
UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Judgment No. 2022-UNAT-1284



Ihsanullah Khan
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Case No.:	2021-1639
Date of Decision:	28 October 2022
Date of Publication:	9 December 2022
Registrar:	Juliet Johnson

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

THE UNITED NATIONS APPEALS TRIBUNAL

THE UNITED NATIONS APPEALS TRIBUNAL

Medical Section that he had made travel arrangements for himself, his wife as escort, and his four minor children who had to suspend their schooling, to fly to Peshawar, Pakistan, on 24 May 2019. According to Mr. Khan, the medical facilities in Peshawar were better and his brother had already made a medical appointment for him in Peshawar.

10. The Chief of the Medical Section responded to Mr. Khan on 24 May 2019. She stated that:

Khartoum is consider[ed] a p[l]ace with medical facilities, however due to latest political situation we evaluate cases in detail. The nearest place of evacuation for Sudan is Cairo or Amman. However, understanding your request of having family member support we endorsed home country ... and I clarified Islamabad ... as I have been there and know facilities are worst that Khartoum in Quetta [sic].

Let me further explain you that based on actual admin instruction on medevac. Travel to home country only the travel is paid.

[internal quotation to paragraphs 21-24 of UNHCR/AI/2017/4 “Administrative
In (e) 376 2612 Medical Evacuation and Other Medical Tra (tr) 4.5 (u) 0. (o [(/4)]TJO Tc 0 Tw 843747 0 Td()Tj-5.5 (/)-

19. Following his clearance by the Medical Section, Mr. Khan returned to Khartoum on 8 September 2019

25. In a response e-mail dated 11 October 2019, the Deputy Director of DHR outlined several further actions to be taken in respect of his case. These included a review by a designated officer of issues related to his medical travel; the formulation of a legal opinion by the Legal Affairs Section (LAS); a further review at the Human Resources Services Section (HRSS) level; and a telephone conversation with Mr. Khan. All this was aimed at “providing full consideration to the case”.

26. In response to Mr. Khan’s reminder e-mail dated 4 November 2019, the Deputy Director of DHR asked Mr. Khan for his patience, as the review of his case “has not yet been completed” and the Deputy Director hoped “to revert at the earliest”. In response to another reminder message from him on 14 January 2020, the Deputy Director wrote to Mr. Khan that he would “revert on the substance of the issue within the next few days, as [he had] now received the required advice”.

27. On 28 January 2020, the Deputy Director of DHR confirmed to Mr. Khan that the analysis and decision by the PAS were correct, and that he and his family were not entitled to SEA. Regarding accompaniment, the Deputy Director of DHR informed Mr. Khan of the reversal of the prior non-approval of an escort for Mr. Khan’s medical travel and the new decision to reimburse him for the travel cost of one accompanying family member.

28. On 11 March 2020, Mr. Khan filed a request for management evaluation of the decisions in respect of medical travel and his claims for SEA. He stated that the decisions to authorise OMT for him and his travel without accompaniment had been taken on 20 May 2019. 4 (m)7.4.9 (e)-31

family for SEA and his request to change his status to security evacuation, had been taken on oogu s(st t)11be

32. In the impugned Judgment, the Dispute Tribunal dismissed Mr. Khan's application as not receivable *ratione temporis* (for lateness), because Mr. Khan had failed to file a timeous request for management evaluation.⁵ It found that Mr. Khan had received notification of all four contested decisions before 5 August 2019, but had requested management evaluation only on 11 March 2020, more than six months beyond the 60-day deadline. The Dispute Tribunal noted a number of requests for clarification that Mr. Khan had made after August 2019, but held that they did not change the effective notification date of the decisions. As for the 28 January 2020 e-mail in which the Deputy Director of DHR reversed the second contested decision and approved the accompaniment of one family member for Mr. Khan's OMT, the Dispute Tribunal held that Mr. Khan's challenge to the second contested thsco

c711eed

THE UNITED N

39. Mr. Khan also maintains that the UNDT disregarded the evidence disclosed by the Respondent on 24 September 2021 and did not allow him to examine it in violation of his right to be heard (*audi alteram partem*). In his view, the evidence disclosed demonstrated his paralytic condition and incapacitation on the day of the first and second contested decisions and for months thereafter, and further shows that the second contested decision not to classify his medical travel as “Medevac” requiring an escort was “flawed, erro[neous], baseless hence unlawful and void ab initio”. Recognition of his condition during this period, he submits, would have entitled him to apply for management evaluation in the extended period of one year instead of 60 days after the th.A[57(a)194.D(M(a.10)019 (i)0.51o d)09 (i) 6 (TT5 1 T6 Tc G Tw (°)T)00

THE UNITED NATIONS APPEALS TRIBUNAL

56. Like the UNDT, we sympathise with Mr. Khan's situation and offer the following observation. A remedy does not lie in this litigation, but rather by non-judicial resolution or amendments to the relevant staff rules or statutes.

Judgment

58. Mr. Khan's appeal is dismissed and Judgment No. UNDT/2021/117 is affirmed.

Original in English (E) 3.59 05gr05g 117