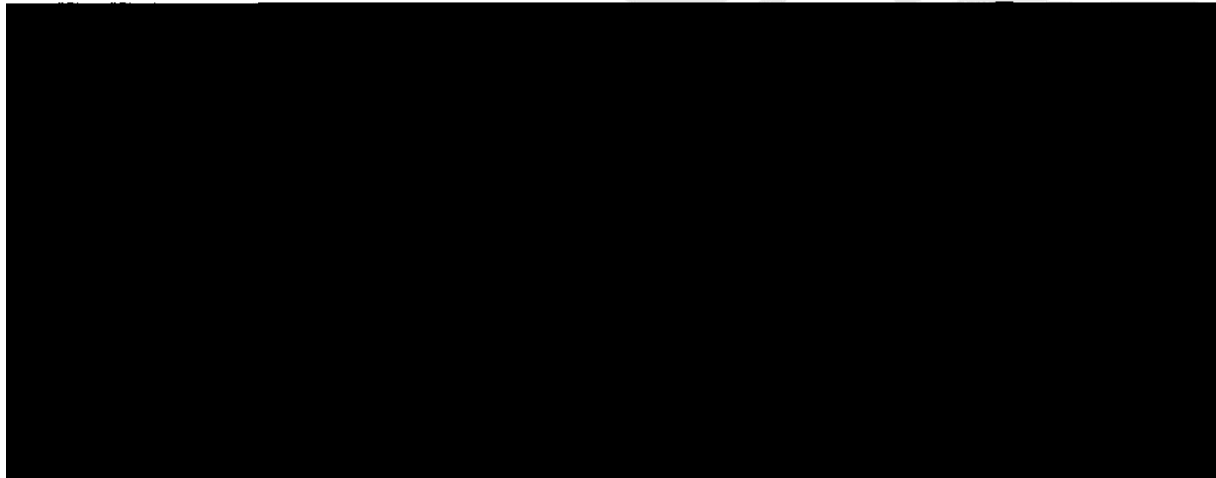




**UNITED**

Judgment No. 2014-UNAT-412



Counsel for Appellant: Self-represented

Counsel for Respondent: Wambui Mwangi

**JUDGE LUIS MARÍA SIMÓN, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Aidai Masykanova against Judgment No. UNDT/2013/033, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 26 February 2013, in the case of *Masykanova v. Secretary-General of the United Nations*

Applicant] in the office and outside of the office (guest house), appear to be done or are deliberately done by [the Applicant's supervisor] in her capacity as supervisor and senior officer of [the Applicant]. It is also noted that the alleged harassing conduct of [the Applicant's supervisor] has created a hostile working environment for [the Applicant].

... The Complainant [i.e., the Applicant] ... has informed the CDO that she would desire for a formal investigation to be conducted because previous interventions ... were not successful and that [the Applicant's supervisor] has not changed her alleged harassing conduct but gets worse each day.

... As per Complainant's [i.e., the Applicant's] desire to initiate a formal investigation and as per provisions of ST/SGB/2008/5 [, entitled 'Prohibition of discrimination, harassment, including sexual harassment, and abuse authority'], copy attached, an investigation in accordance [with ST/SGB/2008/5] is hereby requested.

... In January 2012, the Applicant received a rating of 'does not meet performance expectation' in her performance evaluation report [(PER)], signed by her supervisor.

... She was notified on 20 February 2012 that her temporary appointment would not be extended beyond 5 March 2012.

... On 18 July 2012, the Applicant sent an email to Mr. Calzada seeking clarification with regard to the circumstances of the decision to hold the work of the panel in abeyance and asking when it would resume its work.

... It appears that no further information was provided to the Applicant in response to her email of 18 July 2012, despite her follow-up emails to the Chief of Staff of UNAMA on 16 October and 9 November 2012.

... On 7 December 2012, the Applicant filed the present application with the Dispute Tribunal[, challenging the Respondent's disbanding of, and failure to reinstate, the fact-finding panel formed to investigate her allegations of harassment and abuse of authority against her supervisor].

... On 6 January 2013, UNAMA convened a new fact-finding panel, of which the Applicant was informed on the same date by a letter from the Special Representative of the Secretary-General [(SRSG)]. Subsequent to this, the Applicant received two notifications of further changes to the composition of the panel's membership on 17 January [2013] and 17 February 2013.

3. In its Judgment, the UNDT dismissed Ms. Masytkanova's application, finding it moot in view of the fact that the fact-finding panel had been reconvened. Moreover, the UNDT observed that it had no jurisdiction to consider the case as Ms. Masytkanova had not requested management evaluation of the contested issue, which is a necessary requirement for both current and former staff members prior to filing an application.

### **Submissions**

#### **Ms. Masytkanova's Appeal**

4. Ms. Masytkanova submits that the UNDT erred in finding her case moot. Rather, she

PER completed by her former supervisor in January 2012 to be removed from her file as it was issued in retaliation for her complaints and is hence unfair and inaccurate. She also contends that ST/SGB/2008/5 was violated when the Administ

11. He contends that Ms. Masykkanova's claim regarding violation of ST/SGB/2008/5 is not sufficient because she merely refers to a number of the same arguments she made before the UNDT concerning the manner in which her allegations of harassment and abuse of authority were handled by the Administration.

12. Finally, he avers that Ms. Masykkanova has failed to substantiate her claim for compensation as she does not identify any injuries that she sustained for which the UNDT could have awarded relief, nor does she refer to any specific evidence of damages that would justify an award of compensation for emotional distress or loss of wages.

13. The Secretary-General requests the Appeals Tribunal to affirm the UNDT Judgment and to dismiss the appeal in its entirety.

### **Considerations**

14. The Appeals Tribunal holds that the UNDT correctly determined that the staff member's application had become moot and therefore will dismiss the appeal in its entirety.

15. The administrative decision to disable the fact-finding panel was superseded by its reconvening, after being impugned by the Appellant.

16. Thus, at the administrative stage, the alleged illegality was solved after the judicial procedure had begun, rendering the latter unnecessary, as the specific remedy sought was reached.

17. This does not mean that the eventual past existence of the illegality deprives the staff member of her claim concerning harassment, damages and compensation, which is the matter of the other case she filed before the UNDT (Case No. UNDT/NY/2012/063).

18. Indeed, such issues, including the initial decision to hold in abeyance the fact-finding panel and the grievances Ms. Masykkanova asserts in respect of alleged unfair treatment, relate to Case No. UNDT/NY/2012/063, rather than the instant case, which was limited to th

**THE UNITED**

Original and Authoritative Version: English

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

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Adinyira

*(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