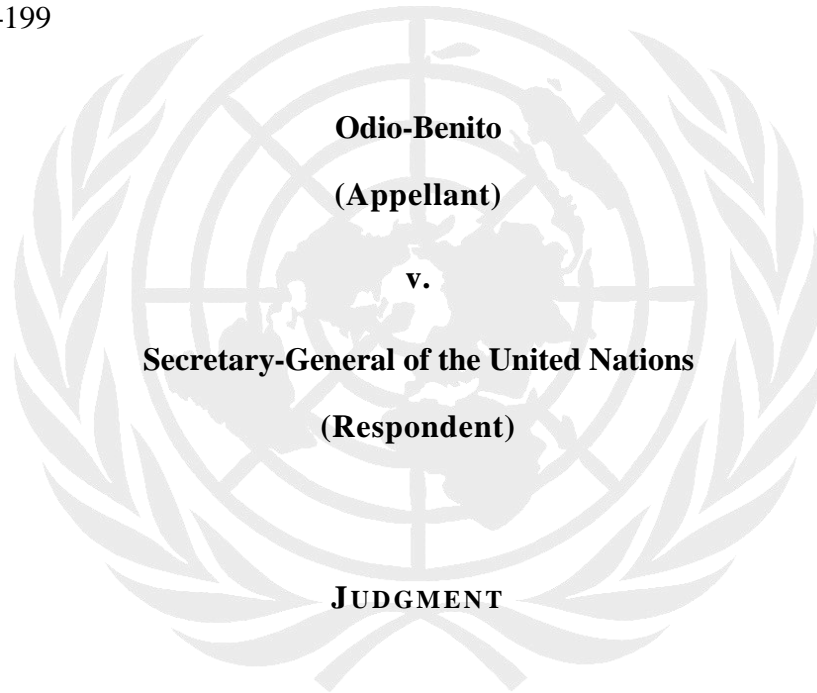




UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2011-199



Before:	Judge Jean Courtial, Presiding Judge Sophia Adinyira Judge Inés Weinberg de Roca
Judgment No.:	2012-UNAT-196
Date:	16 March 2012
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Wambui Mwangi

JUDGE JEAN COURTIAL, Presiding.

Synopsis

1. When a person whose right of access to the United Nations administration of justice system is doubtful nevertheless chooses to submit a request for management evaluation and, subsequently, an appeal to the United Nations Dispute Tribunal, that person must follow the logic of the procedure: if the Management Evaluation Unit replies that the request is not receivable, that reply, whatever its legal basis, constitutes a management evaluation, the date of receipt of which triggers the 90-day response period established in article 8.1 of the Statute of the Dispute Tribunal. Ms. Elizabeth Odio-Benito's application was submitted to the Dispute Tribunal after the expiration of the response period that began on the date on which she received a letter from the Management Evaluation Unit informing her that her request for a management evaluation of the contested decision concerning her pension rights was not receivable because, as a judge, she was not a staff member or a former staff member within the meaning of the Staff Rules. The Dispute Tribunal did not err in a question of fact or of law in rejecting the application as not receivable. Ms. Odio-Benito's appeal is dismissed.

Facts and Procedure

2. Ms. Odio-Benito served as a judge of the International Criminal Tribunal for the Former Yugoslavia (ICTY) from 1993 to 1998. In March 2003, she was elected as a judge of the International Criminal Court (ICC).

3. By resolution 63/259 of 24 December 2008, the General Assembly amended the Pension Scheme Regulations for judges of ICTY, the International Criminal Tribunal for Rwanda and the International Court of Justice so as to ensure that no former judge of any of these Courts received a pension while also serving as a judge of ICC.

4. On 15 May 2009, Ms. Odio-Benito was informed that her retirement pension as a former ICTY judge would be suspended with retroactive effect from 24 December 2008 and that payments already received since that date would be recovered.

5. On 13 July 2009, Ms. Odio-Benito requested management evaluation of that decision.

6. On 31 July 2009, the Acting Chief of the Management Evaluation Unit informed her that her request was not receivable because she was not a United Nations staff member within the meaning of the Staff Rules. She was also informed that if she found that response unsatisfactory, she could file an application with the Dispute Tribunal.

7. On 6 December 2010, after attempting to obtain satisfaction through informal means, Ms. Odio-Benito filed an application with the Dispute Tribunal.

8. By Judgment UNDT/2011/019, delivered on 24 January 2011, the Dispute Tribunal rejected her application, noting that as the result of the management evaluation had been communicated to Ms. Odio-Benito on 31 July 2009, the response period had expired on 29 October 2009. The application, which had been submitted on 6 December 2010, was late and therefore not receivable. Referring to article 8.3 of its Statute, which provides that the Tribunal may decide, 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 also pointed out that Ms. Odio-Benito had not attempted to explain the reasons for the delay in submitting her application.

