



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

Judgment No. 2016-UNAT-694



**Monarawila
(Appellant)**

v.

Secretary-General of the United Nations



Counsel for Ms. Monarawila: Ibrahima Faye

JUDGE JOHN MURPHY, PRESIDING.

1. The United Nations Appeals Tribunal (UNAT) has before it an appeal against Judgment on Receivability No. UNDT/2016/019, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 10 March 2016, in the case of *Monarawila v. Secretary-General of the United Nations*. Ms. Dayanthi Monarawila filed the appeal on 29 April 2016, and the Secretary-General filed an answer on 1 July 2016.

Facts and Procedure

2. On 23 January 2015, the Appellant submitted a request for management evaluation of abuse of authority, harassment and discrimination which she alleged she had been subjected to between 2009 and the date of the request. She referred to “various decisions” taken by the Investment Management Division (IMD) of the United Nations Joint Staff Pension Fund (UNJSPF) during the specified time period and attached a document titled “Sequence of Events”, which set out her concerns and contentions in further detail.

3. The Management Evaluation Unit (MEU) responded to the Appellant’s request in a letter dated 20 February 2015, in which it informed her that her request was not receivable principally on the ground that she had failed to precisely identify the contested administrative decisions, noting that the purpose of management evaluation under the Staff Rules was limited to reviewing specific administrative decisions. The MEU also was of the view that her request was not receivable *ratione temporis*, because her request for management evaluation of the various decisions taken since 2009 was time-barred, as it was not sent within 60 calendar days from the date of her receipt of the notification of any contested decision.

4. Despite the fact that the Appellant had not specified any contested decision with precision, the MEU, in its letter of 20 February 2015, identified five possible decisions in issue, namely: (a) a rejected request for annual leave in August 2010; (b) reassignment to cover a colleague on maternity leave in European Equities in April 2012; (c) reassignment to work with

5. The MEU further stated that the Appellant's request was not receivable because complaints regarding abuse of authority, harassment and discrimination should be addressed using the procedure described in Secretary-General's Bulletin ST/SGB/2008/5 titled "Prohibition of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority".

6. On 16 April 2015, the Appellant filed her application with the Dispute Tribunal. In the relevant part of the *pro forma* application form requiring details of the contested decision, she wrote:

I have been exposed to unfriendly working environment that resulted in the gradual deterioration of my health and wellbeing in connection with improper administrative decisions.

7. The application form contained insufficient information in relation to the other details of the contested decision. In the space for indicating the name and title of the official who made the decision(s), the Appellant merely stated "UNJSPF/IMD Management". While in the space for indicating the date on which the decision(s) were made, the Appellant wrote: "Several decisions imposed on me from May 2009 till April 2015".

8. In the body of the application, the Appellant expounded at some length about difficulties and grievances she had experienced in the work environment after her return to UNJSPF from mission assignments in 2009.

9. The application sets out a chronology of alleged conduct by her supervisors and others from May 2009 to February 2014 regarding various matters, but in the main related to work assignments and requests for annual leave. One issue to which the Appellant attached much significance was the refusal of her request for annual leave for the period from 19 August 2010 to 10 September 2010 so that she could care for her ailing, elderly mother for whom she was the primary caregiver. A few days after her request for leave was refused, she fainted and fell on the train on her way home. She suffered a concussion and had medical and psychological complaints thereafter. In the concluding paragraph of the body of the application she stated:

The foregoing is to demonstrate the physical and mental pain I endured over time and the damage it has caused from the breakdown in 2010 and the consequent head injury

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[her] current and future physical and mental wellbeing. ... The denial of an earned entitlement of annual leave is an “administrative decision” that violated the [Appellant’s] rights, which subsequently lead [sic] to a series of unfortunate events having a lifelong detrimental impact to the [Appellant].

13. The decision denying the Appellant annual leave in 2010 for the full period that she had requested is clearly at the core of her complaint. She did not identify the exact date of the decision. The denial of leave, she said, contributed to an unfriendly work environment. The denial of her request, coupled with an overwhelming workload and a lack of rest and recuperation for over one year between 2009 and 2010, had taken a toll on her wellbeing and resulted in serious health problems. The Appellant requested the UNDT to give due consideration to the chain of events described in her submissions and the resulting harm. She submitted that statutory time limits and deadlines should not apply and that, considering the unique nature of the events set forth in the application, her application should be regarded as a case “out of the ordinary”.

14. The broad formulation of the claims prompted the UNDT to elicit from the Appellant further details of the precise acts and/or omissions which she alleged were in non-compliance with the terms of her appointment or contractual entitlements so that any justiciable claim, as contemplated in Article 2(1)(a) of the UNDT Statute, was clearly identified. To that end, the Dispute Tribunal held two case management discussions (CMD) and issued a number of orders with the purpose of eliciting the necessary details from the Appellant, in order to ascertain whether there had been compliance with the technical requirements for filing a claim under its Statute, to explore the underlying workplace issues, and to explore whether alternative dispute resolution offered the parties a constructive outcome.

15. At the first CMD on 23 July 2015, the Appellant was informed that, in accordance with Article 8(4) of its Statute, the UNDT could not review decisions notified to a staff member more than three years prior to the filing of an application. The Appellant’s attention was also drawn to the provisions of Appendix D to the Staff Rules (Rules Governing Compensation in the Event of Death, Injury or Illness Attributable to the Performance of Official Duties on Behalf of the United Nations), which is the Organization’s specific procedure and rules to be followed in respect of a claim for service-incurred injury or illness. The Appellant was further informed of the need for her to rebut the Respondent’s contentions on receivability. By Order No. 161 (NY/2015) dated 23 July 2015, the UNDT granted the Appellant leave to file concise submissions,

not exceeding three pages, identifying and prioritizing the core issues in her case by 30 July 2015 and ordered the parties to attend a second CMD, on 31 July 2015.

16. The second CMD was rescheduled to take place on 29 July 2015 at which the parties agreed that a stay of proceedings for 30 days would facilitate further discussion towards a possible resolution. By Order No. 171 (NY/2015) dated 30 July 2015, the UNDT ordered a stay of proceedings for a maximum period of 30 days an

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that the Presiding Judge would be biased in determining the merits of the case. In his view, the Presiding Judge merely explained the status of the Appellant's case to her and no sinister motive

23. With regard to the decision concerning the Appellant's annual leave, the UNDT noted that the Appellant had submitted a request and a revised request for leave in August and September 2010, in early August 2010. There was a response to her first request on 6 August 2010 asking her to revise her request having regard to the requirements of the office. There was no response on record to her revised request. Considering the circumstances, the UNDT was of the view that the Appellant knew or ought reasonably to have known in September 2010 of the contested decision, effectively refusing her revised request. The Appellant filed her application to the UNDT in April 2015,

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held that it will not lightly interfere with the discretion of the UNDT in the management of cases vested in it by its Rules of Procedure.¹

29. As for the challenge to the UNDT's decision to issue a summary judgment, it is doubtful

have known of the decision he or she contests, based on objective elements that both parties can accurately determine.

33. The UNDT in this case concluded that the decision denying the Appellant annual leave in August 2010 was both express and implied in that there was no response to the Appellant's revised request for leave which the Administration asked her to submit in its response of 6 August 2010. Having regard to the fact that the request was for leave in September 2010, the UNDT concluded that the Appellant ought reasonably to have known in September 2010 that her request had been refused. Her application to the UNDT was filed on 16 April 2015. And hence it is indisputable that the application in relation to this decision was not receivable *ratione temporis* in terms of Article 8(4) of the UNDT Statute. In addition, Article 8(1)(d) of the UNDT Statute provides that an application must be filed within the stipulated deadlines. In cases where a management evaluation of the contested decision is required, it must be filed within 90 calendar days of the applicant's receipt of the response by management to his or her submission or within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices. In cases where a management evaluation of the contested decision is not required, the applind

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Original and Authoritative Version: English

Dated this 28th day of October 2016 in New York, United States.

(Signed)

Judge Murphy, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Halfeld

Entered in the Register on this 20th day of December 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar