

Judgment No. 2017-UNAT-804



Counsel for Ms. Fitsum: Self-represented

... On 5 September 2011, Ms. Fitsum wrote an interoffice memorandum to Mr. Amaresarwa Rao, Chief of HRSS, copying Ms. Doreen Bongoy-Mawalla, then Director of Administration, requesting an extension of her SPA at the P-2 level from 1 December 2009 to the then-present time to account for the additional functions that she had been performing.

... On 15 January and 18 February 2014, on behalf of Ms. Fitsum, the Office of

Submissions

Ms. Fitsum's Appeal

5. Ms. Fitsum states in the "relief claimed" section of the appeals form that she contests "the decision not to pay her SPA payment". Ms. Fitsum did not submit an appeal brief with the appeal form.

The Secretary-General's Answer

6. The Secretary-General requests the Appeals Tribunal to affirm the UNDT's Judgment and reject the appeal in its entirety. The Secretary-General argues that the UNDT correctly upheld the Administration's dismissal of Ms. Fitsum's request for SPA. The Secretary-General also argues that Ms. Fitsum has not established any errors warranting a reversal of the Judgment as the appeal is a one-sentence submission indicating that she is contesting the decision not to pay her SPA. Article 2(1) of the Statute of the Appeals Tribunal (Statute) delineates appellate jurisdiction over judgments by the UNDT and enumerates limited grounds of appeal. The Appeals Tribunal is limited to determining, if the UNDT has made any errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction. Ms. Fitsum has the burden of satisfying the Appeals Tribunal that the judgment rendered by the UNDT is defective. For an appeal to succeed, an appellant must persuade the Appeals Tribunal that the contested decision fulfills the objective criteria of its competence. As Ms. Fitsum has not specified a statutory ground of appeal, the appeal should be dismissed on this ground alone in its entirety.

Considerations

7. Ms. Fitsum requests being paid SPA for the period from 1 December 2009 to 10 May 2011, when she performed additional duties, before taking SLWOP. Her first claim was submitted on 5 September 2011 and further memoranda were written on 15 January and 18 February 2014.

8. The UNDT declared the application not receivable because of Ms. Fitsum's failure to submit a written claim seeking retroactive payment of SPA in a timely manner, but the UNDT nonetheless addressed the merits of the case, stating that Ms. Fitsum had not given evidence

to show that she continued to perform all of the higher level functions required to be entitled to such a payment.²

9. Ms. Fitsum filed an appeal form, in which she “contested the decision not to pay her SPA payment” (sic). No appeal brief was filed.

10. Article 8 of the Rules of Procedure of the Appeals Tribunal (Rules) requires that

1. Appeals shall be submitted on a prescribed form.

2. The appeal form shall be accompanied by:

(a) A brief that explains the legal basis of any of the five grounds for appeal set out in article 2.1 of the statute of the Appeals Tribunal that is relied upon or, in the case of an appeal against a decision of the Standing Committee acting on behalf of the United Nations Joint Staff Pension Board, a brief containing pleas and an explanatory statement. The brief shall not exceed 15 pages;

...

11. In turn, the Statute, in relevant part, reads as follows:

Article 2(1):

The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

Article 7(1):

An appeal shall be receivable if:

- (a) The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2, paragraph 1, of the present statute[.]

² Ibid. , para. 27: “The evidence tendered to the [Dispute] Tribunal by the Applicant’s supervisors does not support the Applicant’s contentions that she was asked to perform higher level functions. The Applicant has not tendered any documentation nor is there any paper trail to justify such a claim and payment.”

12. This Tribunal has consistently held that it is the appellant's burden to demonstrate that the impugned judgment erred on a question of law or fact, resulting in a manifestly unreasonable decision. In failing to file an appeal brief contesting the decision taken against her, Ms. Fitsum has not discharged this burden. In the circumstance, the decision would normally be subject to the review of this Tribunal if any blatant mistakes were detected in the decision of the UNDT, regardless of any argument or interpretation. This is not the case.

13. In *Musleh*, in a situation where the appellant had failed to file an appeal brief despite the Registry's request, we stated:³

... We recall that the Appeals Tribunal's function is to determine whether the [Dispute Tribunal of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)] has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. An appellant has the burden of satisfying the Appeals Tribunal that the judgment he or she seeks to challenge is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective.

14. In *Mizyed*, we found:⁴

... Being the Appellant, Mr. Mizyed has the burden of satisfying the Appeals Tribunal that the Judgment rendered by the Dispute Tribunal is defective. The Appeals Tribunal finds that Mr. Mizyed has failed to meet that obligation in that he has not established any errors of law, fact or procedure warranting a reversal of the UNDT Judgment.

15. In *El-Khalek*, we found:⁵

... The appellant bears the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective.

³ *Musleh v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* Judgment No. 2015-UNAT-596, para. 20.

⁴ *Mizyed v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-550, para. 41.

⁵ *El-Khalek v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* Judgment No. 2014-UNAT-442, para. 21.

16. In Gallo, we found:⁶

... The Appeals Tribunal has consistently emphasized that the appeals procedure is of a corrective nature and is not an opportunity for a dissatisfied party to reargue his or her case.

17. It naturally follows that the appeal should be dismissed.

18. Notwithstanding the above, we note that there is a clerical mistake in paragraph 22 of the impugned Judgment. Ms. Fitsum made her claim for SPA for the period in question,

Judgment

20. The appeal is dismissed and Judgment No. UNDT/2017/028 is affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2017 in New York, United States.

(Signed)

Judge Halfeld, Presiding

(Signed)

Judge Thomas-Felix

(Signed)

Judge Murphy

Entered in the Register on this 8th day of December 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar