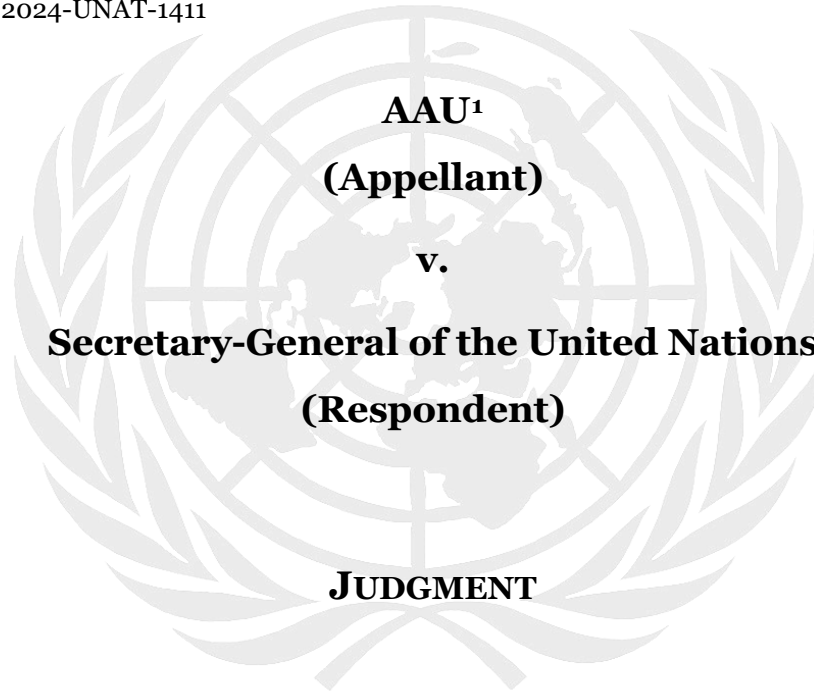




UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2024-UNAT-1411



Before:	Judge Kanwaldeep Sandhu, Presiding Judge Katharine Mary Savage Judge Abdelmohsen Sheha
Case No.:	2023-1805
Date of Decision:	22 March 2024
Date of Publication:	15 April 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Sylvia Schaefer

¹ This unique three-letter substitute for the party's name is used to anonymize the Judgment and bears no resemblance to the party's real name or other identifying characteristics.

JUDGE KANWALDEEP SANDHU, PRESIDING.

1. AAU, a former staff member of the United Nations, contested the decision to terminate her appointment with the United Nations in October 1995 (contested decision).
2. By summary Judgment No. UNDT/2023/020 (impugned Judgment),² the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) determined that AAU's application was not receivable because she requested management evaluation of the contested decision and submitted her application to the Dispute Tribunal more than 27 years after her receipt of the contested decision. In addition, the Dispute Tribunal held it was appropriate to anonymize AAU's name due to her allegations of domestic abuse.
3. AAU appeals and for the reasons set out below, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) dismisses the appeal and affirms the impugned Judgment.

Facts and Procedure

4. AAU alleges that she was initially employed with the United Nations in 1989. She asserts that in 1993, she moved to New York, United States, with her partner and they both started working for the United Nations Secretariat. AAU submits that during that period of time, she was pregnant and a victim of domestic abuse by her partner. Therefore, she had to fly to Norway when she was eight months pregnant, where she spent a year on maternity leave and Special Leave Without Pay (SLWOP).
5. AAU contends that, at the end of her SLWOP, she could not return to her position in New York due to fear of her former partner. She submits that she contacted the Office of Human Resources (OHR) and "suggested to send [her] anywhere, or to grant [her] leave without pay while [she] worked [with the United Nations High Commissioner for Refugees] (UNHCR) on short-term contracts".
6. AAU contends that her request was denied, resulting in the termination of her appointment in October 1995.

² *Applicant v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/020.

7. On 1 December 2022, AAU requested management evaluation of the decision of the Administration to terminate her permanent appointment with the United Nations.³

8. On 6 December 2022, the Management Evaluation Unit (MEU) informed AAU by letter that her management evaluation request was time-barred. The MEU observed that AAU did not submit her request for management evaluation within 60 calendar days from the date on which she received notification of the contested decision, in accordance with Staff Rule 11.2(c),⁴ but rather submitted it more than 27 years later.⁵ On 5 March 2023, AAU filed an application with the Dispute Tribunal challenging the contested decision.

Impugned Judgment

9. On 24 March 2023, the Dispute Tribunal issued the impugned Judgment by way of summary judgment pursuant to Article 9 of the Dispute Tribunal Rules of Procedure. It first granted AAU's request for anonymity considering her allegations of domestic abuse and the fact that she could be identified by the circumstances surrounding the case.⁶

10. With regard to the issue of receivability of her application, the Dispute Tribunal concluded that AAU's request for management evaluation was time-barred as she only requested management evaluation of the contested decision on 1 December 2022.⁷

11. The Dispute Tribunal similarly found that AAU's application to the Tribunal was not receivable as it was filed more than three years after her receipt of the contested decision which "was made in October 1995, (...) more than 27 years earlier". Therefore, the Dispute Tribunal found that it did not have "competence to review the merits of her claim".⁸

³ Management evaluation request dated 1 December 2022.

⁴ Secretary-General's Bulletin ST/SGB/2018/1/Rev. 2 (Staff Regulations and Rules of the United Nations).

⁵ Management evaluation response dated 6 December 2022.

⁶ Impugned Judgment, para. 5.

⁷ *Ibid.*, para. 8.

⁸ *Ibid.*, para. 9.

Submissions

AAU's Appeal

12. AAU requests the Appeals Tribunal to grant her “[c]ompensation of USD 1,5 million due to loss of a stable [United Nations] salary and pension contributions” as well as “[r]etroactive inclusion in the [United Nations] Pension Fund since 1995, based on [her] last [United Nations] P-5, Step 5 position, which [she] held with [the United Nations Population Fund] in Ukraine in 2022, with the possibility to retire at age 60”.⁹

13. AAU also requests that the Appeals Tribunal grant her anonymity in the publication of the present Judgment for security reasons.

14. With regard to the impugned Judgment, AAU submits that the Dispute Tribunal erred in fact in dismissing her application, resulting in a manifestly unreasonable decision.

15. AAU admits that many years have passed since her appointment was terminated but notes that it is not rare for “victims of sexual and gender-based violence (...) to seek justice 20 to 30 years after the abuse”. Therefore, she requests the Appeals Tribunal to “show humanity and look to many other tribunals globally that have extended statutes of limitation and decided in favour of survivors of historic gender-based violence”.

16. AAU submits that the Administration wrongly denied her a termination indemnity for “unknown reasons” and did not inform her of the possibility to appeal the contested decision. By doing so, AAU contends that the Administration breached its duty of care and violated Staff Regulation 9.3 and Staff Rule 9.6 (c).

The Secretary-General's Answer

17. The Secretary-General requests that the Appeals Tribunal dismiss the appeal in its entirety as the Dispute Tribunal correctly found that AAU's application was not receivable *ratione temporis*.

18. The Secretary-General argues that AAU failed to establish any of the five grounds of appeal set out in Article 2(1) of the Appeals Tribunal Statute (Statute) and is relitigating her case contrary

⁹ Appeal form.

to the purpose of the appeal process. Indeed, the Secretary-General observes that AAU's arguments are largely a repetition of the ones that she made before the Dispute Tribunal and are "copy-pasted word for word [of] many of the paragraphs (...) contained in her [a]pplication". However, relying on Appeals Tribunal jurisprudence, the Secretary-General recalls that it is not sufficient for AAU to merely repeat the arguments submitted before the Dispute Tribunal and that the appeals procedure is not an opportunity for a party to reargue the case.¹⁰ Therefore, the Secretary-General submits that the appeal should be dismissed on this ground alone.

19. Nevertheless, even if the Appeals Tribunal were to consider those arguments, the Secretary-General contends that they have no merit. Indeed, the Secretary-General submits that the Appeals Tribunal has consistently held that adherence to time limits must be strictly observed and that the Dispute Tribunal may decide to waive such statutory time limits only in exceptional circumstances.¹¹ However, in the present case, the Secretary-General notes that AAU has not requested such a waiver or "demonstrate[d] that exceptional circumstances beyond her control justify her filing the [a]pplication more than 27 years after the [c]ontested [d]ecision was taken".

20. The Secretary-General submits that AAU cannot invoke her ignorance of the possibility to appeal the contested decision as an excuse because "staff members are presumed to know the Regulations and Rules applicable to them".¹²

21. The Secretary-General makes no submission on AAU's request for anonymity before the Appeals Tribunal.

Considerations

22. The primary issue in the appeal is whether the Dispute Tribunal erred in determining that AAU's application was not receivable 27 years after her receipt of the contested decision.

23. At the outset, in any appeal, the appellant has the burden of satisfying the Appeals Tribunal that the impugned judgment is defective and that the Dispute Tribunal erred pursuant to one or more of the grounds of appeal set out in Article 2(1) of the Statute:

¹⁰ *Antaki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-096, para. 21; *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

¹¹ *Rüger v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-693, para. 13.

¹² *Langa Dorji v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1278, para. 29.

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:

- (a) Exceeded its jurisdiction or competence;
- (b) Failed to exercise jurisdiction vested in it;
- (c) Erred on a question of law;
- (d) Committed an error in procedure, such as to affect the decision of the case; or
- (e) Erred on a question of fact, resulting in a manifestly unreasonable decision.

24. In the present case, AAU submits that the Dispute Tribunal erred on a question of fact resulting in a manifestly unreasonable decision but fails to identify what the factual error was. Instead, she essentially repeats arguments made before the Dispute Tribunal and attempts to relitigate or reargue her case. This is contrary to accepted jurisprudence and the corrective nature of the appeal process.¹³ As such, she has failed to meet the burden of proving a reviewable error in the impugned Judgment and the appeal should be dismissed on that ground alone.

25. In any event, AAU's arguments requesting an extension of time to dispute the contested decision have no merit.

26. Article 8(4) of the Dispute Tribunal Statute (UNDT Statute) provides that "[n]otwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than three years after the applicant's receipt of the contested administrative decision".

27. It is well settled that Article 8(4) of the UNDT Statute is an "absolute restriction on [the UNDT's] judicial discretion" and that the Dispute Tribunal "cannot waive the time limit to file an appeal more than three years after the applicant's receipt of the contested administrative decision".¹⁴

28. In the present case, it is not disputed that AAU received the contested decision in 1995. She filed her request for management evaluation in 2022 and applied to the Dispute Tribunal in 2023. The delays constitute 26 and 27 years respectively. Therefore, this application is clearly time barred under Article 8(4) of the UNDT Statute and not receivable, regardless of the merits of her

¹³ *Gonzalo Ramos v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1256, para. 41; *Al-Moued v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2014-UNAT-458, para. 19.

¹⁴ *Khan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-727, para. 23.

claim. There is no authority given to either Tribunal to extend the timelines in these circumstances. For all of the foregoing reasons, the appeal is dismissed.

29. Finally, in the impugned Judgment, the Dispute Tribunal granted anonymity to AAU due to her allegations of domestic abuse and to “avoid that [AAU] could be identified by the circumstances surrounding her case”. Before the Appeals Tribunal, AAU requested continued anonymity for “security reasons”. However, the Secretary-General makes no submission on the request. Given that there was no challenge by the Secretary-General to anonymity, the UNDT order to anonymize AAU’s name remains in effect pursuant to Section II.C.32 of Practice Direction No. 1 of the Appeals Tribunal.

Judgment

30. AAU's appeal is dismissed, and Judgment No. UNDT/2023/020 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 22nd day of March 2024 in New York, United States.

(Signed)

Judge Sandhu, Presiding

(Signed)

Judge Savage

(Signed)

Judge Sheha

Judgment published and entered into the Register on this 15th day of April 2024 in New York, United States.

(Signed)

Juliet E. Johnson, Registrar