



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES



Palaco Caballero

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Deborah Thomas-Felix, Presiding Judge Dimitrios Raikos Judge Sabine Knierim
Case No.:	2016-934
Date:	28 October 2016
Registrar:	Weicheng Lin

JUDGE DEBORAH THOMAS -FELIX , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Summary Judgment No. UNDT/2016/061, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva o1.

3. As summarized by the UNDT, Ms. Palaco Caballero's principal contentions before the UNDT were that the "absence of formal administrative action on the part of the Registrar of the ICTY ha[d] deprived her of her right to contest the decision by way of management evaluation; and her placement on special leave without pay [was] unlawful because of the lack of administrative action".² She sought Euros 10,000 in compensation.

4. On 19 May 2016, the UNDT summarily rejected Ms. Palaco Caballero's application as non-receivable *ratione materiae* as she had not previously submitted the contested decision for management evaluation, as required by Article 8 of the Statute of the Dispute Tribunal (UNDT Statute) and Staff Rule 11.2(a) and (c). In reaching its decision, the UNDT noted:³

... [T]he Applicant acknowledged in her application and, prior to that, in her memorandum of 2 March 2016 addressed to the Registrar of the ICTY, that she was informed of the decision to place her on special leave without pay by notification of 2 February 2016. Therefore, there can be no doubt that, in accordance with the [provisions of Article 8 of the Statute of the Dispute Tribunal and Staff Rules 11.2(a) and (c)], to allow the [Dispute] Tribunal to declare the application receivable, the Applicant should have submitted the contested decision for management evaluation within the prescribed deadline.

The UNDT further found that in the absence of a timely request for management evaluation, the application was irreceivable *ratione materiae*. It noted that, the statutory time limits had expired so that any potential request by Ms. Palaco Caballero for management evaluation would be time-barred.

5. In her appeal, filed on 25 May 2016, Ms. Palaco Caballero presents a copy of a letter dated 24 May 2016 entitled "Application to the MEU for review of the decision of 16 March 2016 by the Registrar of the [ICTY]". Ms. Palaco Caballero submits that in this letter, she had requested that

Submissions

Ms. Caballero's Appeal

6. Ms. Palaco Caballero was hospitalized on the night of 8-9 December 2015 “[f]ollowing a disagreement that took place at the [ICTY]”. In connection with that

the Appeals Tribunal to assume jurisdiction over her case in an attempt to have her case tried on the merits.

10. Ms. Palaco Caballero may not “cure” her failure to timely request management evaluation. Her attempt to “reset the clock” by claiming that her management evaluation request dated 24 May 2016 was timely based on the Registrar’s 16 March 2016 “formal” response lacks merit and should be rejected. Moreover, her claim neither negates the UNDT’s findings (and her own prior submissions) identifying 2 February 2016 as the date upon which she received notice of the contested decision, nor the holding that her failure to timely seek management evaluation rendered her application irreceivable *ratione materiae* .

11. The Secretary-General submits the appeal should be rejected in its entirety.

Considerations

12. As a preliminary matter, Ms. Palaco Caballero filed a request for an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal’s Statute and Article 18(1) of the Appeals Tribunal’s Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. Moreover, we do not find that an oral hearing would “assist in the expeditious and fair disposal of the case”, as required by Article 18(1) of the Rules. Thus, the request for an oral hearing is denied.

13. It is established jurisprudence that Article 8(1)(c) of the UNDT Statute provides for the submission of contested administrative decisions for management evaluation, as a mandatory first step prior to filing an application before the Dispute Tribunal, and that the Dispute Tribunal is not empowered to suspend or waive the deadlines for management evaluation.⁴

14. We agree with the findings of the UNDT that Ms. Palaco Caballero did not submit the contested decision for management evaluation prior to filing her application before the UNDT, as required by the provisions of Article 8 of the UNDT Statute and Staff Rules 11.2 (a) and (c). Indeed, this fact is undisputed.

⁴ Gehr v. Secretary-General of the United Nations , Judgment No. 2016-UNAT-613, paras. 10-12 (and cases cited therein).

Original and Authoritative Version: English

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

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Raikos

(Signed)

Judge Knierim

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