



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

Judgment No. 2023-UNAT-1378

**Prakash Neupane
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Abdelmohsen Sheha, Presiding Judge Gao Xiaoli Judge Graeme Colgan
Case No.:	2022-1760
Date of Decision:	27 October 2023
Date of Publication:	6 November 2023
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Edwin Nhliziyo
Counsel for Respondent:	Sylvia Schaefer

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Mr. Prakash Neupane contested before the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) the decision to reassign him from the position of Chief of Engineering Section, at the P-5 level, with the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) to the position of Chief of Section, Centralized Warehouse, P-5 within MINUSCA's Mission Support Division (MSD).
2. By Judgment on Receivability No. UNDT/2022/101 (impugned Judgment), the Dispute Tribunal dismissed Mr. Neupane's application as not receivable *ratione materiae*.
3. Mr. Neupane has filed an appeal before the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, we dismiss the appeal and uphold the impugned Judgment.

Facts and Procedure

5. Mr. Neupane joined MINUSCA as Chief of Engineering Section, at the P-5 level in August 2017.
6. In October 2020, Mr. Neupane was *de facto* reassigned as Chief of Section, Centralized Warehouse at MINUSCA's MSD.
7. From 14 to 28 March 2021, while Mr. Neupane was still formally holding the position of Chief of Engineering Section, P-5, at MINUSCA, the position was advertised on Inspira.
8. On 5 May 2021, Mr. Neupane was informed by memorandum from the Director of Mission Support (DMS) that, on 4 May 2021, the Special Representative of the Secretary General, MINUSCA had approved his reassignment to the position of Chief of Section, Centralized Warehouse, P-5 within MINUSCA's MSD with retroactive effect from 29 October 2020.
9. On 24 May 2021, Mr. Neupane wrote to the MINUSCA Chief Human Resources Officer (CHRO) raising concerns and seeking clarification on the validity of his reassignment. He did not receive any response.

10. On 26 November 2021, Mr. Neupane's personnel action (PA) was processed through Umoja indicating his transfer from the position of Chief of Engineering Section to the position of Chief of Section, Centralized Warehouse within MINUSCA.

11. On 30 November 2021, Mr. Neupane submitted a request for management evaluation, challenging his reassignment and requesting his reinstatement to his initial position of Chief of Engineering Section. On 7 January 2022, the Chief of the Management Evaluation Unit (MEU) considered his request not receivable *ratione temporis*.

12. On 5 April 2022, Mr. Neupane filed an application before the UNDT.

13. On 6 October 2022, the UNDT issued Judgment on Receivability No. UNDT/2022/101 dismissing Mr. Neupane's application. The UNDT found that the contested decision of reassignment was communicated to Mr. Neupane, at the latest, on 5 May 2021, in unambiguous and unconditional terms. Since the 60-day deadline for requesting management evaluation began to run from that date and Mr. Neupane only filed a management evaluation request on 30 November 2021, his request was untimely. The UNDT concluded that Mr. Neupane's application was thus not receivable *ratione materiae*.

14. Mr. Neupane appealed the impugned Judgment on 4 December 2022, and the Secretary-General filed his answer on 10 February 2023.

Submissions

Mr. Neupane's Appeal

15. Mr. Neupane submits that the UNDT erred in fact and in law by finding that his application was not receivable since he had failed to timely submit his request for management evaluation. The UNDT failed to understand which decision Mr. Neupane contested. He never challenged the reassignment decision. In fact, he readily agreed to the reassignment and took up his new duties as assigned. Instead, Mr. Neupane challenged the structural demotion he had been subjected to. Mr. Neupane had been promised, during a meeting held on 26 October 2020, that the Administration would take the necessary steps to get him cleared by the Field Central Review Body (FCRB).

16. The reassignment was thus conditional on the Administration's compliance with the applicable Regulations and Rules. This was a legitimate concern because in field missions, promotions are affected through the roster system. Without FCRB clearance for his new post, Mr. Neupane has no clear path to the D-1 level in his new field. Mr. Neupane had already been cleared by the FCRB for the post of Chief, Engineering, he occupied. By reassigning him without FCRB clearance, he has in effect been structurally demoted to the equivalent of a rostered P-4 staff member as opposed to a rostered P-5 staff member and an acquired right has been taken away from him.

