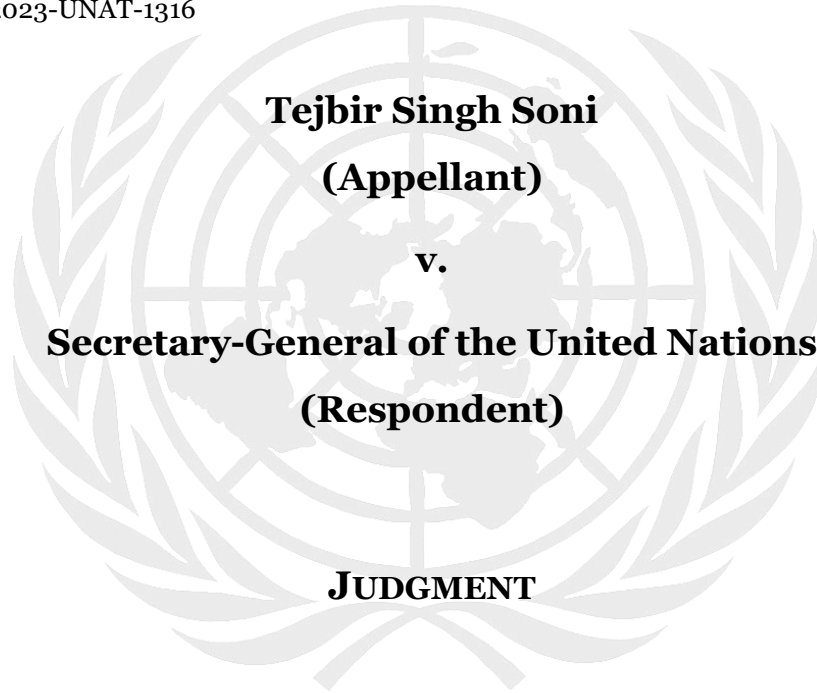




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

---

Judgment No. 2023-UNAT-1316



**Tejbir Singh Soni**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**JUDGMENT**

---

|                      |  |
|----------------------|--|
| Before:              | Judge Dimitrios Raikos, Presiding<br>Judge John Raymond Murphy<br>Judge Martha Halfeld |
| Case No.:            | 2022-1677  |
| Date of Decision:    | 24 March 2023  |
| Date of Publication: | 4 April 2023   |
| Registrar:           | Juliet Johnson   |

---

Counsel for Appellant: Self-represented

Counsel for Respondent: Patricia C. Aragonés

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. Mr. Tejbir Singh Soni contested his separation from service on the grounds of constructive dismissal and coerced resignation by the United Nations Children’s Fund (UNICEF).
2. By Judgment No. UNDT/2022/003<sup>1</sup> (the impugned Judgment), the United Nations Dispute Tribunal (UNDT) found that Mr. Soni had submitted a management evaluation request (MER) out of time, and rejected the application as not receivable *ratione materiae*.
3. Mr. Soni lodged an appeal of the impugned Judgment with the United Nations Appeals Tribunal (Appeals Tribunal or UNAT).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

**Facts and Procedure<sup>2</sup>**

5. Mr. Soni held the post of Social Policy Specialist at the UNICEF India Country Office (ICO), having joined the Organization at that post on 1 December 2020, as an external candidate.<sup>3</sup>
6. After two incidents on 15 and 16 March 2021, over which Mr. Soni felt he was personally humiliated by his reporting officer—Chief of Field Office (CFO), he sent her a resignation e-mail on 17 March 2021.<sup>4</sup> He claimed that after many instances of abuse of authority, administrative lapses, misconduct in day-to-day transactions, misguidance on fund utilization, and consistent deprivation of the Social Policy, Monitoring and Evaluation (SPME Programme), he felt coerced to resign. In a meeting on the same day, the CFO assured him that he would get the requisite support for at least five to six months.
7. On 30 April and 3 May 2021, Mr. Soni took Family Emergency Leave due to COVID-related issues and, on 17 May 2021, he was on Uncertified Sick Leave.<sup>5</sup> During both periods, he was assigned tasks and deadlines.

---

<sup>1</sup> *Soni v. Secretary-General of the United Nations*, Judgment dated 13 January 2022.

<sup>2</sup> Summarized from the impugned Judgment as relevant to the appeal.

<sup>3</sup> Impugned Judgment, para. 2.

<sup>4</sup> *Ibid.*, para. 3.

<sup>5</sup> *Ibid.*, para. 5.

8. On 18 May 2021, Mr. Soni reiterated his resignation, which was accepted by the ICO Representative on 23 May 2021.<sup>6</sup>

9. On 26 May 2021, Mr. Soni reached out to the Chief, Human Resources, UNICEF India, to inquire about internal mechanisms at his disposal in relation to accountability, ethical issues, mediation and redressal, and whether these could be actioned after his separation from service.<sup>7</sup> On 28 May 2021, he addressed a detailed e-mail to the Office of the Ombudsman for United Nations Funds and Programmes, the UNICEF Ethics Office and the Office of Internal Audit and Investigations (OIAI), UNICEF, about his situation.

10. On 4 June 2021, Mr. Soni separated from UNICEF.<sup>8</sup>

11. On 7 July 2021, a Mediation Specialist, Office of the Ombudsman for United Nations Funds and Programmes, underlined to Mr. Soni that the rules of the organization did not allow for reinstatement.<sup>9</sup> The Mediation Specialist requested him to acknowledge this information and confirm if he was nevertheless still willing to engage in mediation.

12. On 9 July 2021, Mr. Soni formally requested legal assistance from the Office of Staff Legal Assistance (OSLA).<sup>10</sup> On 27 October 2021, OSLA informed him that it would not represent him before the UNDT.<sup>11</sup>

13. On 2 August 2021, Mr. Soni requested management evaluation of what he construed as constructive dismissal by UNICEF arising from an inharmonious work environment and a lack of support that compelled him to resign.<sup>12</sup>

14. On 6 August 2021, after a follow-up e-mail from Mr. Soni, OIAI advised him of the correct procedure for the formal process of reporting possible prohibited conduct and explained that after receiving the information in a formal report, OIAI would assess if the reported conduct amounted to misconduct.<sup>13</sup> On 10 August 2021, he followed up with OIAI on the required documentation to start a formal process of investigation.

---

<sup>6</sup> *Ibid.*, para. 6.

<sup>7</sup> *Ibid.*, para. 7.

<sup>8</sup> *Ibid.*, para. 9.

<sup>9</sup> *Ibid.*, para. 10.

<sup>10</sup> *Ibid.*, para. 11.

<sup>11</sup> 27 October 2021 e-mail from OSLA (Annex 34 to the application).

<sup>12</sup> Impugned Judgment, para. 12.

<sup>13</sup> 6 August 2021 e-mail from OIAI (Annex 26 to the application).

15. On 31 August 2021, Mr. Soni's management evaluation request (MER) was rejected as not receivable on the grounds that it had not been filed within the mandatory deadline and that it did not contest an administrative decision.<sup>14</sup>

*The Impugned Judgment*

16. On 13 January 2022, the UNDT rendered the impugned Judgment, rejecting Mr. Soni's application.

17. The UNDT found it appropriate to decide the matter of receivability through a summary judgment.

18. The UNDT concluded that the application was not receivable *ratione materiae*. The MER was filed out of time. At the earliest, Mr. Soni knew of the alleged implied contested decision to constructively dismiss him by the date he reiterated his resignation, i.e. 18 May 2021, or, at the latest, on the date UNICEF accepted his resignation, i.e. 23 May 2021. Accordingly, he should have filed his MER by 17 July 2021 or, at the latest, by 22 July 2021.

19. The UNDT was of the view that Mr. Soni's arguments regarding lack of orientation and support for filing the MER on time, i.e. ignorance of the law, are unsupported. The UNDT does not have authority to waive or suspend the MER deadlines. A formal mediation process was never initiated. There is no evidence that his MER deadline was extended pursuant to staff rule 11.2(c).

20. The UNDT found that the events recounted by Mr. Soni do not amount to exceptional circumstances justifying compliance with a mandatory deadline. Nothing exceptional, i.e. beyond his control, prevented him from seeking management evaluation.

**Submissions**

**Appellant's Appeal**

21. Mr. Soni requests the Appeals Tribunal to reverse the impugned Judgment and seeks reinstatement in his post either in the same location or elsewhere with full pay and benefits, including for the period from the date of his separation to the date of his reinstatement, and compensation for mental trauma and distress.

---

<sup>14</sup> *Ibid.*, para. 15.

22. Mr. Soni argues that the UNDT, deciding the matter on the basis of receivability and not merits, has failed to exercise jurisdiction vested in it, erred on a question of law and on a question of fact resulting in a manifestly unreasonable judgment. The UNDT committed an error in procedure by not identifying this matter as an exceptional case.

23. Mr. Soni submits that the UNDT failed to take into account misguidance on the part of OSLA by providing conflicting legal advice, which is demonstrated by the 31 July 2021 e-mail<sup>15</sup> implying that OSLA had expressed the opinion of him having an arguable case, and the delay in providing legal assistance—18 days instead of 5 business days.

24. He further claims that OSLA failed to deal with him fairly, act in good faith and respect his dignity, carried personal prejudice and bias against him, and caused him emotional and professional damage. In addition, he claims that OSLA, by refusing to provide legal assistance, violated Staff Rule 11.4(d), and exhibited unprofessional behaviour and ignorance of the law, violating sections 1, 2 and 4 of Article 4 of the Appendix to General Assembly resolution 71/266 on 23 December 2016 (Code of conduct for legal representatives and litigants in person).

25. Mr. Soni asserts that he was also misguided by the Mediation Specialist's 7 July 2021 e-mail<sup>16</sup> which encouraged him to reach out to OSLA to obtain legal advice, instead of filing the MER.

26. Mr. Soni argues that the UNDT failed to consider Annex 41 to his application which demonstrates that this case is exceptional: he was constructively dismissed, Article 1 of Regulation 1.1(b) was violated, no orientation was provided to him which violated Staff Rule 1.3(b), and he was actively seeking a solution. The UNDT failed to establish the facts, according to which he was mistreated before and after separation from service.

27. Mr. Soni states that he never received any communication from OIAI nor was he included in the assessment at any stage by OIAI, which is a violation of section 5.14 of the UNICEF Executive Directive CF/EXD/2012-007 (Prohibition of discrimination, harassment, sexual harassment and abuse of authority).

---

<sup>15</sup> Mr. Soni refers to Annex 4 to the appeal.

<sup>16</sup> Inaccurately denoted in the appeal as a 6 July 2021 e-mail.

28. Mr. Soni submits that the UNDT erred in finding that he had interpreted assignments of work during family leave as punishment. The CFO singled him out for victimization.<sup>17</sup>

29. Mr. Soni observes that in *Sera v. Secretary-General of the United Nations*<sup>18</sup>, the UNAT declared the case to be exceptional and, in the interests of justice, granted the opportunity to present the case. Amendments to the law or statutes are required.

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

30. The Secretary-General requests that the Appeals Tribunal dismiss the appeal or, if the application is found receivable, remand the case for a determination on the merits.

31. The Secretary-General submits that the UNDT correctly dismissed the application as non-receivable. The appeal fails to demonstrate any error warranting intervention by the UNAT. Mr. Soni fails to accept that the UNDT Statute does not allow the UNDT to waive the requirement of a timely MER irrespective of any alleged exceptional circumstances. Nonetheless, Mr. Soni's criticism of OSLA and the Office of the Ombudsman is misguided and without merit.

32. The Secretary-General observes that Mr. Soni's submissions on the merits and his request for compensation fall outside the jurisdiction of the UNAT.

33. The Secretary-General argues that Mr. Soni's additional evidence, consisting of correspondence with OSLA and OIAI, were not presented before the UNDT,<sup>19</sup> and therefore are not properly before the UNAT and should be disregarded. He has neither requested leave to file such evidence nor complied with the criteria set forth in Article 2(5) of the UNAT Statute.

---

<sup>17</sup> Appellant refers to his position in para. 15 of the application and Annexes 15 and 16 to the application.

<sup>18</sup> Appellant apparently refers to Order No. 350 (2019) in *Sera v. Secretary-General of the United Nations*, dated 25 June 2019, case No. 2019-1265.

<sup>19</sup> The Secretary-General refers to Annexes 4 and 12 to the appeal.

## Considerations

### *Oral hearing*

34. Mr. Soni requests that the Appeals Tribunal hold an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal’s Statute, which states: “[t]he judges assigned to a case will determine whether to hold oral proceedings”; and by Article 18(1) of the Appeals Tribunal’s Rules of Procedure (Rules), which states: “[t]he judges hearing a case may hold oral hearings on the written application of a party or on their own initiative if such hearings would assist in the expeditious and fair disposal of the case.” 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. Accordingly, the request for an oral hearing is denied.

### *Merits of the case*

35. The question on appeal is whether the UNDT erred in holding that the application was not receivable. We find that the UNDT did not commit any errors when it found that Mr. Soni’s application was irreceivable *ratione materiae*.

36. 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.

37. It is settled case law that requesting management evaluation is a mandatory first step in the appeal process.<sup>20</sup> 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.<sup>21</sup>

38. In the present case, the UNDT correctly held that Mr. Soni had knowledge of the alleged constructive dismissal on either the date that he reiterated his resignation, i.e., 18 May 2021, or "at the latest" when UNICEF accepted his resignation, i.e., 23 May 2021. Nevertheless, Mr. Soni's request for management evaluation thereof was filed on 2 August 2021, namely outside the 60-day statutory time limit which expired on 17 July 2021 or, at the latest, on 22 July 2021. Consequently, the UNDT rightly concluded further that "[u]nder either of these scenarios, however, the Applicant missed the MER deadline".

39. The Appeals Tribunal has repeatedly and consistently strictly enforced the time limits for filing applications and appeals. Strict adherence to filing deadlines assures one of the goals of our new system of administration of justice: the timely hearing of cases and rendering of judgments.<sup>22</sup> The UNAT has also consistently held that staff members are presumed to know the Regulations and Rules applicable to them. It is the staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse.<sup>23</sup>

40. Further, participation in the mediation efforts does not automatically extend the time limit for filing a request for management evaluation.<sup>24</sup> According to Staff Rule 11.2(c), the Secretary-General has discretion to extend the management evaluation deadlines "pending efforts

---

<sup>20</sup> *Barri v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1005, para. 11; *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.

<sup>21</sup> *Barri* Judgment, *op. cit.*, para. 11; *Vukasović* Judgment, *op. cit.*, para. 13; *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.

<sup>22</sup> *Diab v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2015-UNAT-495, para. 25; *Kissila v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-470, para. 23.

<sup>23</sup> *Vukasović* Judgment, *op. cit.*, para. 14; *Amany* Judgment, *op. cit.*, para. 18, citing *Kissila* Judgment, *op. cit.*, para. 24, and cites therein.

<sup>24</sup> *Kristen Wenz v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1119, para. 30.



for informal resolution conducted by the Office of the Ombudsman, under conditions specified by the Secretary-General”.

41. 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. Mr. Soni has not shown, and we cannot see, that an extension was given by the Secretary-General in this case. While this Tribunal has found in *Wu*<sup>25</sup> 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.<sup>26</sup> 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.

42. At any rate, in the case at hand, there is no indication that such negotiations actually took place. A mere request for assistance from the Ombudsman’s Office is not sufficient in this regard. As the UNDT correctly found, the record shows that although Mr. Soni sought mediation from the Office of the Ombudsman for United Nations Funds and Programmes, a formal mediation process was never initiated; it also shows that Mr. Soni was informed by mediators of his options, particularly that the Organization’s rules did not allow for reinstatement after mediation and that he was asked to confirm whether he would like to proceed with the mediation process.

43. We are satisfied that the Dispute Tribunal properly considered the facts and the applicable statutory law and jurisprudence in arriving at its decision that Mr. Soni’s application was not receivable.

44. In the light of the foregoing, the appeal falls to be dismissed.

---

<sup>25</sup> *Wu v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-306/Corr.1, para. 25.

<sup>26</sup> *Barri* Judgment, *op. cit.*, para. 13; *Ngoga v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-823, para. 36.

**Judgment**

45. The appeal is dismissed and Judgment No. UNDT/2022/003 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 24<sup>th</sup> day of March 2023 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Halfeld

Judgment published and entered in the Register on this 4<sup>th</sup> day of April 2023 in New York, United States.

*(Signed)*

Juliet Johnson, Registrar