9. Ms. Odio-Benito appealed the Dispute Tribunal's judgment on 28 January 2011. The Secretary-General submitted a statement of defence on 17 March 2011.

Submissions

The Appellant

10. Ms Odio-Benito contends that the Dispute Tribunal erred on a question of law by considering that the letter of 31 July 2009 constituted the decision that concluded the management evaluation and that the response period began on the date of receipt of that decision.

11. Ms. Odio-Benito states that the Management Evaluation Unit considered that her request was not receivable because she was not a staff member and was not covered by the Staff Rules. According to the Appellant, an organ that is not competent to rule on a matter cannot issue resolutions with legal effects and thus cannot issue a final decision that triggers time limits under article 8.1 of the Statute of the Dispute Tribunal. Furthermore, a letter dated 30 November 2009 from the Office of Human Resources Management confirmed that no final decision had been taken with regard to her complaint.

12. Ms. Odio-Benito accuses the Dispute Tribunal of having erred on a question of fact by failing to consider the evidence that she had presented, which proves that no final decision had been taken by the ICTY to solve the matter. The evidence shows that she had received conflicting information from the ICTY and various United Nations entities on the matter of ICTY judges' pension rights. The communications that she received suggest that the question of her pension rights should be decided by the General Assembly; thus, no final decision had been taken.

13. Ms. Odio-Benito requests the Appeals Tribunal to overturn the judgment and direct the Dispute Tribunal to decide on the merits of the case.

The Secretary-General

14. The Secretary-General submits that the Dispute Tribunal correctly dismissed Ms. Odio-Benito's application as time-barred since she had neither sought a suspension of the deadline nor demonstrated any exceptional circumstances warranting such a suspension.

15. The Secretary-General contends that the letter dated 31 July 2009 from the Management Evaluation Unit clearly constituted a response to the request for management evaluation. Any subsequent re-examination of the issue by the General Assembly in the future does not affect the dispute proceedings or the triggering of deadlines.

16. The Secretary-General requests the Appeals Tribunal to dismiss Ms. Odio-Benito's appeal.

Considerations

17. The Appeals Tribunal notes that, in her letter dated 31 July 2009 addressed to the Appellant, the Acting Chief of the Management Evaluation Unit referred to the Appellant's request for management evaluation and, in conclusion, stated that since she was not a staff member or a former staff member within the meaning of the provisional Staff Rules, she regretted to inform her that her request was not receivable. Furthermore, this letter stated that if Ms. Odio-Benito found the result unsatisfactory, she could file an application with the Tribunal. It is clear from the wording of this letter that it marked the conclusion of the management evaluation and informed the Appellant of the procedure to be followed.

18. When a person whose right of access to the United Nations administration of justice system is doubtful nevertheless chooses to submit a request for management evaluation and, subsequently, an appeal to the United Nations Dispute Tribunal, that person must follow the logic of the procedure: if the Management Evaluation Unit replies that the request is not receivable, that reply, whatever its legal basis, constitutes a management evaluation, the date of receipt of which triggers the 90-day response period established in article 8.1 of the Statute of the Dispute Tribunal. Ms. Elizabeth Odio-Benito's application was submitted to the Dispute Tribunal after the expiration of the response period that began on the date on which she received a letter from the Management Evaluation Unit informing her that her request for a management evaluation of the contested decision concerning her pension rights was not receivable because, as a judge, she was not a staff member or a former staff member within the meaning of the Staff Rules. The Dispute Tribunal did not err in a question of fact or of law in rejecting the application as not receivable. Ms. Odio-Benito's appeal is dismissed.

19. As the Administrative Tribunal stated in the *Sethia* case,¹ the repeated submission of the same claim does not stop the deadline for contesting the decision from running or give rise to a new administrative decision that would replace the original decision and restart the time period.

20. It is clear from the foregoing that the Appellant's claim that the Dispute Tribunal judge erred on a question of fact by considering the letter dated 31 July 2009 as the decision that concluded the management evaluation and that it erred on a question of law by deducing that this reply triggered the time limit is unsubstantiated.

Judgment

21. Ms. Odio-Benito's appeal is dismissed.

Original and Authoritative Version: French

Dated this 16th day of March 2012 in New York, United States.

(Signed)

Judge Courtial, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 7th day of May 2012 in New York, United States.

(Signed)

Weicheng Lin, Registrar

¹ *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079.