

THE UNITED NATIONS APPEALS TRIBUNAL

Translated from French

**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-059

Hijaz

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before: Judge Jean Courtial, Presiding
Judge Inés Weinberg de Roca
Judge Rose Boyko

Case No.: 2010-TANU-055

Date: 1 July 2010

Registrar: Weicheng Lin

Counsel for Appellant: Not represented

Counsel for Respondent: Cristián Gimenez Corte

Judge Jean Courtial, Presiding Judge

Synopsis

1. The Appellant is appealing a decision of the United Nations Dispute Tribunal in Nairobi rejecting his second request for an extension of the appeal deadline. The Court ruled that such a decision was not a judgment made in respect of an appeal against an administrative decision, within the meaning of article 2 of the Dispute Tribunal's statute, since no such appeal had yet been filed. In accordance with article 2, paragraph 1, of the statute of the United Nations Appeals Tribunal, an appeal may be filed only against judgments within the meaning of these provisions. Therefore, the decision of the Dispute Tribunal cannot be appealed.

Facts and procedure

2. Mr. Hijaz was a staff member of the International Criminal Tribunal for Rwanda (ICTR). On 18 September 1998, the ICTR made him an offer of appointment at the FS-3/I level. On 30 September 1998, Mr. Hijaz requested a revision of the grade that had been offered to him during his recruitment. On 14 October 1998, the ICTR changed that grade to FS-3/II. On 3 November 1998, Mr. Hijaz accepted the offer. He joined the ICTR on 12 February 1999.

3. Between 2001 and 2009, Mr. Hijaz made repeated claims to the ICTR to review his recruitment grade and step. On 4 February 2009, the ICTR Registrar responded that his entry level had been correctly determined in accordance with the prevailing guidelines in 1998, that his case had been dismissed and that any further request on the matter would not be entertained.

4. Mr. Hijaz filed a request for administrative review of the decision to the Secretary-General on 30 March 2009. After being informed, on 1 June 2009, that the decision had been upheld, Mr. Hijaz turned to the Joint Appeals Board on 16 June 2009, although the Board never acknowledged receipt of an appeal.

5. In an e-mail dated 22 July 2009, Mr. Hijaz informed the Dispute Tribunal Registrar that he wished to contest the administrative decision taken by the ICTR and requested an extension of the deadline in order to avail himself of legal assistance. Information about the Dispute Tribunal and the Office of Staff Legal Assistance was provided to him on 5 August 2009.

6. On 11 August 2009, Mr. Hijaz asked the Dispute Tribunal for an extension of the appeal deadline. By order dated 25 August 2009, the Tribunal granted him a seven-week extension, bringing the deadline for submitting his application to 13 October 2009. On 10 October, Mr. Hijaz filed another request for extension of the deadline to 12 January 2010. That request was denied on 29 October 2009 in a decision entitled "judgment No. 2009/056" and the case was registered as UNDT/NBI/2009/17 when Mr. Hijaz announced his intention to request to be removed from the roster.

7. Mr. Hijaz had indicated in his request for extension of the appeal deadline that he needed more time to provide the information about his case requested by the Office of Staff Legal Assistance because he had lost two weeks owing to illness. In addition, he was making arrangements to move to Cairo after being appointed to a post at the World Health Organization. The Dispute Tribunal did not consider that these reasons constituted exceptional circumstances within the meaning of article 8,

paragraph 3, of its Statute. The Tribunal considered that Mr. Hijaz had not shown enough diligence in seeking legal advice during the additional time that he had been granted by the order of 25 August 2009 and that it was difficult to understand how the six additional months that he was now requesting would help him, given the history of the case thus far. The Tribunal concluded that the application was totally unserious and constituted an abuse of the process (“I find the application totally unserious and lacking in diligent prosecution. The present application not only lacks merit but constitutes an abuse of the process of the Tribunal”).

8. Mr. Hijaz filed an appeal against the Dispute Tribunal’s decision on 13 December 2009. The Secretary-General submitted a memorandum in defence on 23 April 2010.

Submissions

Appellant

9. Mr. Hijaz maintains that the Dispute Tribunal made a legal error in characterizing his application as an abuse of process and a factual error as to whether he had shown enough diligence in filing an application that led to an obviously unreasonable decision. He gives a detailed review of the process, including correspondence with the Office of Staff Legal Assistance and further information about the illness that he and his family reportedly suffered between August and November 2009.

10. Mr. Hijaz states that the outline of events in the judgment is copied from the letter dated 1 June 2009 from the administration and that the Dispute Tribunal was not impartial. In addition, Mr. Hijaz states that the Registrar did not deal impartially with his application and that this had a negative impact on the Tribunal’s decision.

11. Mr. Hijaz maintains that the Tribunal acted ultra vires in dismissing his application in so far as it would have been possible to grant him a shorter extension than the one requested. In addition, Mr. Hijaz states that he was not aware that documentation needed to be produced in support of his request and that the Registrar did not ask him to produce such documents.

12. Mr. Hijaz maintains that the Dispute Tribunal made a factual error in characterizing his request for an extension of the deadline as an abuse of process. He argues that the Tribunal has not established that he acted with malicious intent, a lack of seriousness or lightly. He adds that the Tribunal was wrong to state that he had not been diligent in filing his application. He maintains that he was diligent in seeking to obtain legal assistance, as was his right under the Staff Rules, that the delay is a result of the Office of Staff Legal Assistance not responding to his request promptly and that he intends to provide medical certificates as proof of his illness.

13. With regard to the filing of his appeal, Mr. Hijaz maintains that the judgment was sent to him on Friday, 30 October, at 2.53 p.m., by which time he had left his office, and that he did not receive it until 2 November 2009.

14. Mr. Hijaz requests the Appeals Tribunal to annul the judgment of the Dispute Tribunal and reinstate application No. UNDT/NBI/2009/17.

Respondent

15. The respondent maintains that the appeal is late and therefore not receivable. He maintains that the judgment was received by the appellant on 30 October 2009

and that the appeal was registered on 15 December 2009, after the deadline — 14 December 2009 — calculated in accordance with article 7, paragraph 1 (c), of the Statute of the Appeals Tribunal, had passed.

16. In the event that the appeal is deemed receivable, the Secretary-General maintains that the Dispute Tribunal made no error in noting that the reasons given by Mr. Hijaz in his request for extension of the deadline cannot be considered exceptional circumstances. The additional evidence provided by Mr. Hijaz, which should have been submitted to the Dispute Tribunal, are not receivable under article 2, paragraph 5, of the Statute of the Appeals Tribunal. Furthermore, even if that additional evidence were accepted, the conclusions of the Dispute Tribunal would remain valid. The Dispute Tribunal took the general position, followed by the former United Nations Administrative Tribunal, that exceptional circumstances are those which lie outside the applicant's control.

17. The respondent maintains that the Dispute Tribunal made no error in noting the lack of diligence in filing the appeal. There is no use in Mr. Hijaz citing his dealings with the Office of Staff Legal Assistance since he had the right to file his appeal without representation in accordance with article 12 of the rules of procedure of the Dispute Tribunal. Mr. Hijaz's argument regarding abuse of process is not relevant to the appeal since the issue is whether an additional extension of the appeal deadline should have been granted to him on the basis of the circumstances that he has alleged. The Dispute Tribunal made no error in noting that Mr. Hijaz should have filed his appeal within the seven-week extension that he had been granted but that he had not done so.

18. The Secretary-General concludes that the appeal is late and therefore not receivable. He therefore concludes that it should be rejected since the Dispute Tribunal rightly refused to further extend the deadline and Mr. Hijaz has not identified any legal or factual errors in its decision.

Considerations

19. Article 8 of the Statute of the Dispute Tribunal provides that an application addressed to the Tribunal is receivable only if it is filed within the set deadlines. However, paragraph 3 of that article states: "The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases". Article 7, paragraph 5, of the rules of procedure specifies that: "In exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits [...]. Such request shall succinctly set out the exceptional circumstances that, in the view of the applicant, justify the request. [...]"

20. The principle of legal certainty requires that deadlines must be respected. The aforementioned provisions do not confer any right upon the appellant, but simply provide the option of requesting the Tribunal to suspend, waive or extend deadlines where exceptional circumstances can be shown. It is for the Tribunal to decide whether exceptional circumstances justify the request.

21. The decision of the Dispute Tribunal on an appellant's request to suspend, waive or extend deadlines is not a judgment made in respect of an appeal against an administrative decision, within the meaning of article 2 of its Statute, since no appeal had yet been filed. Under article 2, paragraph 1, of the statute of the Appeals Tribunal, an appeal may be filed only against judgments within the meaning of these

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provisions. Therefore, the decision of the Dispute Tribunal on an appellant's request to suspend, waive or extend the deadline, cannot be appealed.

22. In light of the foregoing, Mr. Hijaz's appeal is not receivable.

Judgment

23. Mr. Hijaz's appeal is rejected.

Dated this 1st day of July 2010 in New York, United States

Original: French

(Signed) Judge Courtial (Signed) Judge Weinberg de Roca (Signed) Judge Boyko
Presiding Judge

Entered in the Register on this 16th day of August 2010 in New York, United States.

(Signed) Weicheng Lin, Registrar, UNAT
