



Judgment No. 2015-1



Counsel for Mr. A

Counsel for Secret

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment No. UNDT/2014/126, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 20 October 2014, in the case of *Awan v. Secretary-General of the United Nations*. Mr. Muhammad Sarfraz Awan filed his appeal on 19 December 2014, and the Secretary-General filed his answer on 17 February 2015.

Facts and Procedure

2. The Dispute Tribunal made the following undisputed findings of facts relevant to Mr. Awan's application before the UNDT:¹

... [Mr. Awan] entered into the service of [the United Nations Children's Fund (UNICEF)] as a Construction Specialist, at the National Officer Level, on 26 November 2007. He retired on 30 April 2012.

... During 2008, after a competitive bidding process, UNICEF contracted [with] a construction company called Michigan Climax Builders ("MCB") for the construction of 430 transitional shelter schools in the earthquake affected areas of Pakistan. [Mr. Awan] was charged with overseeing and monitoring the MCB contract on behalf of UNICEF.

two years' net base salary for professional, physical and emotional suffering; compensation for the period of 1 May to 20 November 2013, during which time he was unemployed and engaged in criminal and civil litigation; moral and material damages totaling USD 150,000 for defamation, harassment and discrimination; and assistance in seeking asylum in any European country, especially the United Kingdom, due to ongoing threats against him and his family.

4. On 20 October 2014, the UNDT issued Judgment No. UNDT/2014/126, rejecting Mr. Awan's application as non-receivable *ratione materiae*.

5. On 19 December 2014, Mr. Awan, represented by counsel, filed his appeal and the Secretary-General filed his answer on 17 February 2015.

Submissions

Mr. Awan's Appeal

6. The Appellant disagrees with the UNDT limiting itself to receivability, which is a "technical aspect/requirement" that amounts to a "denial of justice [that is] averse to the contractual rights of the Appellant". Further, the Appellant contends that UNICEF's decision to deploy him to a "hardship and risky environment" was an administrative decision.

7. The Appellant asserts that since his management evaluation request was accepted and acted upon on 7 May 2014, and his application to the Dispute Tribunal was timely filed within 90 days of that date, his UNDT application was timely.

8. The Appellant claims that his UNDT application contests the failure of UNICEF to make a decision, which in itself is an implied administ

13. The Appellant fails to distinguish between the filing of his request for management evaluation under the Staff Rules and the filing of his application before the Dispute Tribunal. Pursuant to the UNDT Statute, the UNDT must examine the receivability of an application and its claims, which is separate and distinct from the Administration's examination of the receivability of a management evaluation request. Thus, there is no merit to the Appellant's claim that the UNDT was bound to receive the application because the request for management evaluation had been received.

14. The UNDT correctly found that the Appellant

18. Staff Rule 11.2(c) provides that “[a] request for a management evaluation shall not be

21. The Appeals Tribunal can find no fault with this conclusion by the Dispute Tribunal, which accords with our jurisprudence.¹¹ Since this ground is sufficient to affirm the UNDT Judgment and to dismiss the appeal, there is no need for us to determine whether Mr. Awan's application before the UNDT challenged a specific implied administrative decision on the part of UNICEF or whether Mr. Awan was merely making general complaints about UNICEF's failure to protect him.

Judgment

22. The appeal is dismissed and Judgment No. UNDT/2014/126 is affirmed.

¹¹ *Leboeuf et al. v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-568, para. 68; *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 38.

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

Entered in the Register on this 18th day of December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar