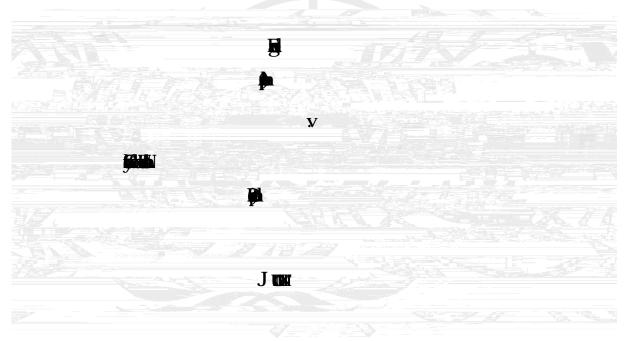


Case No. 2010-062



Before:	Judge Rose Boyko, Presiding Judge Sophiældinyira Judge Kamaljit Singh Garewal
Judgment No.:	2010-UNAT-057
Date:	1 July 2010
Registrar:	Weichenlgin

Counsel foAppellant: Joseph Grinblat

Counsel for Respondent: Guillaume Lemenez

JØ RØ BØ , Presiding.

## Synopsis

1. Mayara Fagundes (Fagundes) appeals from a decision of the United Nations Dispute Tribunal (UNDT or DispetfIribunal) refusing to hear appeal against a judgment of the former Administrative Tribunal The UNDT found that the decision of the former Administrative Tribunal was final and that NDET 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 teappointment at the P-3 lease 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 septend 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 dentified 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 are requested a copy of the report of the Medical Board. But the Administration denied the request.

4. On 20 September 2006, Fagundes requested admini**straitive** of the "violation of due process and harassment" against her. Fagundes later filed an appeal to the Nairobi Joint Appeals Board (JAB). On 30 Janua**£**972**£**he JAB advised her counsel that it was

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

5. On 22 February 2007, Fagundes filed **plication** with the former Administrative Tribunal. On 31 July 2009, the formern**Astnai**tive 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 JudgiNientUNDT/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 is I to considered that the competence of the UNDT under the transitional measures meltatithe 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/SCB/2009/11 extended to cases pending before the former Administrative Tribunal at the time of biodishment 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 incompetent 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 ther**appisal**ble anto 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 ant to Article 12 of the statute of the former Administrative Tribunal 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 alleged 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 App**Teabs**unal to reject the appeal in its entirety.

# Considerations

14. At issue is whether the Appeals Tribussajuhisdiction to hear this appeal. The UNDT refused to hear Fagundes's appeal cogrthunds that a decision had been made by the former Administrative Turial and that the UNDT statdtd 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 this<sup>s</sup>1day of July 2010 in New York, United States.

Original: English

(Signed)

(Signed)

(Signed)

Judge Boyko, Presiding Judge A

Judge Adinyira

Judge Garewal

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

(Signed)

Weicheng Lin, Registrar United Nations Appeals Tribunal