



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

Judgment No. 2025-UNAT-1524

Maria Alejandra Mouchabek

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

| | |
|----------------------|--|
| Before: | Judge Abdelmohsen Sheha, Presiding Judge Katharine Mary Savage Judge Graeme Colgan |
| Case No.: | 2024-1898 |
| Date of Decision: | 21 March 2025 |
| Date of Publication: | 24 April 2025 |
| Registrar: | Juliet E. Johnson |

Counsel for Appellant: Cristian Gimenez Corte

Counsel for Respondent: Rupa Mitra & Agnieszka Martin

JUDGE ABDELMOHSEN SHEHA, PRESIDING.

1. Ms. Maria Alejandra Mouchabek, a former staff member of the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), contested the decision concerning her separation (contested decision).
2. By Judgment No. UNDT/2023/139 (impugned Judgment),¹ the United Nations Dispute Tribunal (UNDT) dismissed the application on the merits.
3. Ms. Mouchabek 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 Procedure²

5. Ms. Mouchabek commenced her employment with ECLAC on 11 December 1989.³ At the time of her separation from the Organization, she held a permanent appointment as Senior Administrative Assistant, at the G-7 level, in the Travel, Traffic and Local Transportation Unit of the Division of Administration.
6. In 2022, due to her deteriorating health, Ms. Mouchabek “started to consider the possibility of retirement”.⁴ On 1 September 2022, she met with the Director of the Division of Administration (D/DA) of ECLAC to discuss her health situation and review the options available to her. On the same date, following that meeting, she sent the D/DA an e-mail stating that she had decided to go on early retirement from 31 December 2022. The D/DA replied a few hours later noting that Ms. Mouchabek had set a high standard in the Travel, Traffic and Local Transportation Unit. The D/DA then notified the Acting Executive Secretary (AES) of ECLAC of her resignation and then instructed the Human Resources Section (HRS) to initiate Ms. Mouchabek’s separation process and a recruitment process to fill the position that would soon become vacant due to her separation.

¹ *Mouchabek v. Secretary-General of the United Nations*, Judgment dated 15 December 2023.

² Summarized from the impugned Judgment as relevant to the appeal.

³ Impugned Judgment, para. 4.

⁴ *Ibid.*, paras. 5-6.

7. Following that exchange, Ms. Mouchabek started interacting with the HRS in preparation for her early retirement on 31 December 2022.⁵ From 1 September 2022 until 15 December 2022, she undertook the necessary administrative procedures to be separated from the Organization, including completing the forms to secure her pension benefits and to ensure after-service health insurance (ASHI) coverage. On 15 December 2022, the HRS processed her separation action on the Umoja platform, and she received a Personnel Action notification in this regard.

8. Meanwhile, the ECLAC Administration commenced preparations to fill Ms. Mouchabek's post effective 3 January 2023.⁶ The D/DA instructed the HRS to advertise the vacancy.

9. On 16 December 2022, Ms. Mouchabek sent the D/DA an e-mail stating that since her health condition had improved and she was now able to successfully perform her assigned tasks, she had decided to withdraw her request for early retirement and to continue working at ECLAC beyond 31 December 2022.⁷

10. On 19 December 2022, Ms. Mouchabek received the contested decision.⁸ In the e-mail, the HRS provided the following reasons for not accepting the withdrawal of her request:⁹

a. The request for early retirement dated 1 September 2022 had already been accepted by the Acting Executive Secretary of ECLAC under the current delegation of authority framework.

b. A temporary job opening ("TJO") had been advertised to fill the post that the Applicant would leave vacant after 31 December 2022, and an internal candidate ("Candidate A") had already been selected for it.

c. Another internal staff member ("Candidate B") was being laterally assigned to the post that would be left vacant by Candidate A and had already been notified.

d. The Human Resources Section had already undertaken formalities and actions in relation to the Applicant's separation from the Organization.

e. The professional development opportunities of the affected internal staff members would be harmed if the request to reverse the resignation were accepted.

⁵ *Ibid.*, paras. 8-10.

⁶ *Ibid.*, para. 8.

⁷ *Ibid.*, para. 9.

⁸ *Ibid.*, para. 10.

⁹ *Ibid.* The Secretary-General later added in the reply that a third staff member (Candidate C) was being reassigned to the position that would be left vacant by Candidate B.

11. On 23 December 2022, Ms. Mouchabek filed a request for management evaluation.¹⁰
12. On 31 December 2022, Ms. Mouchabek separated from the Organization.¹¹
13. On 7 February 2023, the Management Evaluation Unit informed Ms. Mouchabek that the Under-Secretary-General for the Department of Management Strategy, Policy and Compliance (USG/DMSPC) had decided to uphold the contested decision.¹²
14. On 28 March 2023, Ms. Mouchabek filed her application with the UNDT.

The impugned Judgment

15. By Judgment No. UNDT/2023/010 dated 15 December 2023, the UNDT dismissed the application.

16. The UNDT found that there was no requirement that the written response to the staff member's resignation should be in the form of a signed letter.¹³ The staff regulations and rules and the Human Resources guidelines on resignation and early retirement do not address the decision not to accept the withdrawal of resignation. Having voluntarily resigned and having had her resignation accepted, Ms. Mouchabek could not claim that the Secretary-General had not complied with her terms of appointment or the contract of employment.

17. The UNDT pointed out that for a period of three and a half months until 15 December 2022, Ms. Mouchabek had proceeded to undertake a series of actions aimed at facilitating the implementation of her resignation.¹⁴ She does not dispute that the Secretary-General had taken several steps toward implementing her decision to resign, e.g., recruited her replacement, or that the Human Resources Officers were actively collaborating with her to finalize her separation procedures.

18. The UNDT found that Ms. Mouchabek had not adduced evidence that the Secretary-General had acted in bad faith or that the decision had been improperly motivated.¹⁵ Furthermore, she has not alleged that she was coerced or pressured by the Administration to take

¹⁰ Impugned Judgment, para. 13.

¹¹ *Ibid.*, para. 13.

¹² *Ibid.*

¹³ *Ibid.*, paras. 32 and 35-36.

¹⁴ *Ibid.*, paras. 44 and 47.

¹⁵ *Ibid.*, paras. 48-50.

the decision to resign from her employment. It was reasonable under the circumstances for the Secretary-General to exercise managerial discretion not to accept her request to withdraw her resignation.

Procedure before the Appeals Tribunal

19. On 13 February 2024, Ms. Mouchabek filed an appeal of the impugned Judgment with the Appeals Tribunal, to which the Secretary-General filed an answer on 15 April 2024.

Submissions

Ms. Mouchabek's Appeal

20. Ms. Mouchabek requests the Appeals Tribunal to reverse the impugned Judgment, rescind the contested decision and award compensation for harm equivalent to two years of her net base salary.

21. She argues that the UNDT erred on a question of law in determining that the contested decision was the decision not to accept the withdrawal of her request for early retirement. The actual contested decision was the decision to separate her on early retirement despite the withdrawal of her resignation. The UNDT, therefore, proceeded with its reasoning on that erroneous assumption. The legal consequences of those decisions are different.

22. Ms. Mouchabek contends that the UNDT erred on a question of fact, resulting in a manifestly unreasonable decision, in finding that her request for early retirement had been accepted by the Secretary-General. There is no evidence for it.

23. She submits that Staff Rule 9.11(iv) expressly states that the request for retirement shall be approved by the Secretary-General. The United Nations Human Resources Policy Guidelines on Early Retirement (Early Retirement Guidelines) provide that a “letter of appreciation” “will be signed”. She never received such a letter nor a reply to her 20 December 2022 request for evidence that her request for early retirement had been accepted.

24. Ms. Mouchabek observes that, in the event that her request for early retirement is characterized as resignation, Staff Rule 9.2 clearly states that it should be “accepted” by the Secretary-General. The United Nations Human Resources Policy Guidelines on Separation from Service—Resignation (Resignation Guidelines) require a signature of the appropriate official to the

acceptance of resignation and provide that the acceptance should be conveyed to the staff member in writing. No such letter was conveyed to her.

25. Lastly, Ms. Mouchabek submits that the United Nations Human Resources Guidelines on Separation from Service General Procedures (Separation Guidelines) mandate a number of administrative steps but such steps and many other additional obligations related to the separation procedures have not yet been fulfilled.

The Secretary-General's Answer

26. The Secretary-General requests the Appeals Tribunal to uphold the impugned Judgment and dismiss the appeal.

27. The Secretary-General argues that the UNDT correctly identified the contested decision. Ms. Mouchabek has failed to show any error. In both her application and her appeal, she identified the 19 December 2022 e-mail as the contested decision. Her separation occurred solely pursuant to her resignation and thus was not an administrative decision capable of being challenged. She has pointed to no legal provision supporting any right to withdraw her resignation.

28. The Secretary-General contends that the UNDT correctly held that the Administration had accepted Ms. Mouchabek's resignation. Her claim to the contrary is not supported by the record. First, the AES was copied on the D/DA's 1 September 2022 e-mail acknowledging her resignation. Moreover, the 19 December 2022 e-mail specifically indicated that her resignation was accepted by the AES and the AES was again copied on that e-mail. Subsequent administrative steps also counter her narrative. Second, there is no legal support to Ms. Mouchabek's assertion that a written letter from the Administration was required. Office guidelines do not constitute binding law. Finally, Ms. Mouchabek cannot challenge her separation on the basis that her resignation was never properly accepted without first requesting management evaluation of the alleged non-acceptance of her resignation.

29. The Secretary-General submits that the Administration correctly exercised its discretion. Ms. Mouchabek has not specifically challenged this primary finding by the UNDT nor identified any related errors in the impugned Judgment. She has not raised any issues that would warrant its reversal.

Considerations

30. The present appeal is two-fold. Ms. Mouchabek firstly contends that the UNDT erred in law in identifying the contested decision. Ms. Mouchabek secondly submits that the UNDT erred on a question of fact, resulting in a manifestly unreasonable decision, in finding that her resignation or early retirement was accepted.

31. At the outset, we note that Staff Rule 9.1 provides for specific ways of separation from service: resignation; abandonment of post; expiration of appointment; retirement; termination of appointment; and death. Staff Regulations and Rules do not consider “early retirement” as a distinct way of separation from service. However, as early retirement relies, by definition, on a voluntarily act “initiated by a staff member” with proper notice to the Administration, and regardless of its legal effect under the Regulations, Rules and Pension Adjustment System of the United Nations Joint Staff Pension Fund, which is a different set of legal rules, “early retirement” fits squarely within the definition of resignation governed by Staff Rule 9.2. Therefore, Ms. Mouchabek’s letter of 1 September 2022 is to be considered as a letter of resignation, and we will treat it as such in this Judgment.

Whether the UNDT erred in law in identifying the contested decision

32. In the impugned Judgment, the UNDT identified the contested decision as “the decision of the Administration not to accept the Applicant’s withdrawal of her resignation”.¹⁶

33. Ms. Mouchabek takes issue with that characterization. She contends that the UNDT made an “erroneous assumption” and elaborated an entire legal argumentation justifying that it was within the Administration’s discretionary authority to accept or not to accept the withdrawal of her resignation. Instead, she maintains that the contested decision was the decision of her separation from service despite the withdrawal of her unaccepted resignation.

34. The power of the UNDT to identify the impugned administrative decision(s) has been confirmed by our Tribunal on multiple occasions. In *Massabni*,¹⁷ we held that

(...) 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

¹⁶ Impugned Judgment, para. 26.

¹⁷ *Massabni v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-238, para. 26.

contested and subject to judicial review, which could lead to grant, or not to grant, the requested judgment.

35. In exercising its power to identify the contested decision(s), the first instance Tribunal is “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”.¹⁸

36. It follows that the UNDT enjoys wide discretionary power to evaluate the different elements provided in the application to identify the contested decision(s). This Tribunal shall not intervene lightly in the UNDT’s determination as far as it is supported by “primary legal or factual basis”.¹⁹

37. In the present case, it is undisputed that Ms. Mouchabek stated, both in her management evaluation request and her application before the UNDT, that she was contesting the decision of the Administration to separate her from service despite the withdrawal of her resignation. Besides, it is noted that Ms. Mouchabek’s counsel insisted on this issue during the UNDT’s case management discussion held on 31 October 2023 which was agreed upon with the Secretary-General’s counsel. However, the record also shows that Ms. Mouchabek had indeed sent a letter of resignation on 1 September 2022. A few months later, she sent another letter to the Administration on 16 December 2022 conveying her decision to withdraw her resignation. On 19 December 2022, the Administration rejected Ms. Mouchabek’s withdrawal of the resignation and proceeded with her separation from service. In these established circumstances, we do not find that the UNDT erred in law when it identified the contested decision as the decision of the Administration not to accept Ms. Mouchabek’s withdrawal of her resignation. We further note that this approach did not cause prejudice to her as the UNDT was able to examine all her contentions, in particular whether her resignation was accepted, and whether she had a legal right to the withdrawal of her resignation.

38. Ms. Mouchabek’s contention thus fails.

¹⁸ *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. This Judgment concerned the UNRWA Dispute Tribunal, but the same principle remains applicable for the UNDT.

¹⁹ *Alan George Blythe v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1404, para. 36 (internal citation omitted).

Whether the UNDT erred in fact, resulting in a manifestly unreasonable decision, when it found that the Administration had accepted Ms. Mouchabek's resignation

39. In the impugned Judgment, the UNDT found that the Administration had accepted Ms. Mouchabek's resignation.²⁰ She takes issue with this finding. She asserts that the Administration had never accepted her resignation which, consequently, could be withdrawn. As she withdrew it before its acceptance, she says, her resignation became inoperative, and the Administration erred when it separated her from service.

40. Although Ms. Mouchabek's contention goes to a matter of fact, it raises a primary question of law that must be settled. That is whether a resignation is conditional on the Administration's acceptance. If not, Ms. Mouchabek's contention becomes immaterial to the outcome of the present case.

41. Staff Regulation 9.1 provides:

Staff members may resign from service upon giving the Secretary-General the notice required under the terms of their appointment.

42. Staff Rule 9.2, entitled "Resignation", reads:

(a) A resignation, within the meaning of the Staff Regulations and Rules, is a separation initiated by a staff member.

(b) Unless otherwise specified in their letters of appointment, three months' written notice of resignation shall be given by staff members holding continuing appointments, 30 calendar days' written notice by those holding fixed-term appointments and 15 calendar days' written notice by those holding temporary appointments. The Secretary-General may, however, accept resignations on shorter notice.

(c) The Secretary-General may require the resignation to be submitted in person in order to be acceptable.

43. The legal nature of resignation was addressed in the jurisprudence of the former League of Nations Administrative Tribunal. In *Hilliar*, it found that the Organization "did not have to express its agreement to a resignation which complied with the terms of the employment contract" and

²⁰ Impugned Judgment, para. 36.

held: “Strictly speaking, in law the resignation was final and unconditional; its withdrawal thereafter, even if formally notified, was therefore inoperative.”²¹

44. In the same vein, the former United Nations Administrative Tribunal held in *Abu Sirdaneh*:²²

(...) There is no indication that the validity of the resignation is conditioned on acceptance. In addition, if the rule were to require consent in order to make resignation effective, then a staff member who wished to leave would be at the mercy of the Agency which, for either arbitrary or malicious reasons, wished to impede a staff member’s departure. The Tribunal cannot conceive that the rule was intended to confer on the Agency such authority over a staff member’s decision to leave.

45. It follows from the foregoing, and especially from the relevant provisions of the Staff Regulations and Rules, that resignation is a staff member’s unilateral act. To be valid, such an act must be made voluntarily, in writing, and with notice that respects the statutory notice period. It is only when the staff member wishes to resign on a shorter notice or with no notice that the resignation becomes conditional on the acceptance of the Secretary-General.

46. As such, a resignation that is submitted with the required notice produces all its legal effects without the need for the Administration’s acceptance. If the staff member wishes to withdraw his or her resignation, the Administration retains a discretionary authority to accept that withdrawal,²³ which it did not do in the present case for good reasons.

47. It is undisputed that Ms. Mouchabek, a staff member on a continuing appointment, presented her letter of resignation on 1 September 2022 with effect from 1 January 2023, hence with more than three months’ notice. Ms. Mouchabek does not dispute the fact that her resignation was the product of her free will, without external pressures. As such, Ms. Mouchabek’s resignation produced its legal effect without the need for the Administration to formally accept it. It follows

²¹ The League of Nations Administrative Tribunal Judgment No. 20, *Hilliar* (1939).

²² Former United Nations Administrative Tribunal Judgment No. 990, *Abu Sirdaneh* (2000), para. I (internal citation omitted).

²³ *Adwan v. Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-020, paras. 22-23. In this case, the Administration notified Mr. Adwan that he had six working days to withdraw his resignation. Although Mr. Adwan did request the withdrawal of his resignation in a timely manner, the Administration did not accept the withdrawal as the post he vacated was quickly filled. The Administration’s approach was confirmed by this Tribunal.

that Ms. Mouchabek's contention that the UNDT erred in fact in finding that the Administration accepted her resignation is immaterial.

48. We also do not accept Ms. Mouchabek's contention that the Administration did not respect the relevant guidelines on resignation. As we have ruled in multiple instances, administrative manuals and guides lack legal authority as they are not meant to create substantive rights or obligations for the addressees.²⁴ Administrative manuals and guides give practical advice to management and personnel undertaking their professional duties. They are subject and subservient to rules and regulations and to contractual rights and obligations. Therefore, such issuances are not binding and cannot modify or supplement the rights and obligations specifically provided for under the relevant regulations, rules and administrative instructions.²⁵

49. We should not, however, be viewed as unsympathetic to Ms. Mouchabek in the present case. The relevant guidelines reflect the Administration's best practice of sending a formal acceptance letter to the staff member, with confirmation on the effective date of separation. Although this type of letter is confirmative, with no legal effect on the separation from service by resignation, this type of communication provides assurance for the staff member and for the Administration, preventing the kind of misunderstanding that could turn into a judicial dispute, as in the present case.

50. In light of the foregoing, the appeal must fail.

²⁴ *Mahmoud Mohamad Zeidan v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2024-UNAT-1496, para. 46 (internal citations omitted).

²⁵ *Ibid.*

Judgment

51. Ms. Mouchabek's appeal is dismissed, and Judgment No. UNDT/2023/139 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 21st day of March 2025 in Nairobi, Kenya.

(Signed)

Judge Sheha, Presiding

(Signed)

Judge Savage

(Signed)

Judge Colgan

Judgment published and entered into the Register on this 24th day of April 2025 in New York, United States.

(Signed)

Juliet E. Johnson,
Registrar