17. Mr. Neupane asks that his lateral reassignment be regularized by completing the process to clear him by the FCRB.

The Secretary-General's Answer

18. The Secretary-General submits that the UNDT correctly held that the application was not receivable. The UNDT correctly identified the contested administrative decision in this case to be Mr. Neupane's reassignment. In both his management evaluation request and application, he indicated and made several references to his reassignment as the contested decision. The contested "decision" Mr. Neupane claims to be at issue in his appeal, the lack of his FCRB clearance and roster membership for the reassigned post, is not an administrative decision. Mr. Neupane has no right to an FCRB clearance and roster membership for the position of Chief, Integrated Warehouse Section under his contract of employment or terms of appointment. Contrary to Mr. Neupane's claims, the reassignment was not conditional on his FCRB clearance and roster membership for the reassigned post, nor did he have an acquired right to it.

19. The Secretary-General also submits that the UNDT correctly found that Mr. Neupane had not submitted a timely request for management evaluation. The UNDT correctly held that Mr. Neupane had been notified about his reassignment on 5 May 2021 at the latest and that the memorandum from the DMS had expressed his reassignment "in unambiguous and unconditional terms, including that the reassignment was not temporary". Mr. Neupane's argument that he could only realize that his reassignment was permanent and without FCRB clearance once the respective personnel action was issued is made for the first time on appeal. The personnel action as of 26 November 2021 simply documented the implementation of the 4 May 2021 reassignment decision, of which he had been notified on 5 May 2021. Thus, the UNDT rightfully stressed that if Mr. Neupane had wished to challenge his reassignment, he should have filed a management

evaluation request by 4 July 2021, “in particular given that instantly in May 2021 he questioned the legality of the impugned decision”.

20. Furthermore, in accordance with UNAT’s consistent jurisprudence, Mr. Neupane’s 24 May 2021 request for clarification did not reset the deadline for requesting management evaluation. The UNDT cannot waive the deadline for requesting management evaluation. Finally, the Secretary-General opposes Mr. Neupane’s contention that staff members encountering the United Nations internal justice system for the first time are at a disadvantage, since Mr. Neupane was himself represented by competent Counsel of the Office of Staff Legal Assistance (OSLA) before the UNDT and UNAT. The Secretary-General concludes that Mr. Neupane consequently did not timely request management evaluation prior to filing his application before the UNDT, and the UNDT thus rightfully dismissed the application as not receivable.

21. The Secretary-General asks that the UNAT dismiss the appeal in its entirety.

Considerations

22. In its Judgment on Receivability under appeal, the UNDT defined the impugned decision as the decision to laterally reassign the Appellant from his previous P-5 position of Chief of Engineering Section, within MINUSCA’s MSD, to the P-5 position of Chief of Section, Centralized Warehouse, within the same Division.¹

23. The Appellant contends that the UNDT wrongly determined the impugned decision, noting that he “never contested the decision to reassign him”,² but rather asked to be rostered for the new position.³ Consequently, he submits that the Dispute Tribunal erred when it considered that the time limit for management evaluation for this specific decision started to run from 5 May 2021.

24. The main issue in the present appeal is whether the UNDT erred in fact or in law in the determination of the impugned decision and, consequently, in the ruling that the request for management evaluation was time-barred and the application for judicial review was not receivable *ratione materiae*.

¹ Impugned Judgment, paras. 1 and 2.

² Appeals brief, para. 1.

³ *Ibid.*, para. 5.

25. Article 2(1)(a) of the UNDT Statute confers the Dispute Tribunal with the power to hear and pass judgment on applications filed by individuals “[t]o appeal an *administrative decision* that is alleged to be in non-compliance with the terms of appointment or the contract of employment”.⁴

26. According to the consistent jurisprudence of this Tribunal, an administrative decision is defined as “a unilateral decision of an administrative nature taken by the administration involving the exercise of a power or the performance of a function in terms of a statutory instrument, which adversely affects the rights of another and produces direct legal consequences”.⁵

27. In terms of the UNDT’s power to determine the impugned decision, our Tribunal has ruled in *Massabni* that:⁶

... 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...

