



**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-385

**Samuel Thambiah
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

(Respondent) u3

Counsel for Appellant: Michael Ford Shanahan

Counsel for Respondent: Simon Thomas

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Oshadhie Samuel Thambiah against Judgment No. UNDT/2012/185, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 29 November 2012 in the case of *Samuel Thambiah, O. v. Secretary-General of the United Nations*. Ms. Samuel Thambiah appealed on 28 January 2013, and the Secretary-General answered on 4 April 2013.

Facts and Procedure

2. Ms. Samuel Thambiah joined the United Nations Children's Fund (UNICEF.2()].4(n).ah Unit

United Nations Office at Geneva (Section) required her to undergo a medical examination by

12. In August 2011, Ms. Samuel Thambiah submitted a claim to the Advisory Board on Compensation Claims [ABCC] in accordance with Appendix D to the Staff Rules and Regulations.

13. In Judgment No. UNDT/2012/185, the Dispute Tribunal rejected

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Ms. Samuel Thambiah's argument that the time limit only starts to run once the Administration can prove that the document has actually been received by the staff member would place an unreasonable burden on the Respondent, given that the knowledge and evidence of this is solely in the hands of Ms. Samuel Thambiah. It would moreover allow staff members to arbitrarily re-set deadlines in accordance with their own convenience, based on inherently unverifiable claims that they had only opened an e-mail communication after the unambiguous date on which it had been sent.

20.

- (i) In cases where a management evaluation of the contested decision is required:

36.

Separation while on service-incurred sick leave

42. The UNDT found Ms. Samuel Thambiah's claim regarding separation while on service-incurred sick leave to be receivable. It, however, dismissed her claim by holding that Ms. Samuel Thambiah had failed to follow procedures relating to service-incurred illness and her service was therefore properly terminated.

43. She contests that the UNDT's finding was a mistake of law and "in clear contradiction with international jurisprudence on work-related injuries".

44. Ms. Samuel Thambiah submits further that the Dispute Tribunal failed to consider the Secretariat's administrative instruction ST/AI/2005/3. This Tribunal notes that the relevant administrative instruction is UNICEF's CF/AI/2009-009 of 19 August 2009 that provides, in section 7.1:

When a staff member on a fixed-term or temporary appointment is incapacitated for service by reason of an illness that continues beyond the date of expiration of the appointment, he or she shall be granted an extension of the appointment, after consultation with the United Nations Medical Director or designated medical officer,

