

UNITED NATIONS APPEALS

Judgment No. 2024-UNAT-1418



Counsel for Appellant: Self-represented

Counsel for Respondent: Sylvia Schaefer

both positions were duly submitted and processed by UNON in May 2010. According to the official Classification Notice memo issued by the Recruitment and Classification Section at

11.1.1 (i 7.-.d8 (d1.1.(i u2.6 (12.01/RS/UNON) (at 863) 241.1 (n)4.7 (s)-9.f)4.52.6 (32.2 8Tc 0 Tt)11.7.1TJ-0.0261 (r)-7.5 (-)-46)TjOM.

16. On 15 November 2022, Mr. Ng'ang'a filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

17. On 2 March 2023, the Dispute Tribunal issued the impugned Judgment on receivability. The UNDT observed that “[w]here statutory provisions exist to provide internal remedies, it is proper that staff members should exhaust those remedies before resorting to litigation before the [Dispute] Tribunal”.¹² In the present case, the UNDT agreed with the Secretary-General’s argument that although Section 5 of ST/AI/1998/9 provides that “[t]he decision on the classification level of a post may be appealed”, “it is an internal remedy that is available to the Applicant, and one that must be exhausted before the jurisdiction of [the UNDT] is triggered”.¹³

18. The UNDT also observed that the MEU lacked authority to review the matter, as management evaluation is not “a remedy equivalent to that one provided in Section 5 of ST/AI/1998/9”.¹⁴

19. Therefore, the UNDT dismissed Mr. Ng'ang'a's application. (M)3.,o ()0 Te Tf .2 (l)1.8 (m[(1)-3

22. With regard to the impugned Judgment, Mr. Ng'ang'

28. Last, Mr. Ng'ang'a argues that the UNDT failed to consider that the Administration, in its memorandum dated 30 August 2022, concluded that "the whole matter of the processing of the reclassification's requests (...) ha[d] been resolved and [was] considered moot".¹⁷ In doing so, he submits that the Administration "closed all the avenues on [h3.3 (d)0es oi doi510.6 (h)-2.2 (3.3 1.8 (f)1.7 (-)0j)1(

28 September 2022.¹⁹ The Secretary-General observes that the UNDT has 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.²⁰

34. With regard to Mr. Ng’ang’a’s reference to several breaches in the reclassification process and, particularly, his reference to paragraph 2.4 of ST/AI/1998/9, the Secretary-General notes that the UNDT’s non-consideration of that matter, which pertains to the merits of the case, cannot constitute a reversible error in the appeal on receivability. In any event, the Secretary-General contends that Mr. Ng’ang’a should have appealed the reclassification process following the procedure set out in ST/AI/1998/9. Indeed, the Secretary-General highlights that Section 5 of this Administrative Instruction specifically provides that the appeal procedure applies in cases where “the classification standards were in correctly applied, resulting in the classification of the post at the wrong level”.²¹

35. Fourth, the Secretary-General submits that Mr. Ng’ang’a’s argument that appeal of a decision on the classification level is not mandatory because Section 5 of ST/AI/1998/9 uses the word “may” and not “must” is misguided. Indeed, the Secretary-General observes that the use of the word “may” does not mean that the appeal procedure is not mandatory but only “indicates that a decision on a classification level of a post can be appealed (i.e., ‘may be appealed’) if a staff

1 - member decides to do so”. Moreover, the Secretary--

THE UNITED NATIONS APPEALS TRIBUNAL

management of cases”.²⁷ In the present case, after a careful review of both parties’ submissions, we find that the UNDT correctly decided to issue a Judgment without holding an oral hearing, especially as the issue for consideration was one of receivability.

46. M - 2 . 2 2

Section 5

Appeal of classification decisions

The decision on the classification level of a post may be appealed by the head of the organizational unit in which the post is located, and/or the incumbent of the post at the time of its classification, on the ground that the classification standards were incorrectly applied, resulting in the classification of the post at the wrong level.

...

Section 6

Appeal proear7ee /P3t9 (a)-1054c 0 Tw 13.892 0 Td()TjEMC 7/P MCI1054c DC -13.892 -1.506 Td()TjEMC 8/P MCI
Tht a6ar7TjD 6 .9 (s)-3..6 (p)-9.2 (p)-95 (o)-17 (f)-14.28 (c).1 (e)-0.8 (h)1.7D[(T)-9.4(p)-9.2 (e)-d1 (s)-3. (d)-18.2 (o)-5.1

the Dispute Tribunal.²⁹ In other words, the decision to appeal an administrative decision on reclassification is optional as seen in the use of the word “may”. However, should a staff member decide to exercise the right to appeal, the nature of such appeal must be as laid down in Section 6 of ST/AI/1998/9.

52. In this regard, in *Edward E. Hammond*, we held that:³⁰

(...) Even assuming, in Mr. Hammond’s favor, that he may appeal a reclassification decision under ST/AI/1998/9 even when it is taken by the General Assembly, the application is not receivable because Mr. Hammond has not followed Sections 5 and 6 of ST/AI/1998/9 (...)

(...) It becomes clear from Section 6.eT()TjEMC 8.142o5 (f)-85.6 (o9 0 Td((()TjEMC 8BDC -37.964 -T.1 (w)4.1 (e)3.

before initiating formal proceedings before the UNDT. Consequently, the Dispute Tribunal correctly found his application not receivable because it was premature.

55. Turning to Mr. Ng'ang'a's claims that the UNDT erred in law "by failing to realize that Section 5 of ST/AI/1998/9 could not provide relief" for his alleged breaches of the reclassification process, that Section 5 of this Administrative Instruction "has no standards for classification of posts at the General Service category" or that the Administration "closed all the avenues on [his] way in search of justice and (...) [had] been applying double standards by implying that [he] should have appealed on the basis of Sections 5 and 6 of ST/AI/1998/9 only when [he] moved to the Dispute Tribunal", we find that they have no merit and constitute a misunderstanding of this Administrative Instruction.

56. With regard to the Secretary-General's reference to ST/AI/1998/8 in the first instance procedure, it was obviously a typographical error. Mr. Ng'ang'a did not demonstrate that the UNDT erred in law "by upholding results of a classification exercise subjected to the wrong law".

57. Therefore, the UNDT did not err in finding that Mr. Ng'ang'a's application was premature and thus not receivable because he had not exhausted the remedy set out in ST/AI/1998/9 by submitting an appeal of the reclassification decision.

58. Since Mr. Ng'ang'a's application is not receivable, all his submissions and additional evidence concerning the merits of the case cannot be considered by this Tribunal.

Judgment

59. Mr. Ng