UNITED N

Judgment No. 2023-UNAT-1388

Counsel for Appellant: Norbert Okumu

Counsel for Respondent: Amanda Stoltz

6. Subsequently, on 9 March 2016, the Staff Association requested UNAMID to agree to a proposal to have past payments of salaries paid retroactively in USD after they had been repaid by the UNAMID staff members to the Agency in the original SDG currency in which they had previously been paid.

7. After consideration, this request was declined by letter by UNAMID on 17 June 2016 and this led, in July and August 2016, to a strike by Staff Association members whose previous request had then become a demand.

8. In August 2016, a proposal was put by UNAMID to the Staff Association to pay in USD some of the UNAMID staff members' salaries that had previously been paid in SDG. This was to pay one month's salaries (those for February 2016) out of the six months claimed by staff members.

9. The dispute then widened to include not only what was to happen to the balance of the six-month period claimed for retrospective payment, but also included claims about calculations for Mission contributions, Medical Insurance Plan contributions, entitlements of UNAMID staff members, contract status affecting staff members of more than five years' service, a review of salary payment methodology, taxation refund issues, end-of-service allowance payments and collective as well as individual cases that were pending.[4] On 19 August 2021, the Staff Association sent a letter to UNAMID in which it raised this cornucopia of issues.

10. On 28 August 2021, UNAMID replied to the Staff Association by letter rejecting the Staff Association's claims and providing "an outcome and rationale for each issue raised".[5]

11. On 21 October 2021, one UNAMID staff member, whom we will refer to as Mr. A.A., requested management evaluation (ME), for himself and purportedly on behalf of some 2,700 other current and former UNAMID staff members, of the Agency's decision not to reimburse the staff assessments deducted from their salaries and the decision not to pay them the full six months of retrospective salaries in USD. On 16 December 2021, the Management Evaluation Unit (MEU) refused Mr. A.A.'s request for ME on the ground of non-receivability.

[4] Impugned Judgment, para. 25.
[5] *Ibid*., para. 26.

12. On 16 February 2022, Mr. Haroun personally, and not either represented by or accompanied by Mr. A.A., filed an application before the UNDT which he described as being "8 outstanding claims for 4 000 former UNAMID national staff members [of] claims refuted by UNAMID management on 28 August 2021".[6]

Impugned Orders Nos. 157 (NBI/2022) and 158 (NBI/2022)

13. We address first the relevant events leading to the two challenged interlocutory Orders of the UNDT. Except for the following, it is unnecessary to summarise other interlocutory maneuvers in the litigation before the UNDT.

14. On 5 October 2022, the previously unrepresented Mr. Haroun advised the UNDT that he would henceforth be represented by counsel.

15. On 6 October 2022, the UNDT held a case management discussion (CMD) during which the parties agreed, among other things, that an oral hearing was not required for the s(e)-5.38804 26st(a)6.7 (n)6

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18. On 4 November 2022, having heard from the Secretary-General's counsel, the UNDT issued impugned Order No. 158 (NBI/2022), deciding that the case would proceed without Mr. Haroun's amended application and without an oral hearing. Steps for filing final submissions were also timetabled. Mr. Haroun complied with those steps.

Impugned Judgment

19. The impugned Judgment was issued on 17 November 2022. The UNDT determined that Mr. Haroun had failed in several respects to meet the statutory receivability grounds necessary to have his application considered on its merits. It held that there was no evidence that Mr. Haroun had sought ME of his claims, an essential jurisdictional prerequisite to their consideration by the UNDT under Staff Rule 11.2(c).[8] Mr. A.A. had done so in October 2021 and Mr. Haroun claimed that this ME referral was made on his behalf as one of the affected UNAMID current or former staff members represented by Mr. A.A. However, the Dispute Tribunal ruled that it was the significant time lapse (more than four years) between the notification of the contested administrative decision to the Staff Association and the referral to ME, which delay counted against the proceeding's receivability. Significant in the UNDT's reasoning were also the facts that at the time of notification of the administrative decision to the Staff Association, Mr. Haroun was a member thereof, and that he had taken part in the strike action in July and August 2016 protesting against the administrative decision. The UNDT held that Mr. Haroun ought reasonably to have been aware of the Administration's decision, even if, as he claimed, there had been no response until 28 August 2021 to the Staff Association's demand that the Agency reverse its decision not to make refund payments. Indeed, the Dispute Tribunal found that when Mr. Haroun received his July 2016 pay slip and subsequent editions of this with no references to a refund, this demonstrated the Agency's decision refusing the Staff Association's demand.[9]

20. It was deemed immaterial that the contested administrative decision was reiterated on 28 August 2021 in response to the Staff Association's correspondence dated 19 August 2021. A reiteration of an earlier decision, made and communicated, did not reset the period for an application for ME of that original decision. Accordingly, the UNDT held that there had been no timely ME request. On this ground alone, Mr. Haroun's proceeding was unreceivable.[10]

[8] Secretary-General's Bulletin ST/SGB/2018/1 (Staff Regulations and Rules of the United Nations).
[9] Impugned Judgment, paras. 32-36.
[10] *Ibid*., para. 35.

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granted Mr. Haroun two extensions of time, that the case could proceed without his amended application.

37. Moreover, the Secretary-General contends that, in accordance with Articles 16(1) and (2), 17(6) and 18(5) of the Dispute Tribunal Rules of Procedure, it was also within the UNDT's discretion to hold an oral hearing. The Secretary-General notes that Mr. Haroun "agreed during the CMD that the case would be decided based on the parties' written submissions and is therefore estopped from raising this claim on appeal".

38. Last, the Secretary-General submits that the UNDT acted within its competence and in accordance with Article 19 of the Dispute Tribunal Rules of Procedure when it rejected Mr. Haroun's motion for an oral hearing without giving him an opportunity to respond to the Secretary-General's comments.

Mr. Haroun's Appeal

39. Mr. Haroun requests the Appeals Tribunal to reverse the impugned Judgment and to issue an "[o]rder directing for a fresh trial before the (...) UNDT by a different [j]udge", pursuant to Article 2(6) of the Statute. He also requests the Appeals Tribunal to issue an "[o]rder that the fresh hearing before the UNDT be conducted by way of oral evidence", pursuant to Article 17 of the Dispute Tribunal Rules of Procedure.

40. With regard to the impugned Judgment, Mr. Haroun submits that the Dispute Tribunal committed several errors in procedure, fact and law in dismissing his application.

41. First, Mr. Haroun contends that the UNDT erred in procedure and exceeded its jurisdiction and competence in delivering the impugned Judgment during the pendency of Case No. 2022-1746 before the Appeals Tribunal. Indeed, Mr. Haroun submits that, pursuant to Article 7(5) of the Statute and Article 8(6) of the Appeals Tribunal Rules of Procedure (Rules), orders issued by the Dispute Tribunal are automatically suspended once an appeal is filed.

42. Second, Mr. Haroun submits that the UNDT erred in fact, resulting in a manifestly unreasonable decision, when it

June 2016 instead of 28 August 2021.[19] Indeed, Mr. Haroun argues there was no evidence, other than "conjectures and rumours", that the 17 June 2016 letter had been communicated to the Staff Association or to individual UNAMID staff members.

43. Third, Mr. Haroun argues that the UNDT also erred in fact when it found that his application was not receivable because the request for ME "was not individualized as to mention [his name] specifically". Mr. Haroun further observes that the UNDT erroneously applied "double standards" because it relied on the June 2016 decision, which had not been proven to be "individualized as to personally address each staff member".

44. Fourth, Mr. Haroun submits that the UNDT erred in law in adopting a restrictive interpretation of Article 2(1) of the Dispute Tribunal Statute when it had the "jurisdiction to hear a [r]epresentative [a]pplication". Indeed, Mr. Haroun submits that the term "individual" should have been interpreted broadly to allow a party to file an application "on their own behalf and on behalf of other parties with similar or common interests or claims".

45. Fifth, Mr. Haroun reiterates that the nature of the case required that an oral hearing be conducted.

46. Last, in support of his request to remand the case to a different UNDT judge, Mr. Haroun submits that the UNDT Judge was "manifestly harsh, hostile and biased against [him]". He further presents similar arguments to the ones he had made before the UNDT, i.e. that: i) the UNDT "endorsed an illegality" when it extended Mr. Haroun's deadline to file his amended application in Order No. 157 (NBI/2022) because this Order was initially issued by a Legal Officer instead of a UNDT judge; ii) the deadline fixed in Order No. 157 (NBI/2022) was "unrealistic"; and iii) the "hurried manner" in which Order No. 158 (NBI/2022) was issued raised "suspicion that the outcome (...) was pre-determined".

The Secretary-General's Answer

47. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety.

48. First, the Secretary-General submits that Mr. Haroun failed to establish that the UNDT erred in procedure or exceeded its jurisdiction and competence in delivering the impugned

[19] Mr. Haroun refers the /Lf6.8 (rp(N)-9 (oS.8 (a)e) ( )-TJ0 T Tc 0 Tw 5.1c -0.049 Td Tc 0 Tw4 (r)-7.5 (H)-4.l (p)0

demonstrate that the decision had a direct impact on his terms of appointment or contract of employment".

52. Moreover, the Secretary-General contends that the UNDT's interpretation of Article 2(1) of the Dispute Tribunal Statute was consistent with the established jurisprudence which states that "the UNDT does not have jurisdiction to hear representative claims filed on behalf of other staff members and that the right to challenge an administrative decision in the UNDT is an individual right".[23]

53. Third, the Secretary-General submits that Mr. Haroun failed to establish that the UNDT was biased against him or that there was any basis for remanding the case to a different UNDT judge. Indeed, observing that Mr. Haroun's arguments in this regard are also the subject of his appeal in Case No. 2022-1746, the Secretary-General notes that his submissions will supplement "the arguments set in detail in [his] [a]nswer to [Mr. Haroun]'s [i]nterlocutory [a]ppeal". The Secr Tw 11.04 -0 (i)-8.63is36o3at or [c506.88 43-0 (i)-fi8321 Tc 0.021 Tw 11.04 -0 0 11.031 Tw 11.04 -0 0 11.0313.

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permitted to assist the Dispute Tribunal with a brief of submissions to ensure that wider interests than those of the immediate parties alone are identified and can be addressed.

76. Next, we address the other ground on which the UNDT concluded that it could not receive Mr. Haroun's application because it had not previously been the subject of timely request for ME. We cannot fault the UNDT's analysis of the several gr(e)-3.2 (79.3 1f0.001 Tc 9 (o)7(s)-

that no application is receivable "if it is filed more than three years after the applicant's receipt of the contested administrative decision". For the reasons just set out, the UNDT was right to have identified the date of its receipt by Mr. Haroun as being in June 2016. Therefore, even if Mr. Haroun had submitted a timely request for ME, his filing of the application more than five years after he had received notification of the contested decision also made it unreceivable. In so concluding, the UNDT committed no error of fact or law.

82. Mr. Haroun's next argument is that the UNDT wrongly refused to conduct an oral hearing of his case. We have already dealt with this argument at paragraphs 58 and 59 of the Judgment in relation to his appeal against the interlocutory Order on which it featured, so we will only add this. We can discern no error of law in that direction. A hearing on papers was agreed to by Mr. Haroun, albeit at a time prior to his change of mind and his subsequent motion for an oral hearing that the Dispute Tribunal refused. It was the correct course of action in a case in which Mr. Haroun's claims pleaded were unreceivable from the outset. Had they been considered on their merits at an oral hearing, this