



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES (United Nations Appeals Tribunal)

Judgment No. 2016-UNAT-661



Counsel for Appellant: Self-represented

Counsel for Respondent: Zarqaa Chohan

THE UNITED NATIONS

7. On 18 September 2015, the UNDT issued Judgment on Receivability No. UNDT/2015/087, concluding Mr. Kalashnik's application was not receivable *ratione materiae* or, alternatively, was duplicative of Case No. UNDT/NY/2015/031, which Mr. Kalashnik had previously filed.

8. On 20 October 2015, Mr. Kalashnik filed an application for interpretation of Judgment on Receivability No. UNDT/2015/087. On 20 November 2015, the UNDT issued Judgment No. UNDT/2015/113, finding the application for interpretation was not receivable as Judgment No. UNDT/2015/087 "does not require clarification".

9. On 30 November 2015, Mr. Kalashnik filed an appeal and on 29 January 2016, the Secretary-General filed his answer.

Submissions

Mr. Kalashnik's Appeal

10. The UNDT erred on a question of fact, resulting in a manifestly unreasonable decision, when it failed to consider whether the USG/DM acted properly when he "rubber stamp[ed]" the MEU's decisions to condone the recruitment processes of the OIOS management. The application before the UNDT contested the failure of the Under-Secretary-General for Management to exercise the duties and responsibilities vested in him.

11. The UNDT committed an error of procedure, such as to affect the decision, when it misconstrued the application and did not give fair consideration to it. In this regard, Mr. Kalashnik notes that Judgment on Receivability No. UNDT/2015/087 was issued within four business days of the Secretary-General's Reply, and Judgment No. UNDT/2015/113 was issued within less than 24 hours of the Secretary-General's Reply. The UNDT "hurriedly issued" those judgments "without giving the Applicant a chance to comment".

12. The UNDT erred as a matter of law when it entered into a summary judgment, as "material facts [of the case were] in dispute".

13. The UNDT failed to exercise jurisdiction vested in it or exceeded its jurisdiction or competence when it determined that the response to a request for management evaluation was not an administrative decision subject to judicial review or, alternatively, found the

application duplicative of Case No. UNDT/NY/2015/031. This failure to exercise jurisdiction leaves the USG/DM unaccountable.

14. Mr. Kalashnik requests that the Appeals Tribunal remand the present case to the UNDT for consideration on the merits by a different judge.

The Secretary-General's Answer

15. The UNDT correctly determined that the application was manifestly inadmissible. The Secretary-General's response to a request for management evaluation does not constitute a reviewable administrative decision. The key characteristic of an administrative decision is that it must produce "direct legal consequences" or "have a direct impact" on the terms of appointment or contract of employment. The response to a request for management evaluation does not have this key characteristic.

16. Alternatively, piercing through the responses to the requests for management evaluation, the administrative decisions challenged by Mr. Kalashnik pertain to the same job opening administrative decisions he challenged in another case before the UNDT, Case No. UNDT/NY/2015/031. A staff member may not bring more than one action challenging an administrative decision.

17. The Appellant has not established any errors warranting a reversal of the UNDT Judgment. The Appellant does not raise any grounds for reversal under Article 2 of the Appeals Tribunal Statute; rather, he appears to be seeking a *de novo* hearing of his application. This is grounds to dismiss the appeal. Moreover, the Appellant also goes beyond the issue on appeal and addresses the merits of his claims, as well as the proper remedy. Neither the merits nor a remedy on the merits is before the Appeals Tribunal.

18. Finally, there is no merit to the Appellant's claim that the Dispute Tribunal "hurriedly issued" the Judgment. Although the Dispute Tribunal acted expeditiously, the Appellant cannot point to any evidence or argument that the UNDT failed to consider. In this regard, the Appellant also wrongly claims that the UNDT issued a summary judgment against him. It did not. In fact, the UNDT specifically found that summary judgment would not be a proper procedure for consideration of a receivability issue.

19. The Secretary-General requests that the Appeals Tribunal affirm the impugned Judgment and dismiss Mr. Kalashnik's appeal in its entirety.

Considerations

Request for Judicial Notice

20. On 9 June 2016, Mr. Kalashnik filed a request that the Appeals Tribunal take judicial notice of *Wilson v. Secretary-General of the United Nations*, Judgment No. UNDT/2015/125 (*Wilson*). The Secretary-General filed his observations opposing the request on 16 June 2016. The Appeals Tribunal denies Mr. Kalashnik's request, noting that the *Wilson* Judgment by the UNDT is not *stare decisis* – or even persuasive – as it is currently on appeal before the Appeals Tribunal.²

The Appeal

21. The Dispute Tribunal determined that Mr. Kalashnik's case was not "suitable for summary judgement under art. 9 of the [UNDT's] Rule of Procedure".³ Thus, Mr. Kalashnik's claim that the UNDT erred procedurally by granting summary judgment against him is without foundation and has no merit.

22. Although the UNDT did not utilize the summary judgment procedure, it nevertheless concluded that the "matter may still be dealt with on an expedited basis as the application appears to be clearly manifestly inadmissible".⁴ Under our jurisprudence, the Dispute Tribunal is competent to consider – even on its own volition - whether it has jurisdiction or competence to receive an application.⁵ In this case, the Secretary-General raised the issue of whether the application was receivable *ratione materiae* in his reply and the UNDT was correct to address that issue before any other issue.⁶

23. As noted above, Mr. Kalashnik's application contested the decisions of the USG/DM, dated 23 February 2015 and 5 May 2015, "to blindly endorse the MEU's product without due review and consideration of its accuracy, veracity, objectiveness, impartiality,

² See *Wilson v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-679, also issued during the 2016 summer session (reversing Judgment No. UNDT/2015/125).

³ Impugned Judgment, para. 11.

⁴ *Ibid.*

⁵ *Christensen v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-335, para. 21.

⁶ See *Saka v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-075, para. 21.

and fairness and effectively force the matter into litigation”. In fact, Mr. Kalashnik sets forth dozens of ways in which he believes the USG/DM erred when he adopted the MEU’s evaluation that the several job-related

Staff Rules or elsewhere. Management has discretion in how to consider and respond to staff members' requests for evaluation; the discretion is not subject to micro-managing by the staff members. In fact, as discussed, management may choose not to respond at all.

31. "The role of the Dispute Tribunal includes adequately interpreting and comprehending the application submitted by the moving party, whatever name the party attaches to the document."¹¹ In addition to finding the application was not receivable *ratione materiae*, the UNDT alternatively found that the application challenged "precisely the same job openings/administrative decisions" Mr. Kalashnik challenged under Case No. UNDT/NY/2015/031.¹² This alternative ground is supported by the record, and the UNDT did not err in fact or law in reaching this conclusion.

32. As the Appeals Tribunal has concluded that the UNDT did not err in law or fact when it refused to receive the application, the UNDT Judgment on Receivability should be affirmed, and the appeal denied.

Judgment

33. UNDT Judgment on Receivability No. UNDT/2015/087 is affirmed, and the appeal is denied.

¹¹ *Gakumba v. Secretary-General of the United Nations*, Judgment No. 2015-U9(ae)4founGakumba v.

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Dated this 30th day of June 2016 in New York, United States.