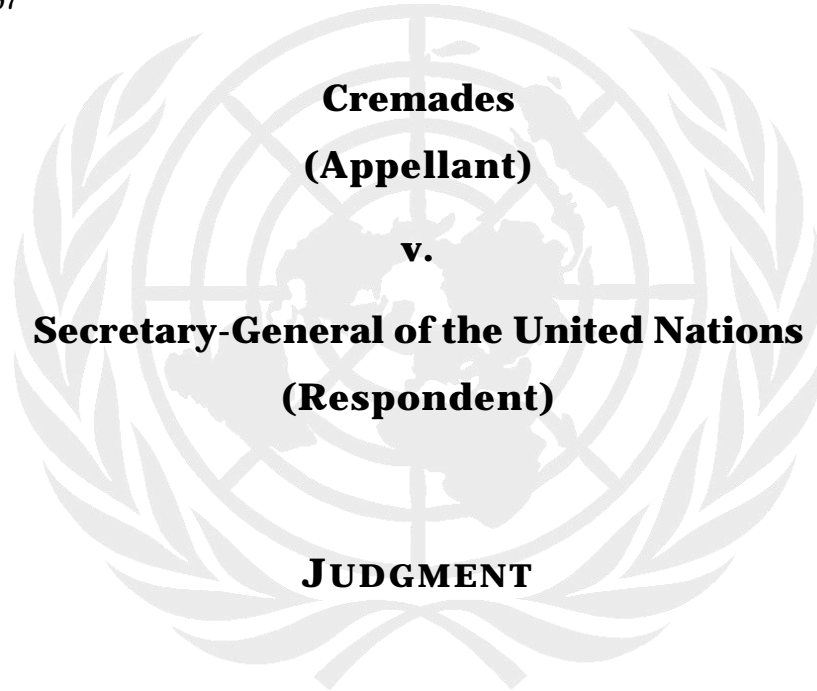




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2012-297



Before: Judge Sophia Adinyira, Presiding
Judge Luis María Simón
Judge Rosalyn Chapman

Judgment No.: 2012-UNAT-271

Date: 1 November 2012

Registrar: Weicheng Lin

Counsel for Appellant: Alfred de Zayas

Counsel for Respondent: Wambui Mwangi

JUDGE SOPHIA ADINYIRA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Maria Carmen Cremades against Judgment No. UNDT/2011/180, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 21 October 2011 in the case of *Cremades v. Secretary-General of the United Nations*. Ms. Cremades appealed on 16 December 2011, and the Secretary-General answered on 9 April 2012.

Synopsis

2. Ms. Cremades, a Spanish language teacher with the United Nations Office at Geneva (UNOG), retired on 31 July 2009. Before she retired, Ms. Cremades submitted a request to the Chief of the Human Resources Management Service (HRMS/UNOG) to extend her contract until 31 August 2009 in order to cover the annual leave corresponding to the first two trimesters of 2009 or, alternatively, to pay her compensation for work performed up to 31 July 2009 and for her proportional annual leave entitlement relating to that period. In a memorandum dated 3 June 2009, the Chief of HRMS/UNOG rejected her request.

3. By letter dated 25 August 2010, Ms. Cremades requested management evaluation. She was informed, however, that her request was rejected as time-barred. Her appeal to the UNDT was dismissed as non-receivable.

4. We affirm the decision of the UNDT; subsequent responses to her requests for re-consideration of the contested decision of 3 June 2009 simply confirmed the original decision and did not have the effect of suspending, or re-starting, the time limits for initiating formal proceedings.

5. As such, Ms. Cremades' appeal is dismissed and UNDT Judgment is affirmed.

Facts and Procedure

6. On 29 January 2009, Ms. Cremades submitted a request to the Chief of HRMS/UNOG to extend her contract beyond retirement age until 31 December 2009, in order to allow her to receive a full year's pay.

7. By memorandum dated 7 April 2009, the Human Resources Officer, HRMS/UNOG, advised Ms. Cremades that “an extension of contract beyond the date of retirement approved by the Secretary-General at age 62 is not feasible”.

8. On 1 May 2009, Ms. Cremades submitted a request to the Chief of HRMS/UNOG to extend her contract until 31 August 2009 in order to cover the annual leave corresponding to the first two trimesters of 2009 or, alternatively, to pay her compensation for work performed up to 31 July 2009 and for her proportional annual leave entitlement relating to that period.

9. In a memorandum dated 3 June 2009, the Chief of HRMS/UNOG referred to HRMS’ reply of 7 April 2009 and rejected her request. He pointed out that breaks between terms were treated as special leave with pay and not as annual leave. He also pointed out that all entitlements for staff members stopped as of the date of retirement. He ended his memorandum by stating: “I hope the above information clarifies the matter”.

10. In a memorandum dated 7 July 2009 to the Chief of Administration, UNOG, Ms. Cremades referred to her earlier memorandum of 25 June 2009, in which she requested payment of financial compensation on the basis of her right to 13-weeks of annual paid leave, and made a detailed calculation to show that she was owed CHF 11,912 by the end of July 2009.

11. In a memorandum dated 20 July 2009 to the Officer-in-Charge, Human Resources Policy Support Unit, Office of Human Resources Management in New York, the Deputy Chief, HRMS/UNOG, referred to Ms. Cremades’ 7 July 2009 request for payment of additional days corresponding to the scheduled break between the term that she had just completed and the beginning of the next term. Mr. Kisselev continued:

3. Based on [the former Administrative Tribunal] judgement No. 1212 of 31 December 2005 and on the provisions of ST/AI/316 of 6 March 1984 granting the status of staff members to full-time language teachers, we have informed [Ms. Cremades] that the leave taken during the summer recess and the scheduled breaks in excess of the normal annual leave entitlement is to be treated as special leave with full pay. Accordingly, [Ms. Cremades] was informed that she could not be paid for additional days of leave corresponding to the scheduled break during the summer.

4. We would be very grateful to have your opinion on the reasoning and the method of calculation proposed by [Ms. Cremades] in her memorandum dated 7 July 2009 sent to the Director, Division of Administration. Should you consider that her request is based on

valid legal grounds, we may reconsider our position previously conveyed to [Ms. Cremades].

12. After her retirement on 31 July 2009, Ms. Cremades sent follow-up messages for an update. In a letter dated 1 July 2010, the Chief of HRMS/UNOG informed Ms. Cremades:

Le Tribunal [Administratif des Nations Unies] a confirmé que les périodes de « conge special avec traitement » reconnues aux professeurs de langues pendant l'été (soit 8 semaines) ne peuvent être assimilées aux congés annuels reconnus aux professeurs de langues (soit 5 semaines). Par conséquent, le Tribunal a jugé que la demande de la requérante n'avait pas de fondement juridique.

Au vu de ce qui précède, le Service de la gestion des ressources humaines de l'Office des Nations Unies à Genève a estimé que votre demande ne pouvait pas être satisfaite.

Toutefois, comme vous le savez, nous avons soumis votre requête au Bureau de la gestion des ressources humaines, par memorandum du 20 juillet 2009, pour nous assurer que nous appliquions une politique cohérente avec celle mise en oeuvre au Siège de l'Organisation.

Je souhaite vous informer que le Bureau de la gestion des ressources humaines a confirmé que votre situation ne vous ouvre pas de droit à compensation.

Au vu de ce qui précède, je vous confirme que je ne suis malheureusement pas en mesure de donner suite à votre demande.

13. By letter dated 25 August 2010, Ms. Cremades requested management evaluation. She was informed that her request was rejected as time-barred.

14. Ms. Cremades then appealed to the Dispute Tribunal. In Judgment No. UNDT/2011/180, the UNDT dismissed Ms. Cremades' application as not receivable on the grounds that it was time-barred. The UNDT considered that, while the Administration's replies to Ms. Cremades' requests might not always have been sufficiently explicit such as to be taken as administrative decisions subject to appeal, it was established that the Chief of HRMS/UNOG replied to Ms. Cremades' request on 3 June 2009. That was the impugned decision. "The subsequent decisions of the Administration rejecting new requests from the Applicant relating to the same issue are confirmations of the earlier decision which do not extend the time limit for the filing of an appeal." In the view of the UNDT, Ms. Cremades should have contested the decision of 3 June 2009 within the statutory two-month period, but she did not do so until 25 August 2010.

Submissions

Ms. Cremades' Appeal

15. Ms. Cremades submits that the UNDT erred in law when it found that the appeal was time-barred. In her view, 3 June 2009 can not be considered as the crucial date for time limit purposes, and the memorandum of 20 July 2009 from the Chief of HRMS/UNOG suspended the running of the time limit. In light of the information given to her and the action taken by the Chief of HRMS/UNOG, a reasonable person would have understood that the period of time for submission of an appeal had not started to run, because negotiations aimed at informal settlement were in progress.

16. Ms. Cremades also submits that it was the Administration's obligation to give her complete and timely information so as ensure her rights. Instead, the Administration gave her equivocal and misleading information and at no time informed her of the need to file an appeal.

17. Ms. Cremades further submits that the UNDT erred in law in failing to give proper weight to the 20 July 2009 memorandum from the Chief of HRMS/UNOG seeking advice on how to proceed. In her view, the 1 July 2010 letter from the Chief of HRMS/UNOG should be seen as constituting "exhaustion of remedies", therefore giving her the right to address her case to the Management Evaluation Unit and the UNDT.

18. Ms. Cremades also appeals the UNDT Judgment on its merits. Her contentions thereon are not, however, relevant to this review on receivability.

Secretary-General's Answer

19. The Secretary-General submits that the UNDT correctly concluded that Ms. Cremades' request for management evaluation was not receivable as it was time-barred because she did not file her request within the two months set forth in the former Staff Rule 111.2 (c), with which Ms. Cremades should have been acquainted.

20. The Secretary-General also submits that the UNDT properly determined that the communications of the Administration subsequent to 3 June 2009 rejecting Ms. Cremades' new requests relating to the same issue were confirmations of the earlier decision and do not extend the time limit for filing an appeal.

Considerations

21. It is established that, by memorandum dated 3 June 2009, of which Ms. Cremades was informed no later than 25 June 2009, the Chief of HRMS/UNOG replied to her, rejecting the two options that she had proposed in a letter dated 1 May 2009. In the said letter, Ms. Cremades was seeking an extension to her contract until 31 August 2009 in order to receive upon her retirement a *pro rata* payment for accrued annual leave.

22. Staff Rule 111.2(a), which was in force on 3 June 2009, provides:

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 letter must be sent within two months from the date the staff member received notification of the decision in writing...

Accordingly, the decision of 3 June 2009 should have been contested by Ms. Cremades within the two month period prescribed.

23. Instead of submitting a request for management evaluation within this period, however, Ms. Cremades submitted several requests on the same issues to the UNOG Administration. It was not until after receipt of the 1 July 2010 letter, affirming the decision to reject her request, that she filed a request for management evaluation, on 25 August 2010.

24. The appeal before us is without merit. The request by Ms. Cremades for management evaluation was rather late. We note that her request for pro-rated payment for accrued annual leave was unequivocally rejected by the Chief of HRMS/UNOG on 3 June 2009. All her subsequent letters on the same issues were rejected in repetition of the contested decision of 3 June 2009. Time for requesting management evaluation started to run from 25 June 2009, at the latest, when she was deemed to have received the 3 June letter.

25. Ms. Cremades submits that, in light of the information given to her and the action taken by the Chief of HRMS/UNOG, a reasonable person would have understood that the period of time for submission of an appeal had not started to run, because negotiations aimed at informal settlement were in progress. This Tribunal notes that, under the Staff Rules, the Secretary-General has the power to extend the 60 day period in which a staff member may seek management evaluation, pending efforts for informal resolution conducted by the Office of the

Ombudsman, under conditions specified by the Secretary-General. The Appeals Tribunal recalls its *Abu-Hawaila* Judgment:¹

This Tribunal also holds that the exceptional suspension of time limits provided for under Article 8(1) of the UNDT Statute and provisional Staff Rule 11.1 applies only to informal dispute resolution conducted through the Office of the Ombudsman. The suspension of time limits cannot be extended by analogy to other informal dispute resolution procedures, precisely because of its exceptional character. Exceptions to time limits and deadlines must be interpreted strictly and are not subject to extension by analogy.

26. In the present case, Ms. Cremades provided no evidence of any informal resolution efforts as envisaged under Staff Rule 11.1(c). Moreover, she made no request to extend the time limit pending such informal resolution.

27. The UNDT correctly applied this Tribunal's ruling in *Costa* that article 8(3) of the Statute of the UNDT prohibits the UNDT from suspending or waiving the deadlines for management evaluation.

28. Her submission that she exhausted all remedies before requesting management evaluation also does not aid her, as exhausting internal remedies or conducting negotiations between parties does not stop the time limit.²

29. Furthermore, subsequent responses to her requests for re-consideration of the contested decision of 3 June 2009 simply confirmed the original decision and did not have the effect of suspending, or re-starting, the time limits for initiating formal proceedings.

30. We note that Ms. Cremades was a UNOG staff member from 1 January 1984 until her retirement on 31 July 2009. It is therefore reasonable to expect her to have been acquainted with the Staff Rules that governed her employment, including those on time limits.

31. In any event, ignorance of the law is no excuse for failing to meet the time limits to request administrative evaluation, or, for that matter, management evaluation.³

¹ *Abu-Hawaila v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-118, para. 29.

² *Sahel v. Secretary-General of the United Nations*, Judgment No. UNDT/2011/023; Former Administrative Tribunal Judgment No. 1211, *Muigai* (2004).

32. From the foregoing we affirm the UNDT decision that Ms. Cremades' request for management evaluation was not receivable as it was time-barred.

Judgment

33. The appeal is dismissed and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

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

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Simón

(Signed)

Judge Chapman

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

(Signed)

Weicheng Lin, Registrar

³ *Ajdini et al. v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108; *Trajanovska v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-074.