JUDGE SOPHIA ADINYIRA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2014/136, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 20 November 2014 in the case of *Gebremariam v. Secretary-General of the United Nations*. Mr. Haile Gebremariam filed his appeal on 21 November 2014, which he sought to perfect on 15 December 2014. The appeal was served on the Secretary-General on 5 January 2015, who answered on 5 March 2015.

Facts and Procedure

2. The Appellant joined the United Nations Economic Commission for Africa (ECA) in Addis Ababa, Ethiopia, in 1990. At the time of filing his UNDT application, he worked at ECA as a Library Clerk at the G-4 level on a permanent appointment.

3. The following facts giving rise to the Judgment under appeal are uncontested:[1]

> ... On 4 February 2013, the [Appellant] filed a management evaluation request concerning delays in granting his annual within-grade increment for [...] 2013. He copied the [Director, Division of Administrative Services (DAS), ECA] on his complaint.
>
> ... In the afternoon of the same day, 4 February 2013, [the DAS Director] informed the [Appellant] that she intended to schedule a meeting between them and a Human Resources Officer to discuss his complaint.
>
> ... In the late afternoon on 4 February 2013, [... the Director's] Assistant [...] informed the [Appellant] that [the Director] would like to meet with him on 5 February 2013.

… On 6 February 2013, [the Director] issued an interoffice memorandum [which] informed the [Appellant], inter alia , [that his]

> […] behavior of gross insurbordination and disrespect to constituted authority amounts to misconduct for which you are hereby issued this letter of reprimand in line with Staff Rules [sic] 10.2 (b)(i). The Chief, [Human Resources Services Section (HRSS)] is hereby advised to keep a copy of this letter of reprimand in your file. Please be informed that a repeat of this or similar behavior shall result in sterner actions against you.

… [On] 7 February 2013, the [Appellant] protested against [the Director]'s actions and, on 22 February 2013, he filed a management evaluation request of the decision to issue a reprimand.

… On 16 April 2013, the [Appellant] received a letter from [the Director, informing] him that she had rescinded the reprimand and […] decided to give him the opportunity to respond or comment on the circumstances surrounding his refusal to attend the meeting to which she had invited him on 5 February 2013.

… On 18 April 2013, the [Appellant] filed [an a]pplication with the Dispute Tribunal contesting [the Director]'s decision to issue him with the written reprimand of 6 February 2013.

[By way of remedy he requested that the UNDT order rescission of the written reprimand and that it be expunged from his Official Status File, and payment of the sum of three months' net base salary as compensation for moral injury.]

… On 23 April 2013, the Management Evaluation Unit issued a letter informing the [Appellant] that his request was moot because the reprimand had been rescinded.

… On 24 April 2013, the [Appellant] filed a management evaluation request of what he described as the decision to initiate a disciplinary process on the basis of allegations that have already given rise to a reprimand which was ultimately rescinded. On 26 April 2013, he filed an application for Suspension of Action [against the purported decision to initiate a disciplinary process. The UNDT granted suspension on 6 May 2013].

4. On

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10. The Appellant's remaining claims on appeal were not properly before the UNDT for adjudication as they had not previously been the subject of management evaluation. The UNDT's jurisdiction was limited to reviewing the correctness of the decision to issue him with a reprimand, which was subsequently withdrawn.

11. The Appellant equally has not established any legally sustainable basis for an award of compensation. The UNDT was correct not to order a number of remedies that the Appellant now claims on appeal as he had not requested them in his UNDT application. The UNDT equally had no jurisdiction to grant remedies in respect of those claims which fell outside the scope of the UNDT application. Insofar as he claimed compensation for a number of alleged procedural violations, the UNDT did not make any finding that any of the Appellant's procedural rights had been violated or that he had suffered direct harm as a result. Beyond the bare assertions in his pleadings, the Appellant also failed to provide any evidence to support his claim that he suffered harm. There was, therefore, no legal basis on which the UNDT could have awarded compensation as a consequence of alleged procedural violations.

12. The Secretary-General requests that this Tribunal dismiss the Appellant's appeal and affirm the UNDT Judgment.

Considerations

Preliminary matters – Motion to file additional pleadings and evidence

13. On 14 October 2015, Mr. Gebremariam filed a motion requesting leave to file additional pleadings and adduce fresh evidence as "a further example of the retaliation [he was] encountering". We observe that the new evidence he seeks to have admitted relates to matters falling outside the scope of his application before the UNDT which contests the imposition of a reprimand. As such, the evidence is unlikely to establish facts relevant to the appeal of the UNDT Judgment. The Motion to file additional pleadings is accordingly refused and the annexed evidence has not been admitted to the case file.

14. We also note the improper submission of purported "additional evidence" directly to the Registry of the Appeals Tribunal by e-mail on 24 October 2015. Apart from the fact that the evidence is, again, unrelated to the scope of the appeal, the parties are not at liberty to submit evidence in this manner. Having already been directed as to how to submit evidence to the Appeals Tribunal for its consideration prior to the filing of his motion of 14 October 2015,

19. The Appeals Tribunal is of the view that since the Administration had rescinded the impugned decision even before Mr. Gebremariam had filed his UNDT application, and by corollary should then have removed the written reprimand and all reference to it from Mr. Gebremariam's Official Status File, as rescission implies, it thereby rendered the claim before the Dispute Tribunal moot.[4] There was thus no administrative decision on which the UNDT was competent to pass judgment in terms of Articles 2 and 8 of the UNDT Statute.[5]

20. The UNDT, having accepted that the reprimand had already been rescinded, consequently ought to have ruled that the application was not receivable as there was no contestable administrative decision for it to review. The UNDT thus exceeded its jurisdiction in accepting the application and considering whether compensation was payable.

21. In view of the foregoing, Mr. Gebremariam's appeal, which we nonetheless note argues matters that fall outside the scope of the current appeal, must by corollary be dismissed.

Judgment

22. The appeal is dismissed. Judgment No. UNDT/2014/136 is vacated *proprio motu*.

Postica v. Secretary-General of the United Nations, Judgment No. 2015-UNAT-509, para. 29 and cites therein.

[4] *Saffir v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-565, paras. 26-27; *Masylkanova v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-412, paras. 15-16 and 19; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-328, paras. 20-21; *Warintarawat v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-208, para. 10.

[5] *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT 328, para. 20. See also

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Dated this 30th