



Judgment No. 2017-UNAT-793



Counsel for Mr. Muhsen: Self-represented

Counsel for Secretary-General: Nathalie Defrasne

**JUDGE RICHARD LUSSICK, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2017/015, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 8 March 2017, in the case of *Muhsen v. Secretary-General of the United Nations*. Mr. Mamoon Hussain Muhsen filed his appeal on 6 May 2017, and the Secretary-General filed an answer on 7 July 2017.

**Facts and Procedure**

2. The following facts are uncontested:<sup>1</sup>

... The Applicant is a staff member of the United Nations High Commissioner for Refugees (UNHCR; the High Commissioner).

...

... The High Commissioner has authority delegated by the Secretary-General to decide on promotion of his staff (...). The High Commissioner has authority delegated by the Secretary-General to carry out management evaluation as part of the formal justice system. The High Commissioner has further delegated the management evaluation functions to the Deputy High Commissioner (...).

... On 5 February 2014, the High Commissioner promulgated the Policy and Procedures for the Promotion of International Professional Staff Members (UNHCR/HCP/2014/2; "Promotion Policy" (...))/. The Promotion Policy provided that recommendations for promotion to the P-4 level would be considered by a Promotions Panel in accordance with the criteria and processes set out therein. It informed about availability of recourse in an internal procedure notwithstanding access to the formal justice system through management evaluation (...).

... On 20 October 2014, the decisions of the High Commissioner concerning promotions to the P-4, P-5 and D-1 level were announced to all staff via an email memorandum dated 17 October 2014. The Applicant was not among the successful candidates. Staff were advised that, in the event where information that may have had an impact on the final recommendation was not available at the time of the review, they could seek "recourse" in an internal procedure (...). On 25 November 2014, the Applicant submitted a recourse application (...).

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<sup>1</sup> Impugned Judgment, paras. 1 and 11-23.



recommended for promotion had he received full and fair consideration during the 2013 promotions session (...).

... The High Commissioner accepted the Board's recommendations on 28 December 2015 (...).

... On 5 January 2016, the Director, Division of Human Resources Management (DHRM) informed the Applicant of the High Commissioner's decision to confirm his non-promotion based on the Board's recommendation (...).

... [On 30 March 2016, [Mr. Muhsen] filed an application with the [UNDT]

It also correctly concluded that Mr. Muhsen had to have requested management evaluation of the 5 January 2016 decision. In any event, Mr. Muhsen's submission fails to meet the requirements

is defective. It is not sufficient for an appellant to simply state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.<sup>4</sup>

10. Mr. Muhsen fails to meet this burden. Moreover, his claim that he was “not informed for the need of a further recourse” does not advance his appeal. It was his responsibility as a staff member to ensure that he was aware of the applicable procedure in the context of the administration of justice at the United Nations. He cannot invoke ignorance as an excuse.<sup>5</sup>

11. For these reasons alone, we dismiss the appeal.

12. The Dispute Tribunal did not make any error of law or fact in holding that Mr. Muhsen’s application was not receivable. The Dispute Tribunal was cognisant that, pursuant to Article 8(1) of the UNDT Statute and Staff Rule 11.2(a), management evaluation is an obligatory step to take prior to requesting judicial review of a contested administrative decision, and that under Staff Rule 11.2(c) a request for management evaluation shall not be receivable unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

13. The Dispute Tribunal correctly held that, although Mr. Muhsen had requested management evaluation of the first negative decision of 3 March 2015, that decision had been rescinded and had thus stopped producing any consequences for his terms of appointment. The Dispute Tribunal was right to find that the second negative decision, communicated to him on 5 January 2016, which was taken as a consequence of the rescission of the 3 March 2015 decision, was purportedly a fresh consideration of the matter and was dispositive of the question of promotion. Its conclusion was correct that: “As such, in order for the application to be receivable before the UNDT, this new decision should have been first submitted for management evaluation, failing which it must be dismissed.”<sup>6</sup>

14. It is an established fact that Mr. Muhsen failed to request management evaluation of the second negative decision communicated to him on 5 January 2016. Accordingly, the Dispute Tribunal’s decision that his application was not receivable cannot be faulted. Although the Dispute Tribunal was sympathetic in considering that the process applied in Mr. Muhsen’s case was “convoluted and confusing”, it was right to hold itself bound to take

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<sup>4</sup> *Staedtler v. Secretary-General of the United Nations*, Judgment NoT bl TD.00201 Tm(4)Tj10.02 .6(Goewint Nn.2(f)7e

a legalistic approach, bearing in mind that Article 8(3) of the UNDT Statute does not give it the authority to suspend or waive the deadlines for management evaluation.

15. For the foregoing reasons, the appeal must fail.

**Judgment**

16. The appeal is dismissed and Judgment No. UNDT/2017/015 is affirmed.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of October 2017 in New York, United States.

*(Signed)*

Judge Lussick, Presiding

*(Signed)*

Judge Murphy

*(Signed)*

Judge Knierim

Entered in the Register on this 8<sup>th</sup> day of December 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar