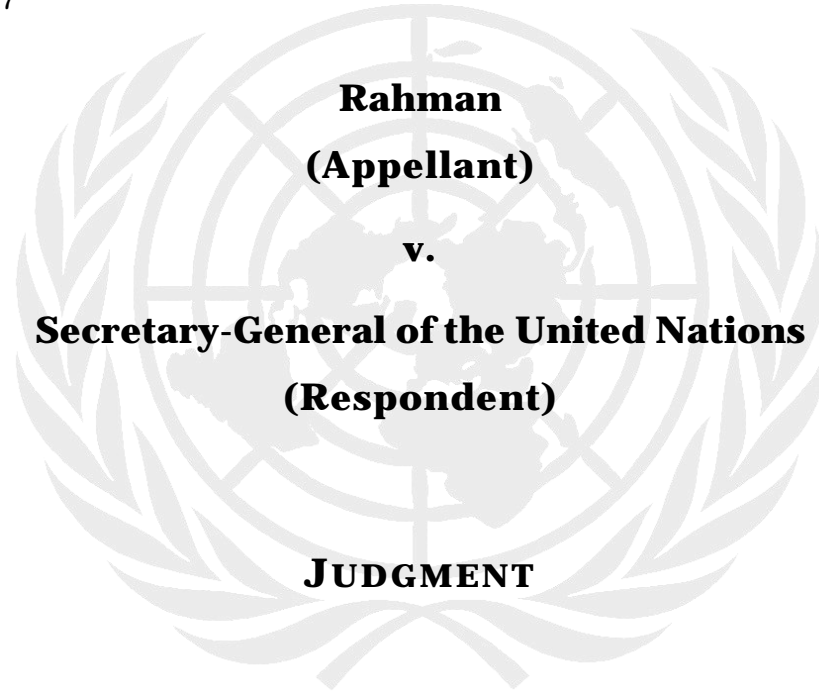




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2011-277



Before:	Judge Richard Lussick, Presiding Judge Mary Faherty Judge Sophia Adinyira
Judgment No.:	2012-UNAT-260
Date:	1 November 2012
Registrar:	Weicheng Lin

Counsel for Appellant: Bart Willemsen

Counsel for Respondent: Stéphanie Cartier

JUDGE RICHARD LUSSICK, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Khalihur Rahman (Appellant) against Judgment No. UNDT/2011/183, rendered by the United Nations Dispute Tribunal (UNDT) in Geneva on 28 October 2011 in the case of *Rahman v. Secretary-General of the United Nations*. Mr. Rahman appealed on 28 November 2011, and the Secretary-General (Respondent) answered on 13 January 2012.

Synopsis

2. Mr. Rahman appeals the UNDT Judgment rejecting his application as time-barred. He relies on the UNDT case of *Sefraoui*¹ as support for his argument that the time limit commences to run only when evidence arises based on which there could be a reasonable apprehension that there were grounds to request management evaluation. The Appeals Tribunal holds that the UNDT's judgment in *Sefraoui* is no longer good law in view of subsequent Appeals Tribunal jurisprudence. The Appeals Tribunal dismisses the appeal and affirms the UNDT Judgment.

Facts and Procedure

3. Mr. Rahman joined the United Nations Conference on Trade and Development (UNCTAD) in Geneva in 1991 as a Special Advisor. He was promoted to the D-1 level in 2005.

4. On 28 April 2008, a vacancy announcement for the D-2 level post of Director of the Division on Technology and Logistics (DTL), UNCTAD, was circulated. Five internal candidates, including Mr. Rahman, and 63 external applicants applied for the post.

5. On 21 and 22 October and 4 November 2008, four internal candidates and four external applicants were interviewed. The fifth internal candidate (Ms. Anne Miroux) initially declined to be interviewed, but indicated, on 3 March 2009, that she had changed her mind. She was interviewed on 20 March 2009.

¹ *Sefraoui v. Secretary-General of the United Nations*, Judgment No. UNDT/2009/011.

6. In a memorandum dated 26 March 2009 to the Secretary-General of UNCTAD, the Acting Deputy Secretary-General of UNCTAD and Chairperson of the Ad Hoc Interview Panel reported on the completion of the work of the Ad Hoc Interview Panel for the vacant post of Director of DTL. He stated that the Ad Hoc Interview Panel

unanimously agreed that Mr. Khalilur Rahman (Bangladesh, D-1, internal candidate) fully met the requisite competencies for the post under review; that Mr. Charles Gore (United Kingdom, D-1, UNCTAD, internal candidate) met most of the requisite competencies required for the post; and, mindful of taking into account the need to include a woman candidate in the recommended list of candidates, that Ms. Anne Miroux (France, D-1, UNCTAD, internal candidate) met many of the requisite competencies for the post.

He also stated that the Ad Hoc Interview Panel unanimously recommended the above three candidates in an alphabetical order for review by the Senior Review Group. According to Mr. Rahman, he was not aware of this memorandum until more than a year later, on or around 15 July 2010.

7. On 5 June 2009, the Secretary-General of UNCTAD informed all UNCTAD staff members of the appointment of Ms. Miroux as the Director of DTL.

8. After he learnt of the existence of the 26 March 2009 memorandum, Mr. Rahman wrote, on 11 August 2010, to the Officer-in-Charge (OiC) of the Human Resources Management Section (HRMS), UNCTAD, stating that he should have been informed in writing of the outcome of the selection procedure. On 13 August, the OiC of HRMS responded to Mr. Rahman that he had been informed of the decision on 5 June 2009.

9. On 20 August 2010, Mr. Rahman requested management evaluation of the decision not to select him for the post of the Director of DTL. On 6 October 2010, the Management Evaluation Unit (MEU) at Headquarters informed Mr. Rahman that his request for management evaluation was not receivable as time-barred.

10. On 26 November 2010, Mr. Rahman appealed to the UNDT. In Judgment No. UNDT/2011/183, the UNDT rejected Mr. Rahman's application as time-barred. The UNDT found that the 5 June 2009 email from the UNCTAD Secretary-General to all UNCTAD staff members constituted a written notification to Mr. Rahman. The UNDT also found that the 13 August 2010 response from the OiC of HRMS merely confirmed the 5 June 2009 decision and could not be used to reopen the time limits for submission of a request for management evaluation.

Submissions

Mr. Rahman's Appeal

11. Mr. Rahman submits that the UNDT erred in law and/or fact in rejecting his application as not receivable *ratione temporis*, and that the case should therefore be remanded to the UNDT for adjudication on the merits.

12. Mr. Rahman maintains that the UNDT erred in law when it failed to address all of his principal arguments, in violation of the terms of Article 11(1) of the UNDT Statute, and when it failed to state the facts and law upon which its decision was based.

13. Mr. Rahman also submits that, at the time of the notification of the impugned decision on 5 June 2009, he had no reason to assume, let alone evidence to support, that the impugned decision was unlawful or otherwise improper and therefore did not have reasonable and good faith grounds to request management evaluation. In his view, it was the disclosure of the 26 March 2009 memorandum that triggered the time limit for appeal, as that memorandum provided him with a reasonable belief that there were grounds to request management evaluation.

14. Mr. Rahman avers that the UNDT should have followed its precedent in *Sefraoui*,² namely that the time limit started to run only when evidence arose based on which there could be a reasonable apprehension that there were grounds to request management evaluation of the impugned decision.

Secretary-General's Answer

15. The Secretary-General submits that the UNDT correctly concluded that Mr. Rahman's application was not receivable as it was time-barred, because he did not file his request for management evaluation within two months from the date he received written notification of the contested decision.

16. The Secretary-General also submits that, as consistently followed by the Appeals Tribunal, staff members are presumed to know the rules of the Organization, including the time limits for legal action.

² *Ibid.*

17. The Secretary-General maintains that, contrary to Mr. Rahman's assertion, the UNDT did not fail to consider his arguments. The fact that he disagreed with the UNDT's characterization of his argument does not mean that the UNDT did not consider it, let alone erred in relation to it. Moreover, the UNDT is not bound to refer to each and every argument that the parties put forward.

Preliminary Matter

18. The Appellant has filed a motion for an oral hearing in order to make further submissions on the law. The Secretary-General opposes the motion. The Appeals Tribunal considers that further submissions would be pointless in this case since the factual and legal issues have already been clearly defined by the parties. The motion is accordingly dismissed.

Considerations

19. It is not in dispute that the Appellant did not submit a request for management evaluation until more than one year after he had been notified that he had not been selected for the post in question.

20. Former Staff Rule 111.2, which was applicable at the relevant time, provided that a staff member wishing to appeal an administrative decision "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".

21. The Appellant's contention is that the two-month deadline prescribed in the Staff Rule did not commence to run until on or around 15 July 2010, when he received a copy of the 26 March 2009 memorandum. This was more than one year after he had been notified of the administrative decision appointing another candidate to the post for which he had applied. The Appellant bases this contention on the UNDT judgment in *Sefraoui*,³ in which Judge Shaw held that such deadline did not commence to run until such time as the applicant could have reasonably apprehended that there were grounds for administrative review.

³ *Ibid.*

22. Article 8(3) of the UNDT Statute states, in very plain language, that the Dispute Tribunal shall not suspend or waive the deadlines for management evaluation. It is now well settled by the jurisprudence of the Appeals Tribunal that, pursuant to Article 8(3), the UNDT has no discretion to waive the deadline for management evaluation or administrative review.⁴

23. It follows that the earlier UNDT judgment in *Sefraoui* is no longer good law and is of no assistance to the Appellant. The Appellant received written notice of the disputed decision on 5 June 2009 and, therefore, should have made a request for administrative review under Staff Rule 111.2 within two months of that date. The Appellant's argument that the time limit began to run only when he had been provided with a reasonable belief that there were grounds to request management evaluation is contrary to the applicable law.

24. Staff members are presumed to know the regulations and rules applicable to them.⁵ The Appellant should have been aware of the two-month deadline imposed by the staff rules, particularly considering that he had joined UNCTAD as long ago as 1991. Moreover, the memorandum of 5 June 2009 from the Secretary-General of UNCTAD informed the Appellant comprehensively of the successful candidate's qualifications and career record. If the Appellant was of the view that these did not match his own, then it was incumbent upon him to seek management evaluation within the time prescribed. To do nothing until he learned further details of the appointment more than one year later was quite unreasonable.

25. The Appellant also claims that the UNDT erred in law in failing to address all of his principal arguments in violation of Article 11(1) of the UNDT Statute, and in failing to state the facts and law upon which its decision was based.

26. Under Article 11(1) of the UNDT Statute, the UNDT was obliged to issue a judgment in writing, stating the reasons, facts and law on which it was based. The UNDT decided that the Appellant had been properly served with a notification in writing in compliance with former Staff Rule 111.2. The UNDT then decided that Article 8(3) prohibited the UNDT from extending the deadline for management evaluation. These decisions stated the reasons, facts

⁴ See, for example, *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036; *Ajdini et al., v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108; *Samardzic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-072; *Trajanovska v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-074.

⁵ *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029.

and law on which they were based and were sufficient to dispose of the application under consideration. The Appeals Tribunal finds that these decisions were correct and that the UNDT fully complied with its obligations under Article 11(1) of its Statute. The Appellant has not demonstrated any error of law on the part of the UNDT.

27. For the above reasons, the Appeals Tribunal holds that the UNDT did not fall into error in concluding that the Appellant's request for management evaluation was time-barred.

Judgment

28. The appeal by Mr. Rahman is dismissed and the Judgment of the UNDT is affirmed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Faherty

(Signed)

Judge Adinyira

Entered in the Register on this 18th day of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar