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

**Nielsen
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Deborah Thomas-Felix Judge Richard Lussick
Case No.:	2015-736
Date:	24 March 2016
Registrar:	Weicheng Lin

Executive Director, UNFPA, by which she was notified that OAIS decisions were “outside the scope of review by UNFPA management”.

... The Applicant filed her application with the [Dispute] Tribunal on 3 January 2015, [contesting UNFPA’s inaction on her complaint of misconduct against Mrs. C.], and the Respondent submitted his reply on 6 February 2015.

... By Order No. 123 (GVA/2015) of 18 June 2015, the [Dispute] Tribunal requested the Respondent to file additional documentation with regard to the complaints filed [with] OAIS by the Applicant, which he did on 25 June 2015.

3. On 29 June 2015, by way of Order No. 133 (GVA/2015), the UNDT informed the parties that the case would be decided on the papers, without further hearings or submissions.

4. On the same day, 29 June 2015, the Dispute Tribunal rendered the Judgment now under appeal, Judgment No. UNDT/2015/061. Regarding the merits of Ms. Nielsen’s challenge to OAIS’ decision vis-à-vis Mrs. C., the UNDT noted that Ms. Nielsen’s complaint of 22 August 2014 to OAIS was sent almost seven months after she had transferred teams, such that she no longer worked with Mrs. C., and more than 11 months after she had been placed on SLWFP in September 2013. Consequently, her complaint with OAIS was filed more than six months after the date of “the last incident of [h]arassment” of which she complained, and thus did not respect the time limit set out in section 9.3.1 of UNFPA’s Policy on Harassment, Sexual Harassment and Abuse of Authority (2013 UNFPA Policy). The Dispute Tribunal thus concluded that Ms. Nielsen’s complaints were not receivable by OAIS, and that OAIS’ refusal to conduct an investigation into these complaints did not breach any of Ms. Nielsen’s rights. Accordingly, the UNDT rejected Ms. Nielsen’s application.

5. On the same day, 29 June 2015, the UNDT also issued three other judgments in Ms. Nielsen’s cases, dismissing her respective challenges to UNFPA’s decision not to

7. On 11 September 2015, Ms. Nielsen filed a motion “to request [the Appeals Tribunal] to extend [her] rights as a staff member or to admit that they were extended by the [Executive Director, UNFPA]”. On 14 September 2015, Ms. Nielsen filed another motion requesting the Appeals Tribunal, should it reject her case, to “at least remove the immunity from the involved staff members”, so that she may bring her discrimination and harassment complaints against the concerned staff members in the Danish courts.⁴

8. On 29 September 2015, the Secretary-General filed his observations in relation to both motions, requesting that the Appeals Tribunal reject both of them.⁵

9. On 5 October 2015, the Appeals Tribunal Registry informed the parties that the motions would be considered at the time of the Judges’ deliberations on the present case.

Submissions

Ms. Nielsen’s Appeal

10. Ms. Nielsen submits that the Appeals Tribunal should not use the fact that she does not have a legal background as an excuse or justification to reject her appeal.

11. Ms. Nielsen contends that the Dispute Tribunal erred in fact or exceeded its jurisdiction by not asking her directly when she complained to OAIS for the first time. She had well documented through her motions of 30 June 2015, filed with the Appeals Tribunal in Case No. 2014-623, the fact that OAIS was aware as of July 2013 that she was being harassed by her PSB colleagues. Had the UNDT asked, she would have informed it that she first contacted OAIS in July 2013 to complain about the behaviour of her PSB colleagues, as Annex 19 to her appeal proves. Thus, her later complaints to OAIS were a continuation of her earlier complaints, yet OAIS refused to look further into her situation.

12. The UNDT erred and exceeded its jurisdiction by closing her case without holding an oral hearing, which is her right. The UNDT also erred in fact insofar as it did not correctly or completely set out the facts of her case in its Judgment. For instance, the UNDT exceeded its jurisdiction by not mentioning in its Judgment that she had presented extensive

⁴ Ms. Nielsen also filed the same motions in her three other current appeals, registered as Case Nos. 2015-735, 2015-737 and 2015-738.

⁵ The Secretary-General filed the same observations in Case Nos. 2015-735, 2015-737 and 2015-738.

THE UNITED NATIONS

22. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

Considerations

Preliminary issue-request for oral hearing

23. Ms. Nielsen has requested an oral hearing. The Tribunal does not find that an oral hearing is necessary or would assist in the expeditious and fair disposal of the case within the meaning of Article 18(1) of the Appeals Tribunal's Rules of Procedure. Accordingly, the request is denied.

Ms. Nielsen's motions

24. On 11 September 2015, Ms. Nielsen filed a motion "to request [the Appeals Tribunal] to extend [her] rights as a staff member or

27. Furthermore, her motion to have the Appeals Tribunal remove immunity from certain staff members should her appeal fail is entirely misconceived as such a request is entirely outside of the mandate of the Appeals Tribunal.

28. Accordingly, both motions are denied.

Ms. Nielsen's appeal of UNDT Order No. 133 (GVA/2015)

29. In the context of reviewing four applications filed by Ms. Nielsen, including the application which is the subject matter of the present appeal, the Dispute Tribunal by Order No. 133 (GVA/2015) determined that as “all relevant facts transpire from the documents on the files and only legal questions have to be assessed ... these cases may be decided on the papers, without further hearings or submissions from the parties.”⁶

30. Ms. Nielsen complains that the Dispute Tribunal exceeded its jurisdiction in disposing of her application without embarking on an oral hearing.

31. Pursuant to Article 16(1) of the Dispute Tribunal's Rules of Procedure, it is for the judge hearing the case to decide whether an oral hearing is to be held. The Appeals Tribunal has consistently held that the Dispute Tribunal is afforded wide discretion in matters of case management and the Appeals Tribunal will not lightly interfere in such matters.⁷ In the present case, we are not satisfied that Ms. Nielsen has advanced compelling grounds to persuade us that the Dispute Tribunal exceeded its jurisdiction in restricting its judicial review to a papers only assessment. Accordingly, her appeal against UNDT Order No. 133 (GVA/2015) is dismissed.

Ms Nielsen's appeal of Judgment No. UNDT/2015/061

32. The decision which Ms. Nielsen contested before the Dispute Tribunal was the decision of OAIS not to trigger an investigation into complaints she made against a work colleague, Mrs. C. From its assessment of the case file, the Dispute Tribunal determined that Ms. Nielsen's application insofar as it related to the decision of OAIS with regard to Mrs. C. was receivable by the Dispute Tribunal in that it was satisfied that Ms. Nielsen

⁶ *Nielsen v. Secretary-General of the United Nations*, Order No. 133 (GVA/2015), para. 6.

⁷ *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-546, para. 35, citing *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-62, para. 23.

had observed the requisite procedural step of seeking timely management evaluation of the contested decision.

33. The UNDT next considered the “timeliness” of Ms. Nielsen’s complaint regarding Mrs. C. to OAIS. The face of the Judgment

41. In her appeal, Ms. Nielsen raises a myriad of other matters which, in the view of the Appeals Tribunal, do not have any bearing on Judgment No. UNDT/2015/061. Accordingly, we do not propose to address such matters in the course of this Judgment save to reject such pleas.

42. Pursuant to Article 2(1) of the Appeals Tribunal Statute, our appellate function is to ascertain whether it has been established that the Dispute Tribunal:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

43. Save for the procedural deficiency the Appeals Tribunal has identified in relation to the failure of the UNDT to procure the written record of OAIS' preliminary review of Ms. Nielsen's complaint against Mrs. C., none of the arguments put forward by Ms. Nielsen satisfies the requirements of Article 2(1) of the Appeals Tribunal Statute and they are hereby rejected.

44. We would add one further comment. We note the pejorative language and name-calling engaged in by Ms. Nielsen to describe alleged wrongdoings by her erstwhile colleagues. Such language is not appropriate and our warning in this regard should be well heeded by Ms. Nielsen.

Original and Authoritative Version: English

Dated this 24th day of March 2016 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Lussick

Entered in the Register on this 24th day of May 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar