



T

A

B

T

N

U

Case No. 2010-062



S

A

v

G

A

J

Before: Judge Rose Boyko, Presiding
Judge Sophia Adinyira
Judge Kamaljit Singh Garewal

Judgment No.: 2010-UNAT-057

Date: 1 July 2010

Registrar: Weichenlin

Counsel for Appellant: Joseph Grinblat

Counsel for Respondent: Guillaume Lemenez

J~~Ø~~ R~~Ø~~ B~~Ø~~ , Presiding.

Synopsis

1. Mayara Fagundes (Fagundes) appeals from a decision of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) refusing to hear ~~an~~ appeal against a judgment of the former Administrative Tribunal. The UNDT found that the decision of the former Administrative Tribunal was final and that UNDT statute did not confer upon it review or appeals powers with respect to judgments of the former Administrative Tribunal. The UNDT correctly held that when the new internal justice system was created, the UNDT was not given powers to review or hear appeals from judgments of the former Administrative Tribunal. The Appeals Tribunal dismisses the appeal.

Facts and Procedure

2. Fagundes was a staff member of the United Nations. She joined the United Nations in November 2000 on a fixed-term appointment at the P-3 ~~level~~ as a Radio Producer in the Department of Public Information. On 26 October 2004, she joined the United Nations Environment Programme in The Hague on a fixed-term appointment as a P-3 Programme Officer.

3. Fagundes was on sick leave from 8 August 2005 to 17 November 2005, and there was a disagreement between Fagundes and the Administration on the certification of the sick leave. Fagundes was ~~separated~~ from service, effective 31 December 2005. On 7 January 2006, Fagundes submitted a request that a Medical Board be convened to review her sick leave entitlements from 8 August 2005 to 17 November 2005. On 27 April 2006, Fagundes was notified that the Medical Board ~~certified~~ the period of sick leave from 8 August to 7 September 2005, but that the balance, from 8 September to 17 November 2005, had not been certified. On 17 August 2006, ~~she~~ requested a copy of the report of the Medical Board. But the Administration denied the request.

4. On 20 September 2006, Fagundes requested ~~administrative~~ review of the “violation of due process and harassment” against her. Fagundes later filed an appeal to the Nairobi Joint Appeals Board (JAB). On 30 January 2007, the JAB advised her counsel that it was

not competent to review decisions of the Medical Board and suggested that she appeal to the former Administrative Tribunal.

5. On 22 February 2007, Fagundes filed an application with the former Administrative Tribunal. On 31 July 2009, the former Administrative Tribunal issued Judgment No. 1466, rejecting the application in its entirety as time-barred.

6. On 12 November 2009, Fagundes filed an application with the UNDT. On 5 February 2010, the UNDT issued Judgment UNDT/2010/022. The application was rejected in its entirety. The UNDT found that the contested decision was a judicial decision, as opposed to an administrative one, and, as such, did not fall within the competence of the UNDT, as defined in Article 2(1) of the UNDT Statute. It considered that the competence of the UNDT under the transitional measures relating to the introduction of the new system of administration of justice, as set out in Article 2(7) of the UNDT statute and Section 4.2 of the Secretary-General's Bulletin/SGB/2009/11 extended to cases pending before the former Administrative Tribunal at the time of its abolition on 31 December 2009, but not to those on which judgment had already been passed at that point. Accordingly, the UNDT found that it was not competent to examine the application.

7.

revise the judgment was made when the former Administrative Tribunal still existed, but that the transitional measures required that the request be sent directly to the UNDT. Further, under Article(2)(6) of its statute, the UNDT may determine whether it has competence.

10. Fagundes requests the Appeals Tribunal to find the appeal admissible and to consider the merits of her case.

Secretary-General's Answer

11. The Secretary-General responds that the UNDT correctly determined that it did not have jurisdiction to revise the judgments of the former Administrative Tribunal.

12. Should the Appeals Tribunal decide that the UNDT has jurisdiction to revise the judgments of the former Administrative Tribunal pursuant to Article 12 of the statute of the former Administrative Tribunal, the Secretary-General submits that Fagundes's requests lie outside the scope of Article 12 of the statute, which provides that a judgment may be revised in two instances, and neither of them applies. Fagundes seeks to appeal the judgment rendered by the former Administrative Tribunal, on the ground that the former Administrative Tribunal allegedly failed to review her application challenging the decision of the Administration not to provide her with a copy of the report of the Medical Board.

13. The Secretary-General requests the Appeals Tribunal to reject the appeal in its entirety.

Considerations

14. At issue is whether the Appeals Tribunal has jurisdiction to hear this appeal. The UNDT refused to hear Fagundes's appeal on grounds that a decision had been made by the former Administrative Tribunal and that the UNDT statute did not confer any appeal or revision powers on the UNDT from decisions made by the former Administrative Tribunal.

15. Apparently Fagundes failed to file a completed, perfected appeal in a timely manner in her earlier appeal brought before the former Administrative Tribunal and her appeal was

Judgment

19. The decision of the UNDT is upheld and the appeal is dismissed.

Dated thisst1 day of July 2010 in New York, United States.

Original: English

(Signed)

Judge Boyko, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Garewal

Entered in the Register on this ~~15~~¹⁶ day of August 2010 in New York, United States.

(Signed)

Weicheng Lin, Registrar
United Nations Appeals Tribunal