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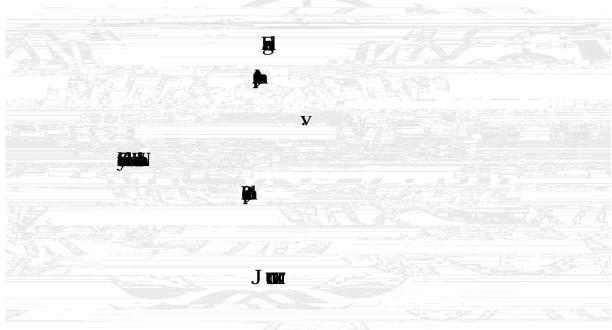
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Case No. 2010-062



Before: Judge Rose Boyko, Presiding

Judge Sophia dinyira

Judge Kamaljit Singh Garewal

Judgment No.: 2010-UNAT-057

1 July 2010 Date:

Weichengin Registrar:

Counsel fo Appellant: Joseph Grinblat

Counsel for Respondent: Guillaume Lemenez

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Je Re Be , Presiding.

Synopsis

1. Mayara Fagundes (Fagundes) appeals from a decision of the United Nations Dispute Tribunal (UNDT or DisputTribunal) refusing to hear appeal against a judgment of the former Administrative Tribunal mass final and that the decision of the former Administrative Tribunal was final and that NIDET statute did not confer upon it review or appeals powers with respect to judgments of the former Administrative Tribunal. The UNDT correctly held that when the new internal justice system was created, the UNDT was not given powers to review or hear appeals from judgments of the former Administrative Tribunal. The Appeals Tribunal dismisses the appeal.

Facts and Procedure

- 2. Fagundes was a staff member of the United Nations. She joined the United Nations in November 2000 on a fixed teappointment at the P-3 lease Radio Producer in the Department of Public Information. On 26 October 2004, she joined the United Nations Environment Programme in The Hague on a fixed-term appointment as a P-3 Programme Officer.
- 3. Fagundes was on sick leave from 8 August 2005 to 17 November 2005, and there was a disagreement between Fagundes and the Administration on the certification of the sick leave. Fagundes was septent from service, effective 31 December 2005. On 7 January 2006, Fagundes submitted a request that a Medical Board be convened to review her sick leave entitlements from 8 August 2005 to 17 November 2005. On 27 April 2006, Fagundes was notified that the Medical Board the period of sick leave from 8 August to 7 September 2005, but that the balance, from 8 September to 17 November 2005, had not been certified. On 17 August 2006, Tequested a copy of the report of the Medical Board. But the Administration denied the request.
- 4. On 20 September 2006, Fagundes requested administrative of the "violation of due process and harassment" against her. Fagundes later filed an appeal to the Nairobi Joint Appeals Board (JAB). On 30 Januar JAB advised her counsel that it was

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not competent to review decisions of the Medical Board and suggested that she appeal to the former Administrive Tribunal.

- 5. On 22 February 2007, Fagundes filed **plicați**on with the former Administrative Tribunal. On 31 July 2009, the formern Astraitive Tribunal issued Judgment No. 1466, rejecting the application in its entirety as time-barred.
- 6. On 12 November 2009, Fagundes filed an application with the UNDT. On 5 February 2010, the UNDT issued JudgiNentUNDT/2010/022. The application was rejected in its entirety. The UNDT found that the contested decision was a judicial decision, as opposed to an administrative one, and, as such, did not fall within the competence of the UNDT, as defined in Article 2(1) of the UNDT titset. It considered that the competence of the UNDT under the transitional measures neglection in the introduction of the new system of administration of justice, as set out in Article 2(7) of the UNDT statute and Section 4.2 of the Secretary-General's Bulletin/SCB/2009/11 extended to cases pending before the former Administrative Tribunal at the time of biodishment on 31 December 2009, but not to those on which judgment had already been passed at that point. Accordingly, the UNDT found that it was to examine the application.

7.

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revise the judgment was made when the former Administrative Tribunal still existed, but that the transitional measures required that the request be sent directly to the UNDT. Further, under Article(2)(6) of its statute, the UNDT may determine whether it has competence.

10. Fagundes requests the Appeals Tribunal to find ther **applical** ble antb consider the merits of her case.

Secretary-General's Answer

- 11. The Secretary-General responds that the UNDT correctly determined that it did not have jurisdiction to revise the judgments of the former Administrative Tribunal.
- 12. Should the Appeals Tribunal decide that the UNDT has jurisdiction to revise the judgments of the former Administrative Tribunal and to Article 12 of the statute of the former Administrative Tribunal Secretary-General submits that Fagundes's requests lie outside the scope of Article 12 of the statute, which provides that a judgment may be revised in two instances, and neither of them applies. Fagundes seeks to appeal the judgment rendered by the former Administrative Tribunal, on the ground that the former Administrative Tribunal allegerabled to review her application challenging the decision of the Administration not to provide her with a copy of the report of the Medical Board.
- 13. The Secretary-General requests the Apparails and to reject the appeal in its entirety.

Considerations

- 14. At issue is whether the Appeals Tribursajuhrisdiction to hear this appeal. The UNDT refused to hear Fagundes's appeal cogrituinds that a decision had been made by the former Administrative Taribal and that the UNDT statdtd not confer any appeal or revision powers on the UNDT from decisions made by the former Administrative Tribunal.
- 15. Apparently Fagundes failed to file a completed, perfected appeal in a timely manner in her earlier appeal brought before the former Administrative Tribunal and her appeal was

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Judgment					
19.	The decision of the UN	DT is upheld and the appo	eal is dismissed.		
Dated	d this day of July 2010	in New York, United St	ates.		
Origi	nal: English				
	(Signed)	(Signed)	(Signed)		
Juc	lge Boyko, Presiding	Judge Adinyira	Judge Garewal		
Enter	red in the Register on th	is day of August 2010 in	n New York, United States.		
	(Signed)				
Weic Unite	heng Lin, Registrar d Nations Appeals Tribı	ınal			