... Thus, the authority to render a judgment gives the Judge an inherent power to individualize and define the administrative decision impugned by a party and identify what is in fact being contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

28. We further ruled in *ElShanti*,⁷ regarding the elements used to identify the administrative decision under contestation, which is applicable both to UNDT and UNRWA DT cases, that: “The UNRWA Dispute Tribunal was not limited to the staff member’s description of the contested or impugned decision; quite properly, it could consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed.”

⁴ Emphasis added.

⁵ *Lloret Alcañiz et al. v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-840, para. 61, citing *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 48, in turn citing former United Nations Administrative Tribunal (former Administrative Tribunal), Judgment No. 1157, *Andronov* (2003), para. V.

⁶ *Massabni v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-238, paras. 25-26. See also: *Gakumba v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-591, para. 21; *Chaaban v. Commissioner-General of the United Nations Relief and Works Agency For Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-611, para. 18.

⁷ *Mohammed Abed AlRaheam ElShanti v. Commissioner-General of the United Nations Relief and Works Agency For Palestine Refugees in the Near East*, Judgment No. 2020-UNAT-1022, para. 45.

29. It follows that the UNDT enjoys a wide discretionary power to evaluate the different elements provided by an applicant in his application for judicial review and subsequently to identify the impugned decision(s). The UNAT shall not intervene lightly in this exercise as far as the UNDT's determination is supported by a "primary legal or factual basis" from which such determination emanates.⁸

30. We have reviewed the application for judicial review submitted to the UNDT and found no error in fact or in law on the count of the Dispute Tribunal.

31. To start, the application for judicial review was quite unclear, especially in its descriptive parts. Mr. Neupane's own sentences were at best confusing. It was however his burden to establish that the administrative decision in issue was in non-compliance with the terms of his appointment or contract of employment. Such a burden cannot be met where he fails to identify an administrative decision capable of being reviewed, that is, a specific decision which has a direct and adverse impact on his or her contractual rights.⁹ Therefore, we find that the UNDT adopted a generous approach by trying to identify the impugned decision in light of the different elements of the application.

32. As to the UNDT's determination, we do not find any error on its count.

33. The application for judicial review focused mainly on the question of regularity of the reassignment decision; a question that was raised repeatedly throughout the application.¹⁰ This went in line with the Appellant's own request for management evaluation that challenged directly and clearly the decision of his reassignment.¹¹ The issue of rostering was raised in the application for judicial review as an argument to prove the alleged procedural irregularity of the Appellant's reassignment, as he was not FCRB cleared for the position to which he was reassigned.¹² In these circumstances, it was not unreasonable for the UNDT to determine the impugned decision as the decision of the Appellant's reassignment, albeit his request to be FCRB cleared made under Section IX for requested relief or remedies.¹³

⁸ *Farzin v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-917, para. 39.

⁹ *Adnan-Tolon v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-970, para. 28.

¹⁰ Application for judicial review, Section V, paras. 1, 3 and 5(a)&(b).

¹¹ *Ibid.*, Annex 3, Request for management evaluation. The remedy sought by Mr. Neupane was "[t]o reinstate [him] against the Post No. 30089671 of Chief of Engineering Section with immediate effect".

¹² *Ibid.*, Section V, para. 5(b).

¹³ *Ibid.*, Section IX, para. 1.

34. Having found the UNDT's determination lawful, there is no need to further assess the other contention of the Appellant.

35. The appeal accordingly fails.

Judgment

36. The appeal is dismissed, and Judgment No. UNDT/2022/101 is hereby affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Gao

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 6th day of November 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar

Concurring Opinion by Judge Graeme Colgan

1. I concur with the Judgment of the Appeals Tribunal and wish to add only this in the spirit of assisting in the promotion of good employment relationships within the United Nations.

2. When Mr Neupane was advised formally in writing of his reassignment, he was invited to contact a Human Resources official if he had any concerns and he did so, seeking an assurance that the formalities of this reassignment would be followed. There was no response to his enquiry. While that non-response would not have justified the whole delay until he sought management evaluation, he nevertheless could reasonably have expected a response and waited for one.

3. I think this absence of any reply, or even an acknowledgment of receipt of his reasonable memorandum, by the Administration was a failing on the part of Human Resources and discourteous to Mr Neupane. He had a reasonable point to make and made it properly, reasonably and respectfully. Assuming that his memorandum was received, the failure to respond does not assist the good and mutually-respectful employment relations that should exist in these situations.

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