



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Ngoma-Mabiala
(Respondent/Applicant)

v.

Secretary-General of the United Nations
(Appellant/Respondent)

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Richard Lussick Judge Rosalyn Chapman
Case No.:	2012-405
Date:	17 October 2013
Registrar:	Weicheng Lin

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by the Secretary-General of the United Nati

7. Upon receipt of his final pay slip, Mr. Ngoma-Mabiala noted that his post was recorded as GL-4/6 instead of GL-5/7 and that the sum of USD 400 had been deducted from his pay. Mr. Ngoma-Mabiala was unable to obtain any official explanation of these decisions.

8. On 7 April 2011, Mr. Ngoma-Mabiala was employed by the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo as a Spply/Fuel Assistant at grade GL-4/6 on an appointment under the 100-series Staff Rules. While his April 2011 payslip reflected the appropriate remuneration for his grade under the new appointment, his May 2011 payslip reflected a further deduction of USD 852.30.

9. In response to his inquiries, Mr. Ngoma-Mabiala was advised, on 2 June 2011, that the sum of USD 400 initially deducted in August 2009, together with the final entitlements due to him upon his separation from the Organization in August 2009 (which he had not received), was insufficient to cover the outstanding overpayment he owed to the Organization. The sum of USD 852.30 was the balance that the Organization sought to recover upon his re-employment.

10. On 22 July 2011, Mr. Ngoma-Mabiala filed an application with the UNDT, contesting “the mode of recovery of the overpayment without formal notification or an amended contract” and seeking “reimbursement of the sum deducted as well as compensation for moral damages”?

11. On 27 July 2011, the Secretary-General filed a reply challenging the receivability of the application and requesting that the UNDT consider receivability as a preliminary issue. By Order No. 100 (NBI/2011), the UNDT granted the application and ordered Mr. Ngoma-Mabiala to file a response on the receivability issue.

12. On 6 September 2012, the UNDT rendered Judgment No. UNDT/2012/134. The UNDT dismissed the application as not receivable on the ground that Mr. Ngoma-Mabiala had failed to request management evaluation. However, in paragraphs 25 to 36 of its Judgment, the UNDT made “Observations” on the merits of the case, concluding that the Administration had made certain mistakes which deprived Mr. Ngoma-Mabiala of his rights.

² Impugned Judgment, para. 16.

Submissions

The Secretary-General's Appeal

13. The Secretary General's core submission to the Appeals Tribunal is that while

Considerations

17. After consideration of the relevant facts and legal submissions which pertained to Mr. Ngoma-Mabiala's application, the Dispute Tribunal concluded that the administrative decision contested by Mr. Ngoma-Mabiala was not "exempt from management evaluation". The Dispute Tribunal further stated "since the Applicant has not exhausted this otherwise mandatory first step of requesting a management evaluation, the jurisdiction of the Tribunal cannot yet be invoked. The Tribunal has no choice but to reject the present claim as not receivable." This finding, namely that the Dispute Tribunal did not have jurisdiction to embark upon a consideration of Mr. Ngoma-Mabiala's application, was not appealed by Mr. Ngoma-Mabiala. The Secretary-General, however, appeals a discrete issue, namely the "Observations" recorded at paragraphs 25 to 36 of the Judgment.

18. Having regard to the submissions made by the Secretary-General, and the answer filed by Mr. Ngoma-Mabiala, the issues to be decided are:

1) Whether the "Observations" set out at paragraphs 25 to 36 of the UNDT Judgment are properly the subject of an appeal by the Secretary-General; and

2) If properly the subject of an appeal, whether those "Observations" ought to be struck from the UNDT Judgment, as requested by the Secretary-General.

19. In the first instance, we are satisfied that the Secretary-General, who was the beneficiary of a Judgment in his favour from the Dispute Tribunal on the receivability issue, is entitled to appeal to this Tribunal regarding the matters which were the subject of the Dispute Tribunal's "Observations" at paragraph 25 to 36 of its Judgment.

20. In our view, there are a number of factors in the present case which distinguish it from the Appeals Tribunal's jurisprudence in *Sefraoui* and *Rasul*.

21. Firstly, the "Observations" were arrived at in circumstances where the Secretary-General had specifically limited his response to Mr. Ngoma-Mabiala's application to the issue of receivability. On 27 July 2011, the Secretary General applied pursuant to Article 19 of the UNDT Statute "for leave to have receivability considered as a preliminary issue", stating:

... Article 19 of the Rules of Procedure provides that the Tribunal may issue any order or direction which is appropriate for the fair and expeditious disposal of the

case. To that end, the Respondent applies for leave to submit a reply on the issue of receivability. In the interests of judicial economy, the Respondent further requests that this issue be dealt with as a preliminary matter by the Tribunal. Such an approach would achieve the fair and expedi

Judgment

26. It is hereby ordered that the title "Observations" and paragraphs 25 to 36 shall be redacted from UNDT Judgment No. UNDT/2012/134.

