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UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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Bauzá Mercére  
(Appellant)

v.

Secretary-General of the United Nations  
(Respondent)

JUDGMENT

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Before:	Mary Faherty, Presiding Judge Inés Weinberg de Roca Judge Richard Lussick
Case No.:	2013-454
Date:	2 April 2014
Registrar:	Weicheng Lin

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JUDGE MARY FAHERTY , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Eduardo Bauzá Mercére against Judgment No. UNDT/2013/011, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 28 January 2013, in the case of Bauzá Mercére v. Secretary-General of the United Nations. Mr. Bauzá Mercére submitted his appeal on 26 March 2013, and the Secretary-General filed his answer on 28 May 2013.

#### Facts and Procedure

2. The Dispute Tribunal made the following findings of fact, which are not contested by the parties except as noted<sup>1</sup>

... The Applicant, a former senior reviser, contests the implementation by the Department of General Assembly and Conference Management (DGACM) of the decision to replace a paper based recording system that kept track of staff members' time and attendance with an electronic one named 'Flex Time System'.

...

... Starting in September 2009, DGACM began holding town hall meetings and briefings with its different units to consult with staff members and explain the Flex Time System which they presented as an 'improved technological infrastructure'. [Mr. Bauzá Mercére disputes the nature of the town hall meetings and submits there was no section meeting in the Spanish Translation Service, as from his entry into service on 9 August 2009.]

2.

... On 5 January 2011, the Executive Officer, DGACM (in the absence of the Under-Secretary-General, DGACM), responded by email to a prior communication from the Applicant by stating in part:

You may not have been around for the numerous informational sessions (Town Halls, staff meetings, section-by-section meetings) we have had regarding the Flex Time System, nor does it seem you have spoken with any of the staff reps with whom we have also had numerous meetings. Please see the answer to your questions [contained in the 4 January 2011 email to the USG/DGACM] below in blue.

... On 6 January 2011, the Executive Officer, DGACM sent an email to all staff in DGACM titled 'Implementation of Flex Time System as of 1 January 2011', which contained the following information:

As you know, we have begun to use fully (in all areas, that is, where readers have been installed), the Flex Time System throughout DGACM as of 1 January. This will be the official time and attendance recording system for the Department. In the near future, there will be scanners at all DGACM offices and in the ... entrances. Until then, anyone not having access to a scanner will continue to use whatever system is in place.

Flex Time System and attendance will simply replace any existing time and at

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which such duties are performed”. The impugned system, by which data on staff members’ working hours was recorded electronically rather than via a paper-based system, did not introduce a requirement to provide new and irrelevant information to the Secretary-General and nor did it fundamentally change the Appellant’s working conditions.

5. Furthermore, the UNDT, citing its Judgment No. UNDT/2010/009, *Allen v. Secretary-General of the United Nations*, determined that any requirement regarding staff consultation was met as “each of the parties ... had the opportunity to make the other party aware of its views”. It also rejected the Appellant’s argument of discrimination, finding “[t]he fact that a practice may not be required by other departments does not render the implementation of such a system within DGACM discriminatory. Rather, the test is whether the implementation of this system discriminated between [him] and other similarly situated staff members within DG ACM”. As the new system was being applied uniformly throughout DGACM, there was no discrimination or unfair treatment of the Appellant.

#### Mr. Bauzá Mercére’s Appeal

6. Mr. Bauzá Mercére submits that the UNDT exceeded its jurisdiction and competence by entering into the merits of the case, rather than restricting its review to the issue of receivability.

7. He further submits that the Dispute Tribunal erred on a question of law in finding his application non-receivable, *ratione materiae*, as it considered not merely whether an administrative decision existed but also whether such decision was in compliance with the terms of his appointment or contract of employment.

8. Mr. Bauzá Mercére contends that the UNDT committed an error in procedure, which affected its decision, in venturing beyond the issue of receivability as he was denied the right to respond to the merits of the Respondent’s case or the right to a hearing.

9. Finally, he argues that the Dispute Tribunal erred on a question of fact, resulting in a manifestly unreasonable decision, with respect to its understanding of the existence and adequacy of staff consultations.

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23. Mr. Bauzá Mercére also appeals on the ground that the UNDT embarked on a consideration of substantive issues such as staff consultations and discrimination arguments when it should have confined itself to the issue of receivability. We uphold his contention in this regard and declare that the Dispute Tribunal's pronouncements on those issues do not have the force of legal authority given that its function, pursuant to Order No. 193 (NY/2012), was to determine receivability.

Judgment

24. The appeal with regard to receivability is dismissed. We declare that the UNDT's consideration of the staff consultations and discrimination arguments is without legal authority.

Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of April 2014 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Lussick

Entered in the Register on this 13<sup>th</sup> day of May 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar