



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

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Judgment No. 2018-UNAT-871

**Reda (Ben Osmane)**

**(Appellant)**

**v.**

**Secretary-General of the United Nations**

**(Respondent)**

**JUDGMENT**

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Before:	Judge Dimitrios Raikos, Presiding Judge John Murphy Judge Martha Halfeld
Case No.:	2018-1163
Date:	26 October 2018
Registrar:	Weicheng Lin

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Counsel for Mr. Ben Osmane: Self-represented

Counsel for Secretary-General: Francisca Lagos Pola

**JUDGE DIMITRIOS RAIKOS, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2018/032, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 1 March 2018, in the case of *Reda v. Secretary-General of the United Nations*. Mr. Ahmed Reda Ben Osmane<sup>1</sup> filed the appeal on 28 March 2018, and the Secretary-General filed his answer on 29 May 2018.

**Facts and Procedure**

2. The following facts are uncontested:<sup>2</sup>

... The Applicant was an individual contractor at [the United Nations Office for Project Services (UNOPS)] and served as a Civil Engineer in Rabat, Morocco. His last individual contractor agreement covered the period from 1 April 2016 to 31 August 2016.

... On 5 February 2018, the Applicant filed an application with the UNDT contesting the incorrect labeling of his duties during an investigation conducted by the UNOPS [Internal Audit and Investigation Group (IAIG)] in Morocco.

... On 14 February 2018, the Respondent filed a motion for leave to argue the non-receivability of the application as a preliminary issue. The Respondent submits that the Applicant was not a staff member of UNOPS but an individual contractor and therefore lacks *locus standi* before the Dispute Tribunal.

... On 15 February 2018, the Applicant filed a response to the Respondent's motion. The Applicant submits that he worked in UNOPS under the same conditions as a staff member of the United Nations.

3. The UNDT rendered its Judgment on Receivability on 1 March 2018 striking the application out as non-receivable. It considered that, pursuant to Article 2(1)(a) and Article 3 of the UNDT Statute, the UNDT's jurisdiction is limited to hearing applications from staff members, former staff members and persons making claims in the name of incapacitated or deceased staff members of the United Nations. As an individual contractor, Mr. Ben Osmane is not a staff member and his contract with UNOPS explicitly states that he shall not be regarded,

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<sup>1</sup> It appears that, contrary to common practice, the UNDT has erroneously named the case after Mr. Ben Osmane's first name. The Appeals Tribunal routinely addresses individuals by their titles and surnames and will do so accordingly in Mr. Ben Osmane's case.

<sup>2</sup> Impugned Judgment, paras. 2-5.

for any purpose, as a staff member of UNOPS or any other entity of the United Nations. Therefore, the Dispute Tribunal held that he had no *locus standi* before it and his application was, consequently, not receivable.

### **Submissions**

#### **Mr. Ben Osmane's Appeal**

4. Mr. Ben Osmane has not submitted an appeal brief. In his appeal form, under the section titled "Relief claimed", Mr. Ben Osmane requests that the Appeals Tribunal (i) consider him as a United Nations staff member "as [he] worked with UNOPS for over three years"; (ii) declare his application receivable; and (iii) if appropriate, inform him of possibilities to defend himself or refer his case to arbitration. As an annex to the appeal form, he, *inter alia*, attaches a "Response to the report of the UNOPS investigators".

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

5. The Secretary-General submits that the UNDT was correct in its conclusion that the application was not receivable. Having considered evidence showing that Mr. Ben Osmane was not a (former) staff member of the United Nations, the UNDT correctly considered that he had no *locus standi* when he filed his application before the UNDT. Mr. Ben Osmane does not fall into any of the categories listed under Article 3(1) of the UNDT Statute. Moreover, Annex A to the Individual Contractor Agreement he signed with UNOPS on 4 April 2016 explicitly provides that he shall not be regarded as a staff member of UNOPS or any other United Nations entity.

6. The Secretary-General avers that Mr. Ben Osmane has failed to establish any basis for his appeal as required by Article 2(1) of the Appeals Tribunal Statute and the applicable jurisprudence. Instead of discharging his burden of satisfying the Appeals Tribunal that the UNDT Judgment is defective, he merely expresses disagreement with the outcome of his case stating that he is disappointed that after three years of service with UNOPS he is not considered a United Nations staff member.

7. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety and affirm the impugned Judgment.

## Considerations

### *Preliminary issue*

8. As a preliminary matter, Mr. Ben Osmane filed a request for an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal's Statute and Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules). 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. Thus, the request for an oral hearing is denied.

### *Merits*

9. The issue before this Tribunal is whether the UNDT correctly concluded that Mr. Ben Osmane's application was non-receivable *ratione personae*.

10. Article 2 of the Dispute Tribunal Statute broadly sets forth those matters the Dispute Tribunal is competent to hear and pass judgment upon. In addition to applications against administrative decisions imposing disciplinary measures and applications seeking enforcement of implementation of agreements reached through mediation, Article 2(1) provides, in relevant part, that the Dispute Tribunal may review the following:

... The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided in article 3, paragraph 1, of the present statute, against the Secretary-General as the Chief Administrative Officer of the United Nations:

(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment. The terms "contract" and "terms of appointment" include all pertinent regulations and rules and all relevant administrative issuances in force at the time of the alleged non-compliance[.]

11. Article 3(1) of the Dispute Tribunal Statute provides, in pertinent part, as follows:

... An application under article 2, paragraph 1, of the present statute may be filed by:

(a) Any staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(b) Any former staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes;

(c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including the United Nations Secretariat or separately administered United Nations funds and programmes.

12. The Dispute Tribunal found that Mr. Ben Osmane's application contesting "the incorrect labeling of his duties during an investigation conducted by the (...) IAIG of UNOPS in Morocco" was not receivable on the ground that he was not a current or former staff member of UNOPS but a former individual contractor of UNOPS and therefore lacked *locus standi* before it.

13. Specifically, the UNDT determined that:<sup>3</sup>

... The evidence shows that the Applicant signed a contract with UNOPS governed by the terms and conditions of the UNOPS Individual Contractor Agreement which specifically provides in paragraph 1.1 that "[t]he Individual Contractor shall have the legal status of an independent contractor vis-a-vis UNOPS and shall not be regarded, for any purpose, as a staff member of UNOPS or any other entity of the United Nations ...".

... The Applicant, not being a staff member of UNOPS or any other entity of the United Nations, has no *locus standi* before this Tribunal. The present application is accordingly incompetent and cannot be entertained.

14. The Appeals Tribunal determines that there is no merit in Mr. Ben Osmane's claim that he should be considered as a United Nations staff member "as [he] worked with UNOPS for over three years". Mr. Ben Osmane was connected to UNOPS in the capacity of an individual contractor, and, therefore, he is not a former staff member within the meaning of Article 101 of the Charter of the United Nations. Hence, the UNDT correctly concluded that Mr. Ben Osmane's application was not receivable *ratione personae* as it did not come within Articles 2(1) and 3(1) of its Statute, pursuant to which the UNDT's jurisdiction is limited to cases brought by staff members, former staff members or persons making claims in the name of incapacitated or deceased staff members of the United Nations.

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<sup>3</sup> Impugned Judgment, paras. 11 and 12.

15. Under Article 2(1)(a) of its Statute, the UNDT is competent to review exclusively administrative decisions affecting the concerned staff member's terms of employment. Thus, this Tribunal is not competent or the proper instance to advise Mr. Ben Osmane of "possibilities to defend [him]self or refer [his] case to arbitration". Such matters will therefore not be addressed in this Judgment.

**Judgment**

16. The appeal is dismissed and Judgment No. UNDT/2018/032 is hereby affirmed.

Original and Authoritative Version: English

Dated this 26<sup>th</sup> day of October 2018 in New York, United States.

*(Signed)*

Judge Raikos, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Halfeld

Entered in the Register on this 20<sup>th</sup> day of December 2018 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar