

Judgment No. 2023-UNAT-1386



Counsel for Appellant: Self-represented

Counsel for Respondent: Sylvia Schaefer

JUDGE NASSIB G. ZIADÉ , PRESIDING .

1. Mr. Didzis Melbiksis (Mr. Melbiksis or Appellant), a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), contested the decision of the Administration not to select him for the position of External Relations Officer in Pretoria, South Africa (contested decision).
2. By Judgment No. UNDT/2022/119 ¹ (impugned Judgment), the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) rejected Mr. Melbiksis's application as not receivable *ratione materiae* and *ratione temporis*.
3. Mr. Melbiksis lodged an appeal against the impugned Judgment with the United Nations Appeals Tribunal (UNAT or Appeals Tribunal).
4. For the reasons set out below, the Appeals Tribunal dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

5. In 2020, Mr. Melbiksis was employed as an Associate Public Information Officer at the P-2 level at the Office of UNHCR in Stockholm, Sweden.
6. On 9 October 2019, Mr. Melbiksis applied for the position of External Relations Officer (the position) at the P-3 level in Pretoria advertised in Job Opening 18186. He was shortlisted and interviewed on 15 June 2020, but only one candidate, which was not him, was recommended for the position.
7. In November 2020, Mr. Melbiksis was informed that he had not been selected for the position.²

¹ *Melbiksis v. Secretary-General of the United Nations*, Judgment No. UNDT/2022/ 119

² The Secretary

8. On 29 January 2021, Mr. Melbiksis requested management evaluation of the decision not

consequences affecting a staff member's terms or conditions of appointment".⁶ The UNDT further stated that a management evaluation "decision" is not an administrative act.⁸ (c.8 (nv)0.7 (e)- ("d)0.7 (e)-3.4 (3i)2.2

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UNDT had the inherent power to define the contested decision because, as a first instance tribunal, it “is in the best position to decide what is appropriate for the fair and expeditious disposal of a case” and that the Appeals Tribunal should “not interfere lightly” with the UNDT’s broad discretion in the management of its cases!²

30. Second, the Secretary-General submits that the UNDT rightfully found that Mr. Melbiksis’s application was not receivable *ratione temporis* because, pursuant to Article 8(1)(d)(i)(a) of the Dispute Tribunal Statute, he had 90 days from the receipt of the management evaluation issued on 25 March 2021 to file an application to the UNDT, but he failed to do so as he filed his application more than five months later, i.e., on 9 September 2021. Furthermore, contrary to Mr. Melbiksis’s contention, the Secretary-General argues that Mr. Melbiksis was not required to file a management evaluation request to the Administration’s response issued on 25 March 2021. Therefore, the Secretary-General argues that the UNDT correctly dismissed Mr. Melbiksis’s application because it was not filed within the statutory deadline.

31. Therefore, the Secretary-General submits that Mr. Melbiksis has failed to establish any

33. “When the Appeals Tribunal hears an appeal, it does not simply re-try the case”; rather, “the appellant has the burden on appeal to establish that the UNDT judgment is defective within the meaning of Article 2(1)” of the UNAT Statute.¹³ With regard to factual determinations, our review is specifically prescribed by the Statute:¹⁴

The Dispute Tribunal has broad discretion (...) to determine the admissibility of any evidence and the weight to be attached to such evidence. *The findings of fact made by the UNDT can only be disturbed under Article 2(1)(e) of the Appeals Tribunal Statute when there is an error of fact resulting in a manifestly unreasonable decision (...)*. This Tribunal is mindful that the Judge hearing the case has an appreciation of all the issues for determination and the evidence before him or her.

34. It is with this framework in mind that we review the two principal determinations by the UNDT in the impugned Judgment. First, the determination that the application was not receivable ~~11.8(p)-2.1(p)-3d1.9a8v)11.87(p)-2.1(p)-3vb (ne)12.8~~

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Appellant learned of that decision on 20 November or 30 November 2020 is immaterial to our disposition.

46. Finally, Appellant requests that the UNAT conduct an oral hearing in this matter. Article 18(1) of the Appeals Tribunal Rules of Procedure provides that “[t]he judges hearing a case may hold oral hearings (...) if such hearings would assist in the expeditious and fair disposal of the case”. Upon consideration of the submissions and the record of this matter, we find that the issues are well-defined and require no further development through an oral hearing. We therefore deny Appellant’s request in that regard.

Judgment

47. Mr. Melbiksis's appeal is dismissed, and Judgment No. UNDT/2022/119 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 27th day of October 2023 in New York, United States.

(Signed)

Judge Ziadé, Presiding

(Signed)

Judge Sandhu

(Signed)

Judge Gao

Judgment published and entered into the Register on this 22nd day of November 2023 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar