



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

Judgment No. 2017-UNAT-740



**Auda
(Appellant)**

v.

Secretary-General of the United Nations



Counsel for Mr. Auda: Self-represented
Counsel for Secretary-General: Ernesto Bondikov

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2017-UNAT-740

... On 20 June 2016, [I] submitted a request for management evaluation of the MEU decision to send a letter of acknowledgment including misleading representations with regard to deadlines for filing an appeal before the UNDT ...

5. On 29 July 2016, Mr. Auda submitted an application to the UNDT contesting the decision of the MEU “to send a letter of acknowledgment including misleading representations with regard to deadlines for filing an appeal before the UNDT”.²

6. In his application to the UNDT, Mr. Auda requested that the UNDT order “[t]he MEU to adopt a standardized acknowledgment of a management evaluation request ... including a paragraph unequivocally stating the deadline for completion of management evaluation and the deadline for the filing [of] an application ...; [and] ... [c]ompensation for the violation of [his] due process rights”.

7. On 3 August 2016, the Secretary-General filed a Motion for Summary Judgment, arguing that the application was not receivable *inartia*.

8. The Registry of the UNDT did not serve the Motion for Summary Judgment on Mr. Auda and he did not file a response to it.

9. On 10 August 2016, the UNDT issued Judgment No. UNDT/2016/107, granting the Secretary-General’s Motion for Summary Judgment on the ground the application was not receivable *inartia*.

10. On 7 September 2016, Mr. Auda filed his appeal of the UNDT Judgment, and on 4 October 2016, the Secretary-General filed his answer.

Submissions

Mr. Auda’s Appeal

11. The Appellant contends that the Dispute Tribunal failed to exercise the jurisdiction vested in it anquivoM[d.iction

12. The UNDT erred in granting the Secretary-General's Motion for Summary Judgment, as summary judgment is not the proper procedure for considering issues of jurisdiction; rather it is for consideration of the merits of the dispute.

13. The "impugned decision" is an appealable administrative decision that is subject to judicial review, as the MEU made misleading statements in its response to his grievance. Moreover, the Appellant has contested two distinct administrative decisions, and the UNDT erroneously referenced the other case in determining that the impugned decision in this case is not a reviewable administrative decision.

14. Mr. Auda requests that the Appeals Tribunal find the appeal receivable, review the appeal on an expedited basis, vacate the UNDT Judgment and remand the case to the UNDT "outside New York for reconsideration".

The Secretary-General's Answer

15. The UNDT correctly determined that summary judgment can properly be used to determine whether the applicatio

u h5.ee4n6(to)NoUNDa

THE UNITED NATIONS

Receivability before the UNDT

20. It is clear that Mr. Auda's application to the UNDT did not challenge an "administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment" of the staff member.⁴ In fact, Mr. Auda did not challenge any sort of decision. Rather, he challenged the MEU's wording in a letter to him acknowledging the receipt of his grievance or complaint.

21. There is no dispute that Mr. Auda's application to the UNDT contests the language of the MEU's acknowledgment of his grievance or complaint. The application states that it is for the purpose of contesting the purported decision of the MEU to send "a letter of acknowledgment including misleading representations with regard to deadlines for filing an appeal before the UNDT". And the relief Mr. Auda sought in the application was that the UNDT order "[t]he MEU to adopt a standardized acknowledgment of a management evaluation request ... including a paragraph unequivocally stating the deadline for completion of management evaluation and the deadline for the filing [of] an application".

22. Recently, the Appeals Tribunal has explained that when the MEU issues a "decision" in response to a grievance or complaint, the MEU's "decision" is not an administrative decision subject to judicial review by the Dispute Tribunal. Rather, the judicially reviewable administrative decision is the underlying decision "that is alleged to be in non-compliance with the terms of appointment or the contract of employment of the staff member".⁵

23. We repeat what we explained in *Kabbik* and reiterated in *Nke* :

28. Finally, the Appeals Tribunal notes that, if the Secretary-General had requested costs on appeal, we would have granted the request and awarded costs against Mr. Auda under Article 9(2) of the Appeals Tribunal Statute, as Mr. Auda has “manifestly abused the appeals process” by bringing this patently frivolous appeal.

Judgment

29. The appeal is denied; Judgment No. UNDT/2016/107 is affirmed.

