



UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Kadri  
(Appellant)

v.

Secretary-General of the United Nations  
(Respondent)

JUDGMENT

JUDGE RICHARD LUSSICK , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2016/211, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 1 December 2016, in the case of *Kadri v. Secretary-General of the United Nations*. Mr. Ali Kadri filed his appeal on 9 January 2017, and the Secretary-General filed the answer on 13 March 2017.

#### Facts and Procedure

2. The following facts are uncontested:<sup>1</sup>

... The Applicant was a staff member of the United Nations Economic and Social Commission for Western Asia (ESCWA) from 24 August 2002 until 24 August 2012 [when he retired from service].

... On 29 March 2010, he filed an application with the Geneva Registry of the ... UNDT... , which was assigned Case No. UNDT/GVA/2010/079.

... Following the filing of that application, the Applicant engaged in settlement discussions with the Administration coordinated by the Ombudsman's office. On 24 April 2010, the Applicant entered into a Settlement Agreement with the Organization.

... On 27 April 2010, he applied to the UNDT in Geneva for a withdrawal of Case No. UNDT/GVA/2010/079 which he had earlier filed as it had been satisfactorily resolved through mediation. The said case was struck out on 3 May 2010 in Judgment No. UNDT/2010/079.

... Nearly three years later and specifically on 7 January 2013, the Applicant filed another application alleging that he had signed the Settlement Agreement under duress, that ESCWA had rejected his application for a position of Director, Economic Development and Globalization Division (E DGD) for which he had previously been rostered and that the ESCWA Administration continued to harass and discriminate against him.

... The Dispute Tribunal sitting in Nairobi which was seized of this latest application heard it and issued a judgment<sup>[2]</sup> on the matter on 23 December 2013. The [Dispute] Tribunal held that where the subject matter of an application had been settled between parties through mediation leading to an agreement signed by both parties, the

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with its contractual obligations and Mr. Kadri has failed to demonstrate that his rights were violated in any way, and he has not provided any evidence of harm beyond the bare assertions in his pleadings. Finally, Mr. Kadri's claim for costs to be awarded against the Secretary-General is baseless since he has not demonstrated that the Secretary-General has manifestly abused the appeals procedure as required by Article 9(2) of the Appeals Tribunal Statute.

13. On this basis, the Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

#### Considerations

##### *Request for confidentiality*

14.

*Appeal*

17. In March 2010, Mr. Kadri filed an application with the UNDT contesting the decision to renew his appointment for a six-month period only and claiming that he had been subjected to harassment, discrimination and abuse of authority by various officials in ESCWA.

18. On 24 April 2010, he entered into a settlement agreement with the ESCWA Administration pursuant to mediation conducted by the United Nations Ombudsman and Mediation Services. Under the agreement, he agreed to withdraw any and all claims, demands, proceedings and/or appeals that he may have against the Organization. In return, the ESCWA Administration agreed to place him on special leave with full pay until the end of his current contract which expired on 23 August 2010 and, commencing 24 August 2010, to renew his appointment for a further two years through 23 August 2012, during which he would be placed on special leave with partial pay until he reached the age of early retirement at 55 years. Consequently, the UNDT declared his application withdrawn and closed the case.<sup>10</sup>

19. In May 2011, ESCWA advertised a director's post for which Mr. Kadri applied but was not selected. On 15 August 2012, he applied for management evaluation, alleging that he had been harassed into signing the settlement agreement and that "the very text of the agreement constitutes a continued harassment and discrimination" by ESCWA management and requesting the removal of all adverse materials from his OSF. These claims were evaluated as being not receivable and otherwise without merit.

20. Almost three years after entering into the settlement agreement, he filed another application with the UNDT on 7 January 2013, alleging that he had signed the settlement agreement under duress, that ESCWA had rejected his application for the position of Director for which he had previously been rostered and that the ESCWA Administration continued to harass and discriminate against him. The UNDT noted that, at paragraph 17 of the settlement agreement, Mr. Kadri had acknowledged that he had signed the agreement of his own free will and without any duress and that he had subsequently informed the UNDT and the Ethics Office that his case had been satisfactorily resolved through mediation. The UNDT found that "[n]o particulars have been tendered in support of this claim, no reference has been made either in his pleadings or other documents as to the nature of the threats. It is not known whether the alleged threats are physical or psychological. [Mr. Kadri ... ] has not gone beyond merely making this

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<sup>10</sup> *Kadri v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/079, para. 4.



assertion and therefore this claim must fail.”<sup>11</sup> Accordingly, the UNDT dismissed his claim of duress as being devoid of any merit.

21. Mr. Kadri appealed this decision to the Appeals Tribunal, which upheld the UNDT’s Judgment dismissing his claim of duress. However, the Appeals Tribunal, although it was of the view that “the nature of the contested decisi

25. In order to ensure that he received a fair hearing of the issues raised by Mr. Kadri, the UNDT ordered him to amend his pleadings “in order to better articulate the continued harassment and discrimination he alleged to have suffered”.<sup>14</sup> It also advised him “[i]n the interests of proper access to justice and for a fair and expeditious disposal of the case” to “seek professional legal advice from the Office of Staff Legal Assistance with a view to properly drafting the amended pleadings”.<sup>15</sup> Mr. Kadri did not accept this advice as he considered that it was in his best interests to be self-represented.<sup>16</sup>

26.



for the implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after the thirtieth day from the date of signing of the agreement.

34. The implementation of the settlement agreement was concluded on 23 August 2012 because Mr. Kadri's contract was renewed only through 23 August 2012 and he was separated from service the following day in accordance with paragraphs 2 and 5 of the settlement agreement. Mr. Kadri filed his application with the UNDT on 7 January 2013. We find that his application was therefore not receivable as it was filed after the agreement had already been fully implemented and therefore, pursuant to Article 8(2) of the UNDT Statute, it was not subject to judicial review.

35. The UNDT's finding of non-receivability is not based on Article 8(2) of its Statute, but on Article 7(4) of its Rules of Procedure. Article 7(4) provides:

Where an application is filed to enforce the implementation of an agreement reached through mediation, the application shall be receivable if filed within 90 calendar days of the last day for implementation as specified in the mediation agreement or, when the mediation agreement is silent on the matter, after 30 calendar days from the date of the signing of the agreement.

36. In our view, the UNDT was not correct in finding that no date was specified in the settlement agreement for its implementation. The last day for implementation can be readily discerned as being 23 August 2012. Pursuant to Article 7(4) of the UNDT Rules of Procedure, Mr. Kadri's challenge to the settlement agreement was therefore out of time because it was filed more than 90 calendar days after the last day for implementation, and not because it was filed more than 30 calendar days from the signing of the agreement as held by the UNDT.

37. Mr. Kadri also argues that his personnel file contains adverse material as a result of which "it is impossible for me to be rehired at UN-ESCWA and anywhere else within or outside the UN, which makes the agreement self-contradictory since it includes a clause that allows me to be rehired".

38. There is no merit at all to this argument. Firstly, he is out of time to challenge the agreement. As held by the UNDT: “Insofar as this Application concerns what uses the adverse materials on the Applicant’s OSF could be put to by the Administration with regard to the terms of the Settlement Agreement, the claim is not receivable.”<sup>22</sup>

39. Secondly, even assuming, *arguendo*, that such a claim is receivable, there was no evidence upon which the UNDT could find that the Administration had provided any negative information about him contrary to the terms of the agreement, nor that it had even been contacted by prospective employers.

40. In conclusion, we find that Mr. Kadri has failed to persuade us that the UNDT committed any error in arriving at its Judgment. It follows that the appeal must fail.

41. His claim for costs of USD 10,000 also fails.

42. Article 9(2) of the Appeals Tribunal Statute provides: “Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.”

43. We find that Mr. Kadri has failed to establish that the Secretary-General has manifestly abused the appeals process in any way. There is therefore no justification for an award of costs.

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<sup>22</sup> Impugned Judgment on Liability and Relief, para. 29.

Judgment

44. The appeal is dismissed in its entirety and Judgment No. UNDT/2016/211 is affirmed.

Original and Authoritative Version: English

Dated this 14<sup>th</sup> day of July 2017 in Vienna, Austria.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Knierim

Entered in the Register on this 5<sup>th</sup> day of September 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar