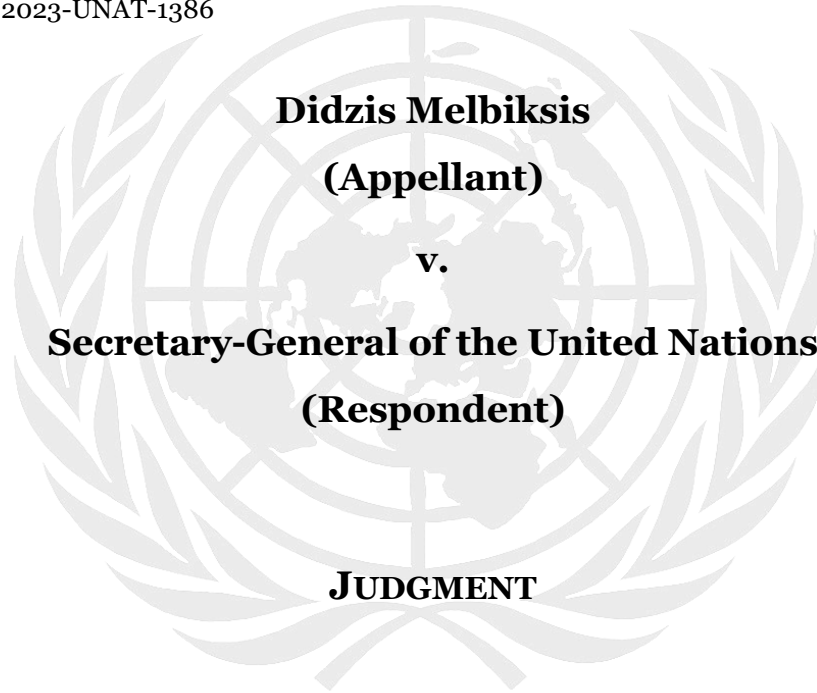




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2023-UNAT-1386



**Didzis Melbiksis
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Nassib G. Ziadé, Presiding Judge Kanwaldeep Sandhu Judge Gao Xiaoli
Case No.:	2023-1772
Date of Decision:	27 October 2023
Date of Publication:	22 November 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Sylvia Schaefer

JUDGE NASSIB G. ZIADÉ, PRESIDING.

1. Mr. Didzis Melbiksis (Mr. Melbiksis or Appellant), a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), contested the decision of the Administration not to select him for the position of External Relations Officer in Pretoria, South Africa (contested decision).
2. By Judgment No. UNDT/2022/119¹ (impugned Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) rejected Mr. Melbiksis's application as not receivable *ratione materiae* and *ratione temporis*.
3. Mr. Melbiksis lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. In 2020, Mr. Melbiksis was employed as an Associate Public Information Officer at the P-2 level at the Office of UNHCR in Stockholm, Sweden.
6. On 9 October 2019, Mr. Melbiksis applied for the position of External Relations Officer (the position) at the P-3 level in Pretoria advertised in Job Opening 18186. He was shortlisted and interviewed on 15 June 2020, but only one candidate, which was not him, was recommended for the position.
7. In November 2020, Mr. Melbiksis was informed that he had not been selected for the position.²

¹ *Melbiksis v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/119.

² The Secretary-General contends that Mr. Melbiksis became aware that he had not been selected for the position on 20 November 2020 and refers the Appeals Tribunal to his UNDT Reply, para. 14. In his UNDT Reply, the Secretary-General observes that Mr. Melbiksis identified the date of the contested decision as 20 November 2020 in his 29 January 2021 request for management evaluation. However, the Secretary-General did not attach said request. The UNDT also considered that Mr. Melbiksis was informed that he had not been selected for the position on 20 November 2020 (impugned Judgment, para. 2). However, in his appeal, Mr. Melbiksis submits that he became aware of the non-selection decision only on 30 November 2020. As discussed below, we find the dispute over this latter date to be of no consequence to our determination.

8. On 29 January 2021, Mr. Melbiksis requested management evaluation of the decision not to select him for the position (first request for management evaluation). On 25 March 2021, the UNHCR Deputy High Commissioner informed Mr. Melbiksis by letter dated 24 March 2021 of the outcome of the management evaluation. She upheld the contested decision and further concluded that Mr. Melbiksis did not possess the required competency and suitability for the position and that, therefore, his non-selection was lawful.³

9. On 23 May 2021, Mr. Melbiksis requested management evaluation of the outcome of his first request for management evaluation (second request for management evaluation). He claimed that he was informed of the decision to classify him as unsuitable for the position only when he received the response from the Administration on 25 March 2021.⁴

10. By letter dated 9 June 2021, the UNHCR Deputy High Commissioner informed Mr. Melbiksis that his second request for management evaluation was not receivable because a management evaluation decision was not a separate administrative decision that could be challenged. She further reiterated the management evaluation outcome of 24 March 2021 and pointed out to Mr. Melbiksis that “if [he] continue[d] to disagree with [his] non-selection, the correct course of action would be to continue to the UNDT within 90 days of receipt of the [management evaluation] response”.⁵

11. On 9 September 2021, Mr. Melbiksis filed an application with the Dispute Tribunal challenging the Administration’s response to his first request for management evaluation.

Impugned Judgment

12. On 7 November 2022, the Dispute Tribunal issued the impugned Judgment, dismissing Mr. Melbiksis’s application on the grounds that it was not receivable *ratione materiae* and *ratione temporis*.

13. First, relying on Article 2(1)(a) of the Dispute Tribunal Statute as well as on Appeals Tribunal jurisprudence, the UNDT recalled that the “key characteristic of an administrative decision subject to judicial review is that the decision must ‘produce direct legal

³ Management evaluation response dated 24 March 2021.

⁴ Management evaluation request dated 23 May 2021.

⁵ Management evaluation response dated 9 June 2021.

consequences' affecting a staff member's terms or conditions of appointment".⁶ The UNDT further stated that a management evaluation "decision" is not an administrative decision subject to judicial review.⁷

14. The UNDT noted that Mr. Melbiksis identified as the contested decision the Administration's response to his first request for management evaluation. However, the Dispute Tribunal found that "the management evaluation response dated 24 March 2021 [did] not substitute the non-selection decision dated 20 November 2020 and [did] not constitute a new administrative decision affecting [Mr. Melbiksis]'s contract or terms of appointment".⁸ Therefore, it found that the Administration's response dated 24 March 2021 did not constitute an appealable administrative decision and that, as a result, Mr. Melbiksis's application was not receivable *ratione materiae*.

15. Second, relying on Article 8 of the Dispute Tribunal Statute, the UNDT observed that Mr. Melbiksis had to file his application before the UNDT "within 90 calendar days of [his] receipt of the response by management to his (...) submission".

16. The Dispute Tribunal then recalled that, in accordance with Appeals Tribunal jurisprudence, it fell under its competence to interpret, "individualize and define the administrative decision impugned by a party and identify what is in fact being contested and so, subject to judicial review".⁹

17. Having analyzed Mr. Melbiksis's application and annexes, the UNDT concluded that the decision that he was contesting was his non-selection for the position for which he requested a management evaluation and received a response from the Administration on 24 March 2021.¹⁰ Therefore, the deadline to file his application before the Dispute Tribunal was 90 days from 24 March 2021 and expired on 22 June 2021. As he filed his application only on 9 September 2021,

⁶ Impugned Judgment, para. 16 citing *Maloof v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-806, para. 34.

⁷ Impugned Judgment, para. 19.

⁸ *Ibid.*

⁹ *Ibid.*, para. 21 citing *Massabni v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-238, para. 26.

¹⁰ Impugned Judgment, para. 22. The UNDT stated that Mr. Melbiksis received the response to his first request for management evaluation on 24 March 2021. However, the letter dated 24 March 2021 was issued on 25 March 2021.

the UNDT found that Mr. Melbiksis's application was consequently not receivable *ratione temporis*.

Procedure before the Appeals Tribunal

18. On 9 January 2023, Mr. Melbiksis filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 24 March 2023.

Submissions

Mr. Melbiksis's Appeal

19. Mr. Melbiksis requests the Appeals Tribunal to reverse the impugned Judgment and to award him monetary compensation equivalent to three years' net base salary at the P-3 level.

20. Mr. Melbiksis also requests an oral hearing before the Appeals Tribunal to "have an opportunity to properly explain [his] arguments and present [his] case in a thorough manner".

21. With regard to the impugned Judgment, Mr. Melbiksis submits that the Dispute Tribunal erred in fact, in law and failed to exercise jurisdiction vested in it dismissing his application. ...

22. First, Mr. Melbiksis contends that the UNDT failed to appreciate his "description of the decision to classify [him] as unsuitable". He further submits that nothing in the selection documentation showed that he was unsuitable for the position and that, therefore, the Administration acted in an "unlawful manner" when it decided to designate him for the first time as unsuitable in its response to his first request for management evaluation. Consequently, he argues the Administration's response issued on 25 March 2021 constituted a new administrative decision.

23. Second, with regard to the UNDT's determination that his application was not receivable *ratione temporis*, Mr. Melbiksis submits that the Dispute Tribunal erred in interpreting that the contested decision was the non-selection decision. He rather contends that he was contesting the decision "to classify [him] as unsuitable, which (...) [he] was made aware (...) [for] the first time on 25 March 2021". He further contends that he was then required to file a second request for management evaluation with regard to this Administration's response issued on 25 March 2021, "[a]s according to the rules, an administration decision need[s] to be first contested through [a]

management evaluation request”. Therefore, he submits that he filed his application in a timely manner after receiving the Administration’s response on 9 June 2021.

24. Last, Mr. Melbiksis submits that the UNDT erred by ignoring “the incoherence and lack of legal arguments in the [Secretary-General]’s narrative around the issue of recommendation” of his candidacy. He also argues that the UNDT accepted “a number of things that the [Secretary-General] stated as facts without checking them”. For example, he contends that the UNDT erred in concluding that he became aware of his non-selection on 20 November 2020, when it was actually on 30 November 2020. He also submits that the UNDT erred in concluding that the contested decision was dated 20 November 2020 and that he was supposedly shortlisted for another vacant position at the P-2 level in Stockholm.

The Secretary-General’s Answer

25. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

26. The Secretary-General contends that the Appeals Tribunal should deny Mr. Melbiksis’s request for an oral hearing as, in accordance with Article 18(1) of the Appeals Tribunal Rules of Procedure, the facts and record clearly identify the issues for consideration on appeal.

27. With regard to the impugned Judgment, the Secretary-General submits that the UNDT correctly held that Mr. Melbiksis’s application was not receivable *ratione materiae* and *ratione temporis*.

28. First, relying on *Tosi*,¹¹ the Secretary-General contends that the Dispute Tribunal rightly concluded that, contrary to Mr. Melbiksis’s contention, the outcome of the management evaluation issued on 25 March 2021 was not an administrative decision subject to challenge but rather a “mere (...) reassessment of the original—and challengeable—administrative decision” and that Mr. Melbiksis’s application was therefore not receivable *ratione materiae*.

29. Moreover, the Secretary-General submits that the UNDT correctly identified the contested administrative decision to be Mr. Melbiksis’s non-selection for the position, which he challenged in his first request for management evaluation. The Secretary-General further observes that the

¹¹ *Tosi v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-946, para. 40. The Secretary-General also refers the Appeals Tribunal to *Kalashnik v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-803, para. 27.

UNDT had the inherent power to define the contested decision because, as a first instance tribunal, it “is in the best position to decide what is appropriate for the fair and expeditious disposal of a case” and that the Appeals Tribunal should “not interfere lightly” with the UNDT’s broad discretion in the management of its cases.¹²

30. Second, the Secretary-General submits that the UNDT rightfully found that Mr. Melbiksis’s application was not receivable *ratione temporis* because, pursuant to Article 8(1)(d)(i)(a) of the Dispute Tribunal Statute, he had 90 days from the receipt of the management evaluation issued on 25 March 2021 to file an application to the UNDT, but he failed to do so as he filed his application more than five months later, i.e., on 9 September 2021. Furthermore, contrary to Mr. Melbiksis’s contention, the Secretary-General argues that Mr. Melbiksis was not required to file a management evaluation request to the Administration’s response issued on 25 March 2021. Therefore, the Secretary-General argues that the UNDT correctly dismissed Mr. Melbiksis’s application because it was not filed within the statutory deadline.

31. Therefore, the Secretary-General submits that Mr. Melbiksis has failed to establish any reversible error by the UNDT and, thus, to satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute.

Considerations

32. The scope of the UNAT’s review of a judgment entered by the UNDT is set forth in Article 2(1) of the UNAT Statute, which provides that:

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision

¹² *Nouinou v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-981, para. 48; *Bastet v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-423, para. 14; *Khambatta v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-252, para. 15.

33. “When the Appeals Tribunal hears an appeal, it does not simply re-try the case”; rather, “the appellant has the burden on appeal to establish that the UNDT judgment is defective within the meaning of Article 2(1)” of the UNAT Statute.¹³ With regard to factual determinations, our review is specifically prescribed by the Statute:¹⁴

The Dispute Tribunal has broad discretion (...) to determine the admissibility of any evidence and the weight to be attached to such evidence. *The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision (...)*. This Tribunal is mindful that the Judge hearing the case has an appreciation of all the issues for determination and the evidence before him or her.

34. It is with this framework in mind that we review the two principal determinations by the UNDT in the impugned Judgment. First, the determination that the application was not receivable *ratione materiae*; and second, the determination that the application was not receivable *ratione temporis*.

35. With respect to the first issue, whether the UNDT erred in determining that the application was not receivable *ratione materiae*, we recall that the UNDT is, by its Statute, “competent to hear and pass judgment on an application” which “appeal[s] an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”.¹⁵ The “key characteristic” of an appealable administrative decision is its “capacity to produce direct legal consequences affecting a staff member’s terms and conditions of appointment”.¹⁶

36. Appellant here applied to the UNDT for review of the 25 March 2021 response to his request for a management evaluation of his non-selection. That response reviewed the underlying decision not to select Appellant for the position for which he had applied, concluded that the “non-selection for the [p]osition was lawful” and provided Appellant with redacted copies of certain documents which related to the non-selection decision.¹⁷ That management evaluation did not produce direct legal consequences for Appellant, and is, therefore, not a

¹³ *Aliko v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-540, para. 28.

¹⁴ *Diop v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-950, para. 26 (emphasis added).

¹⁵ Article 2(1)(a) of the Dispute Tribunal Statute.

¹⁶ *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 38.

¹⁷ Management evaluation response dated 24 March 2021.

reviewable administrative decision, as the UNAT has held on multiple occasions. As the Appeals Tribunal stated in *Kalashnik*:¹⁸

A response (...) to a request for management evaluation is a decision or action of a complementary nature, lacking in the qualities of finality and consequence, and thus will not constitute “an administrative decision that is alleged to be in non-compliance with the terms of appointment or contract of employment” as contemplated in Article 2(1) of the UNDT Statute. The UNDT was accordingly correct and did not err in its finding that the application was not receivable *ratione materiae* and that it hence lacked jurisdiction.

37. As the Appeals Tribunal explained in *Farzin*:¹⁹

[T]he purpose of management evaluation is to afford the Administration the opportunity to correct any errors in an administrative decision so that judicial review of the administrative decision is not necessary. Thus, management evaluation has a specific mandate to review contested administrative decisions, not to make decisions in respect of staff members’ requests in the first instance. (...) [Thus,] the Management Evaluation Unit’s [MEU] “decision”, is not an administrative decision subject to judicial review by the Dispute Tribunal. Rather, the judicially reviewable administrative decision is the underlying decision “that is alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member”.

38. The UNDT was therefore correct in holding that Appellant’s challenge to the management evaluation of 25 March 2021 was not receivable *ratione materiae*.

39. The UNDT further determined that Appellant’s application was not receivable *ratione temporis* because it was filed with the UNDT more than 90 days after his receipt of the management evaluation response.

40. The Dispute Tribunal Statute provides, at Article 8(1)(d)(i), that an application is only receivable if it is filed within the following deadlines:

- (i) In cases where a management evaluation of the contested decision is required:
 - a. Within 90 calendar days of the applicant’s receipt of the response by management to his or her submission; or
 - b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided (...).

¹⁸ *Kalashnik* Judgment, *op. cit.*, para. 27.

¹⁹ *Farzin* Judgment, *op. cit.*, paras. 40-41.

41. Under this provision, an application challenging a non-selection decision is receivable if filed within 90 days of the receipt of the response by management to the request for management evaluation.

42. Appellant maintains that he is not contesting the non-selection decision and suggests that the UNDT erred in determining otherwise. In that regard, we recall that the Appeals Tribunal has held that “[i]t is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted (...), whatever name the party attaches to the document (...). Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”.²⁰

43. The UNDT here determined, based on the record, that the only contestable administrative decision at issue was the non-selection decision, and not the management evaluation. Only the non-selection decision has the indicia of an administrative decision with “direct legal consequences” for the staff member. The UNDT’s determination in that regard was therefore correct and well within its authority to make.

44. Here, Appellant was informed of the outcome of his request for management evaluation regarding his non-selection on or about 25 March 2021. His application to the UNDT therefore should have been filed within 90 calendar days of his receipt of that management response, which would be approximately 23 June 2021. He did not do so, but instead sought a further management evaluation, and filed his application only after receiving a response to that request. Those “ongoing exchanges with the MEU do not extend or re-set the applicable time limits”.²¹

45. Appellant could thus have challenged the non-selection decision had he filed an application by 23 June 2021. He instead filed his application on 9 September 2021, well beyond the applicable deadline. The UNDT correctly determined that the application was not receivable *ratione temporis*. Because this determination does not turn on the particular date on which Appellant became aware of the non-selection decision, the dispute over whether

²⁰ *Fasanella v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-765, para. 20. See also *Massabni v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-238, para. 25, which provides that: “The duties of a Judge prior to taking a decision include adequate interpretation and comprehension of the applications submitted by the parties, whatever their names, words, structure or content, as the judgment must necessarily refer to the scope of the parties’ contentions”.

²¹ *Khalid Younis v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1094, para. 20.

Appellant learned of that decision on 20 November or 30 November 2020 is immaterial to our disposition.

46. Finally, Appellant requests that the UNAT conduct an oral hearing in this matter. Article 18(1) of the Appeals Tribunal Rules of Procedure provides that “[t]he judges hearing a case may hold oral hearings (...) if such hearings would assist in the expeditious and fair disposal of the case”. Upon consideration of the submissions and the record of this matter, we find that the issues are well-defined and require no further development through an oral hearing. We therefore deny Appellant’s request in that regard.

Judgment

47. Mr. Melbiksis's appeal is dismissed, and Judgment No. UNDT/2022/119 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Gao

Judgment published and entered into the Register on this 22nd day of November 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar