



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1419

Nicole Wynn
(Respondent/ Applicant)

v.

Secretary -General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before:	Judge Kanwaldeep Sandhu, Presiding Judge Gao Xiaoli Judge Leslie F. Forbang
Case No:	2023-1801
Date of Decision:	22 March 2024
Date of Publication:	29 April 2024
Registrar:	Juliet E. Johnson

Counsel for Ms. Wynn:	Self-represented
Counsel for Secretary-General:	Patricia C. Aragonés

year.⁴ The HRA/DOS advised her that the Organization would recover USD 1,364.52 of the advance received.

8. On 6 December 2022, Ms. Wynn requested management evaluation of the contested decisions.⁵ On 10 January 2023, following the request of the Management Evaluation Unit (MEU) for further clarification on the disputed fees, she directed the MEU to the school's website providing a description of these fees.⁶

9. On 15 April 2023, Ms. Wynn filed a motion with the Dispute Tribunal, seeking an extension of time to file an application to challenge the contested decisions.⁷

10. The Dispute Tribunal did not request the Secretary-General's response to the motion.

The impugned Order

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if such consideration may be inferred, without providing its reasoning . The Appeals Tribunal has held that health problems and illness are not, per se, exceptional circumstances. She provided no explanation as to the nature of her illness and its effects. The UNDT could have granted a short

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extension of time are to be succinct and not intended to include medical documentation or testimony.

24. Ms. Wynn contends that the duration of the extension of time was also reasonable.¹³ She was ill with multiple diagnoses for the entire 90 -day period provided for filing the application. Moreover, the Secretary-General does not allege or demonstrate any harm or articulate any concrete grievance caused by the impugned Order.¹⁴ The Secretary-General does not seek an opportunity to be heard.

25. Ms. Wynn argues that the appeal is vexatious as it only serves to protract the litigation before the UNDT and to waste time and resources, including hers.

Considerations

26. The primary issue is whether the appeal of the interlocutory Order of the Dispute Tribunal is receivable.

27. Article 2(1)(a) of the Appeals Tribunal Statute provides that 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 (...) [e]xceeded its jurisdiction or competence".¹⁵

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29. In the present case, the Secretary General says the Dispute Tribunal “clearly” exceeded its jurisdiction or competence when it issued the Order without first providing him with an opportunity to be heard.

30. Although Article 8(3) of the Dispute Tribunal’s Statute gives the Tribunal permission to “decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases”, the Dispute Tribunal issued the impugned Order without the “adversely-affected party being heard and without authority to do so.”¹⁸

31. Paragraph 6 of the Dispute Tribunal’s Practice Direction No. 5 on filing of motions and responses provides that a party opposing a motion may file a response to the motion. We have previously held that “[t]his implies, necessarily, that the motion will be served on or otherwise brought to the attention of the other party so that this right of response can be acted upon.”¹⁹ Therefore, we accept that the Dispute Tribunal

It is correct that the learned Judge did not make an explicit finding that there were “exceptional circumstances” in this case. However, it is clear from the reading of the reasons provided in the Order that the learned Judge considered Ms. Wynn’s submissions provided to support the extension of time and opined that this amounted to exceptional justification to grant the extension. In other words, it would have been unfair and unjust to not grant the extension of time in these circumstances.

34. Despite a strict lack of procedural fairness and explicit finding on “exceptional circumstances”, the question is whether this amounted to the Dispute Tribunal “clearly” exceeding its jurisdiction and competence. We find that it does not.

35. This is particularly true , given the general authority granted to the Dispute Tribunal pursuant to Article 19(1) of the UNDT’s Rules of Procedure that it “may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties”. We find the Dispute Tribunal properly exercised its discretion in this regard and any procedural error was de minimis in the sense it is unclear that the UNDT would have come to a different conclusion with the Secretary-General’s submissions on themotion .

36. Therefore, the appeal is dismissed.

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