



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

Judgment No. 2024-UNAT-1451/Corr.1

**Cevat Ozturk
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge Gao Xiaoli Judge Nassib G. Ziadé
Case No.:	2023-1823
Date of Decision:	28 June 2024
Date of Publication:	23 July 2024
Registrar:	Juliet E. Johnson

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Rupa Mitra

JUDGE GRAEME COLGAN, PRESIDING.

1. Cevat Ozturk appeals against Judgment No. UNDT/2023/031 (impugned Judgment) of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal),¹ which declined to receive his application as not having been the subject of a timely management evaluation request and also because his cause of action arose more than three years before his application was filed. The UNDT dismissed Mr. Ozturk's case by issuing a summary judgment on the Secretary-General's motion.
2. This appeal turns essentially on what was the relevant administrative decision and when this came to Mr. Ozturk's notice.
3. For the reasons set out below, we dismiss the appeal and affirm the impugned Judgment.

Facts and Procedure

4. There is a long and convoluted history to this case about erroneous child support deductions taken from Mr. Ozturk's salary, but most of which we need only summarise briefly. Further detail may be found in previous judgments referenced herein.
5. Mr. Ozturk has been a staff member of the United Nations since 2014. In proceedings brought by him and decided in 2018 the UNDT concluded that the Administration had, in 2015, unlawfully deducted child support payments from his salary.² In the 2018 UNDT Judgment, the Dispute Tribunal ordered the rescission of the administrative deduction decision, the reimbursement to Mr. Ozturk of the erroneous deductions, and a direction to the Administration to re-determine, in its discretion, the proper deductions to be made.
6. The Secretary-General appealed the 2018 UNDT Judgment to the United Nations Appeals Tribunal (UNAT or Appeals Tribunal). The appeal was denied in Judgment No. 2018-UNAT-892 (2018 UNAT Judgment).³

¹ *Ozturk v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/031.

² *Ozturk v. Secretary-General of the United Nations*, Judgment No. UNDT/2018/055 (2018 UNDT Judgment).

³ *Ozturk v. Secretary-General of the United Nations*, Judgment No. 2018-UNAT-892.

7. Following the Administration's unsuccessful appeal, the Administration set about calculating the reimbursement amount that was due to Mr. Ozturk.

8. As recounted in Judgment No. 2022-UNAT-1274 (2022 UNAT Judgment), it is undisputed that there were consultations between Mr. Ozturk and the Administration about the amount that it should repay him.⁴ These discussions were pursuant to the 2018 UNDT Judgment and in compliance with Staff Rule 3.18(c)(iii). In the course of that consultation the Administration's calculations were revealed to Mr. Ozturk. Although he may have disagreed with those calculations and thereby to the total amount to be refunded, Mr. Ozturk was given the reasons for the decision, and had an opportunity to persuade the Administration otherwise, at that time.

9. On 7 May 2019, the Administration sent him by wire transfer the reimbursement for the amounts that were unlawfully deducted from his salary. Mr. Ozturk acknowledged receipt of the wire transfer that same day.⁵ More than a year elapsed before Mr. Ozturk again communicated with the Administration about this matter.

10. On 17 July 2020, Mr. Ozturk requested further reimbursement to him of sums he claimed were still owed from the erroneous child support deductions from his salary. The Human Resources Office (HRO) acknowledged receipt of his e-mail. Between July 2020 and March 2021, Mr. Ozturk sent several messages to the HRO asking for a response to his 17 July 2020 query.

11. It was, however, only on 14 May 2021 (10 months after his initial request) that the HRO replied to Mr. Ozturk advising that it considered that the payment made on 7 May 2019 was in accordance with the 2018 UNAT Judgment and that the matter was closed.⁶ There was no further explanation as to how the 7 May 2019 sum had been calculated and no answer to Mr. Ozturk's claim that he had not been given sufficient reimbursement.

12. On 20 May 2021, Mr. Ozturk submitted a request for management evaluation, which he framed as a challenge to the Administration's 14 May 2021 decision. On 1 June 2021, the Management Evaluation Unit (MEU) rejected the request as not receivable.

⁴ *Cevat Ozturk v. Secretary-General of the United Nations*, Judgment No. 2022-UNAT-1274, para. 29.

⁵ *Ibid.*, para. 10. See also impugned Judgment, para. 8.

⁶ Impugned Judgment, para. 10.

13. Rather than continuing to pursue the Administration for payment, Mr. Ozturk tried another tack. On 10 November 2021, he applied to the UNAT for an order of execution of the 2018 UNAT Judgment based on his contention that the payment made by the Administration on 7 May 2019 had been incorrect and insufficient. The UNAT dismissed his application for execution, finding that if Mr. Ozturk was dissatisfied with the amount of the refund, he should have sought management evaluation of that refund decision.⁷

14. Between mid-December 2022 and mid-January 2023 there was correspondence from Mr. Ozturk to the Administration and a meeting with its representative about the correctness of the 7 May 2019 reimbursement. The Administration's calculations were again explained to him and Mr. Ozturk's analysis of the figures was rejected. On 19 January 2023, the Administration reiterated by e-mail that, despite extensive consultation with him, its position remained the same, namely, that it had calculated correctly the dates and amounts of reimbursement due when it paid him on 7 May 2019.

15. Upon receipt of this e-mail, Mr. Ozturk immediately requested management evaluation of what he said was the Administration's decision of 19 January 2023. On 3 March 2023, however, the MEU advised that this request was time-barred and thereby not receivable.

16. Mr. Ozturk lodged his application with the UNDT on 14 April 2023, which was dismissed in the impugned Judgment.

17. It is important to record what is the subject matter of Mr. Ozturk's dispute with the Secretary-General and what it is not. His concern is with the Administration's calculation of the reimbursement due him that was paid on 7 May 2019. There is no dispute about the sums that the Administration subsequently deducted for child support as directed by the UNDT and the UNAT in their respective Judgments. The isolation of the scope of the dispute is important in determining the date upon which Mr. Ozturk was obliged to make a request for management evaluation under the relevant Staff Rule.

⁷ 2022 UNAT Judgment, para. 33.

The impugned Judgment

18. The UNDT defined the contested administrative decision as the Administration's 7 May 2019 reimbursement payment to Mr. Ozturk, following the 2018 UNAT Judgment. The identification of the operative administrative decision, the UNDT said, was confirmed by the Appeals Tribunal in the 2022 UNAT Judgment.⁸ The UNDT held that the Administration's communication to Mr. Ozturk dated 19 January 2023 was a reiteration of the decision underlying the 7 May 2019 reimbursement payment, was not a new decision, and did not otherwise re-set the three-year limitation period for filing an application with the UNDT. The Dispute Tribunal invoked Article 8(4) of the Dispute Tribunal Statute (UNDT Statute) and appellate case law in support of its decision.⁹ The UNDT held that Mr. Ozturk's four-year delay in filing his application with the UNDT was excessive and could not be cured. Accordingly, the UNDT found that his application was not receivable for reasons of time limitations.¹⁰

19. Turning to the Secretary-General's second ground in support of his summary judgment application, the UNDT also held that Mr. Ozturk had not sought management evaluation of the impugned 7 May 2019 administrative decision within the 60 days allowed for doing so and this failure was likewise incurable and fatal to his proceedings.¹¹ The UNDT confirmed that the time for seeking management evaluation began to run from the receipt by Mr. Ozturk of the reimbursement payment on 7 May 2019. The Administration's subsequent reiteration that this amount was correct, when challenged by Mr. Ozturk, did not change that date.¹² Therefore, the time limit for requesting management evaluation of the 7 May 2019 decision expired on 6 July 2019, but Mr. Ozturk did not make his request for management evaluation until 20 May 2021. Accordingly, the UNDT found that his application was also not receivable for time limitation reasons.¹³

⁸ Impugned Judgment, para. 29.

⁹ *Ibid.*, para. 32, citing *Mpacko v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-990, para. 50 and *Khan v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-727, para. 23.

¹⁰ Impugned Judgment, para. 34.

¹¹ *Ibid.*, para. 35. See also Article 8(1)(c) of the UNDT Statute, Staff Rule 11.2(c) and *Khan Judgment*, *op. cit.*, para. 23.

¹² Impugned Judgment, para. 36. See also *Richard Kerby v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1064, para. 37.

¹³ Impugned Judgment, para. 37.

Submissions

Mr. Ozturk's appeal

20. Mr. Ozturk's submissions in support of his appeal emphasise what he contends was the Administration's non-compliance with the spirit of several rules and regulations about the resolution of disputes such as this. Included among these are his contention that he is entitled to a consideration of the merits of his case and that the time limits for management evaluation ought to have been paused because he wished and sought to pursue an informal resolution of the parties' dispute.

21. More specifically, Mr. Ozturk argues that following his 7 May 2019 receipt of payment from the Administration he questioned its justification for its calculations but that the Administration's response was delayed and it "hid" the relevant information from him for a long period. He asserts that it was not until a meeting with him on 12 January 2023 that the Administration's calculations were first revealed to him. He says that he did not ever agree to the amount refunded to him. Mr. Ozturk says that the Administration delayed deliberately the provision of this information to ensure that he could not take the necessary step of management evaluation within what he describes as "timeframe technicalities".

22. Mr. Ozturk submits that the time for seeking management evaluation in such cases only begins to run when a staff member knew or ought reasonably to have known of the impugned administrative decision including when all relevant facts or the basis for the decision were made known. He concedes that this test would focus on the staff member's knowledge of the decision and the reasons for it, rather than mere notification of the decision.

The Secretary-General's Answer

23. The Secretary-General submits first that the UNDT concluded correctly that the impugned administrative decision was made on 7 May 2019 and not on 19 January 2023 as Mr. Ozturk alleges. The 19 January 2023 communication was a reiteration of the Administration's 7 May 2019 decision and the UNDT correctly so concluded.

24. Next, it is wrong to classify the relevant administrative decision as being when the calculations or reasons for the decision were explained to Mr. Ozturk in January 2023. The

administrative decision was the amount of the refund which was made, communicated and remained unaltered from 7 May 2019.

25. The 2022 UNAT Judgment confirmed that the calculations underlying the refund amount were made known to Mr. Ozturk in early 2019 and following receipt of this sum he raised no objections to the calculations so disclosed.

26. Finally, the Secretary-General submits that the UNDT was also correct to have concluded, in the alternative, that Mr. Ozturk's application was filed with the UNDT more than three years after the impugned administrative decision was taken and notified to Mr. Ozturk on 7 May 2019, and was thus out of time.

Considerations

27. There have been a number of judgments of the Appeals Tribunal over recent years in which we have set out expectations of the minimum standards of decision-making by administrations as employers when making administrative decisions and conveying these to affected staff members who have rights to challenge them. In summary, such decisions should include the decision-maker's reasoning to both enable the affected staff member to understand the basis on which the decision was made and, if challenged, that reasoned arguments against their lawfulness can be developed by those staff members. Further, the provision of reasons enables the Tribunals to examine those administrative decisions accurately rather than speculatively. The following Appeals Tribunal Judgments enunciating that principle may be summarised succinctly as establishing a threefold purpose for providing reasons for administrative decisions: intelligibility (enabling both implementation and acceptance), accountability, and reviewability.

28. In *Respondent*, we said:¹⁴

... When a tribunal is called upon to judicially review an administrative decision on the ground of irrationality, it is required to examine whether the decision is rationally connected to the purpose for which it was taken, the purpose of the empowering provision, the information before the Administration, or the reasons given for it by the Administration. That task of judicial review depends on the furnishing of adequate and coherent reasons for the decision. The giving of reasons is one of the fundamentals of

¹⁴ *Respondent v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1097, para. 44.

good administration. It encourages rational and structured decision-making and minimizes arbitrariness and bias.

29. In *Nugroho*, we reiterated the rationale for providing reasons for a decision to justify termination of a staff member's employment:¹⁵

... (...) The duty to give reasons for a decision, as this Tribunal has long held, is essential for the Tribunals to exercise their judicial review of administrative decisions, assessing whether they were arbitrary, capricious, or unlawful. Although this obligation might not stem from any Staff Regulation or Rule, it derives from the public law principle which confers upon the Tribunals the inherent power to review the validity of such administrative decisions, the functioning of the system of administration of justice and the principle of accountability of managers.

It is therefore good practice for the Organisation to provide a general guidance for its managers that a well written statement of reasons, albeit sometimes succinct depending on the circumstance, is fundamental for the correct identification of the matters, concerns and reasoning process of the decision-maker, as well as for the accurate implementation, which will more likely reflect the decision maker's intent. At the same time, this practice provides better grounds of adequate explanation for those adversely affected by these decisions, perhaps even facilitating their acceptance and hence diminishing instances of disputes. What is more, when a justification is given by the Administration for the exercise of its discretion, it must be supported by the facts.

30. In *Blythe*, we said in a similar context:¹⁶

... (...) However, for the sake of reasonableness, fairness and transparency, it is also expected from the Administration to give relevant and true reasons supporting its ultimate choice.

31. While each of these cases may have been brought on a different ground of challenge to the relevant administrative decision, they state the same principle of reasonability of all administrative decisions affecting staff. That must be so to enable a discernible basis for legal challenge.

32. A bare decision where supportive and lawful reasons are absent, is an inchoate administrative decision unless and until those reasons have also been made known to the staff

¹⁵ *Bantan Nugroho v. Secretary-General of the United Nations*, Judgment No. 2020-UNAT-1042, para. 39, citing *Islam v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-115, paras. 39-40.

¹⁶ *Alan George Blythe v. Secretary-General of the United Nations*, Judgment No. 2023-UNAT-1404, para. 66.

member. It is not, in these circumstances and in law, an administrative decision that can be challenged and to which the relevant time limitations for management evaluation and filing an application in the UNDT, apply. It is only when the administrative decision and the reasons or grounds for it are conveyed to the affected staff member that the time clock for management evaluation begins to run.

33. Although not on identical grounds to those relied on by the UNDT, we have concluded that the administrative decision about how much to repay Mr. Ozturk took effect in law when the reasons revealed to and discussed with him shortly before 7 May 2019 were formalised by the payment made on 7 May 2019. Although explanations of the underlying calculations were repeated in subsequent exchanges, those repetitions were not additional or new decisions challengeable as such, but repetitions of the impugned administrative decision, that was supported by reasons provided prior to 7 May 2019.

34. Mr. Ozturk had 60 days from 7 May 2019 to seek management evaluation, but he failed to do so, and indeed he failed to do anything for more than a year. The UNDT concluded correctly that he was substantially out of time to raise a question about the calculations when he eventually did. Moreover, the UNDT was correct to find that Mr. Ozturk was also long out of time to file his application with the UNDT by the terms of the UNDT Statute. The UNDT was without any power to ameliorate these breaches of the time limitations.

35. We find nothing erroneous in the result of the impugned Judgment.

Judgment

36. The appeal is dismissed and Judgment No. UNDT/2023/031 is affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of June 2024 in New York, United States of America.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Gao

(Signed)

Judge Ziadé

Judgment published and entered into the Register on this 23rd day of July 2024 in New York, United States of America.

(Signed)

Juliet E. Johnson, Registrar