



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

Case No. 2010-103

**Ajdini et al.
(Respondents/Applicants)**

v.

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

JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Jean Courtial
Judge Kamaljit Singh Garewal

Judgment No.: 2011-UNAT-108

Date: 11 March 2011

Registrar: Weicheng Lin

Counsel for Respondents/Applicants: Duke Danquah/Kevin Browning

Counsel for Appellant/Respondent: Amy Wood

JUDGE SOPHIA ADINYIRA, Presiding.

Synopsis

1. Ajdini, Rudi, H. Zaneli and S. Zaneli were language assistants locally recruited between September 2000 and August 2002 at the GL-3 level on the 300-series contracts of limited duration with the United Nations Interim Administration Mission in Kosovo (UNMIK). Their appointments were renewed continuously until 30 June 2005, when they were separated from their employment with UNMIK by a letter dated 23 May 2005 from the Chief Civilian Personnel Officer (CCPO).
2. Ajdini and Rudi requested the Secretary-General to review the decisions not to renew their contracts by letter dated 8 May 2006; S. Zaneli did so by letter dated 11 August 2006; and H. Zaneli by letter dated 14 August 2006. Their requests were refused on the grounds that they were time-barred.
3. Their appeal to the former Administrative Tribunal was transferred to the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) during the transitional period. The UNDT waived the deadline for administrative review on the ground of exceptional circumstances.
4. The Secretary-General's appeal that the UNDT exceeded its competence and erred on a question of law in determining that it had authority to waive the time limit for requesting administrative review is upheld.
5. This issue should now be considered as settled because the Appeals Tribunal in *Costa*¹ and other judgments such as *Mezoui*,² *Samardzic*³ and *Trajanovska*,⁴ has consistently held that the UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review.
6. Time limits prescribed for administrative review (and management evaluation under the new system), which could be waived under the previous system, cannot be waived under

¹ *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

² *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043.

³ *Samardzic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-072.

⁴ *Trajanovska v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-074.

Article 8(3) of the Statute of the Dispute Tribunal (UNDT Statute), due to a specific prohibition in this respect contained in Article 8(3).

Facts and Procedure

7. Ajdini, Rudi, H. Zaneli and S. Zaneli were language assistants locally recruited between September 2000 and August 2002 at the GL-3 level on the 300-series contracts of limited duration with UNMIK. Their appointments were renewed continuously until 30 June 2005, when they were separated from their employment with UNMIK.

8. In April 2005, Ajdini and others learned of a plan to downsize UNMIK and reduce the number of language assistants.

9. On 23 or 24 May 2005, Ajdini and others were called into the office of the Director of Administration of the Police component of the Justice and Police Pillar, Robert Locke (Locke), and were told that their contracts would not be renewed. Locke gave them a letter dated 23 May 2005 from the CCPO, Danielle Pecorini, which informed Ajdini and others that their appointments would “expire on 30 June 2005 without further extension” due to post reductions.

10. Ajdini and others met with various officials of the UNMIK Administration for advice about the procedure to make an appeal, but did not receive helpful information. Subsequently they approached the Ombudsman, and continued to try to bring their appeal. Some time in February 2006, they sent an appeal to New York. It was addressed to “UN 100 10017 attn 3 Civilian personnel Plaza”. After four weeks and no response, one of them sent an e-mail to the Secretary of the Joint Appeals Board (JAB) and was immediately advised that the appeal had not been received.

11. Ajdini and Rudi requested the Secretary-General to review the decisions not to renew their contracts by letter dated 8 May 2006; S. Zaneli did so by letter dated 11 August 2006; and H. Zaneli by letter dated 14 August 2006.

12. The Administrative Law Unit determined that the requests for review were not receivable because of the time delay. This decision was supported on appeal by a majority of the JAB Panel which considered the appeals. One member of the JAB Panel dissented.

13. Ajdini and others then appealed to the former Administrative Tribunal, but their appeals were not decided before the dissolution of that body at the end of 2009 and the cases were transferred to the UNDT.

14. On 22 April 2010, the UNDT issued an Order No. 50 (GVA/2010). The fact that Ajdini and others were late in filing their appeals was not in dispute. The sole issue before the UNDT was whether there existed exceptional circumstances to justify a waiver of the two-month time limit set forth in the former Staff Rule 111.2(a) to submit a request for administrative review. Judge Shaw found that Ajdini and others had not been made aware of the appropriate procedure for lodging an appeal, that they had made repeated attempts to bring the complaint to the attention of the administration, and that they had been prevented from timely bringing their requests for administrative review to the appropriate authorities due to the immense difficulties caused in bad faith principally by representatives of the administration. Judge Shaw concluded that those constituted “exceptional circumstances” that contributed to the delay, and that their appeals were receivable.

15. This Order is the subject of the present appeal by the Secretary-General.

Submissions

Secretary-General’s Appeal

16. Jurisdictional decisions, such as the UNDT Order in the present case, no matter how they are named by the Dispute Tribunal, are subject to appeal.

17. The UNDT exceeded its competence and erred on a question of law in determining that it had authority to waive the time limit for administrative review.

Ajdini et al.’s Answer

18. The UNDT is vested with the authority to waive the deadlines for requesting administrative review of a contested decision. Article 8(3) of the UNDT Statute pertains only to the deadlines for management evaluation; it does not mention, let alone prohibit, the waiver of the deadlines for administrative review under the old system of internal justice.

19. Ajdini et al.’s right to seek a waiver of the deadlines for administrative review vested once they filed a claim with the former JAB.

Considerations

20. Article 2(1) of the Statute of the Appeals Tribunal provides:

The Appeals Tribunal shall be competent to hear and pass judgment on an appeal filed against a judgment rendered by the United Nations Dispute Tribunal in which it is asserted that the Dispute Tribunal has:

...

(c) Erred on a question of law;

...

21. The UNDT addressed the preliminary issue of receivability and waiver of time limits in this case in what it described as an “order”, rather than a decision or judgment. This being a jurisdictional matter, the UNDT “Order” is subject to appeal and the appeal is therefore receivable.⁵

22. It is the contention of the Secretary-General that the UNDT erred in law in determining that it had the authority to suspend or waive the deadlines for administrative review or management evaluation.

23. Article 2(1) of the UNDT Statute confers jurisdiction on that Tribunal to hear applications appealing administrative decisions. An application is only receivable when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines.

24. In the present case the contested decision was made prior to 1 July 2009 and the applicable law was the former Staff Rule 311.2 that provided:

A staff member wishing to appeal an administrative decision, pursuant to staff regulation 11.1, shall, as a first step, address a letter to the Secretary-General, requesting that the administrative decision be reviewed; such a letter must be sent within two months from the date the staff member received notification of the decision in writing.⁶

25. Ajdini and others did not comply with the requirement to file a request for administrative review of the contested decisions in a timely manner.

⁵ *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008.

⁶ Former Staff Rule 311.2 is identical to former Staff Rule 111.2.

26. The issue then is whether the UNDT has authority to suspend or waive the deadline for administrative review.

27. Article 8(3) of UNDT Statute provides:

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. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

This issue should now be considered as settled because the Appeals Tribunal in *Costa*, and other judgments such as *Mezoui*, *Samardzic*, and *Trajanovska* has consistently held that the UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review.

28. The Appeals Tribunal in paragraph 23 of *Trajanovska* held:

Therefore, the legal position which emerges is that time limits prescribed for administrative review (and management evaluation under the new system), which could be waived under the previous system, cannot be waived under Article 8(3) of the UNDT Statute, due to a specific prohibition in this respect contained in Article 8(3). We are aware that under Article 8(4) of the UNDT Statute, an application is not receivable if it is filed more than three years after the receipt of the contested administrative decision. But this provision will not help *Trajanovska*. This is a general provision which must yield to the specific provision under Article 8(3) of the UNDT Statute as interpreted by the UNDT in *Costa* and affirmed by this Tribunal.

We do not see any reason why Judge Shaw departed from her own ruling in *Costa*.

29. For the above reasons we hold that the UNDT erred on a question of law in determining that it had authority to waive the deadlines for administrative review.

Judgment

30. The appeal is allowed and Order No. 50 (GVA/2010) of the UNDT is set aside.

Original and Authoritative Version: English

Dated this 11th day of March 2011 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Courtial

(Signed)

Judge Garewal

Entered in the Register on this 19th day of April 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar