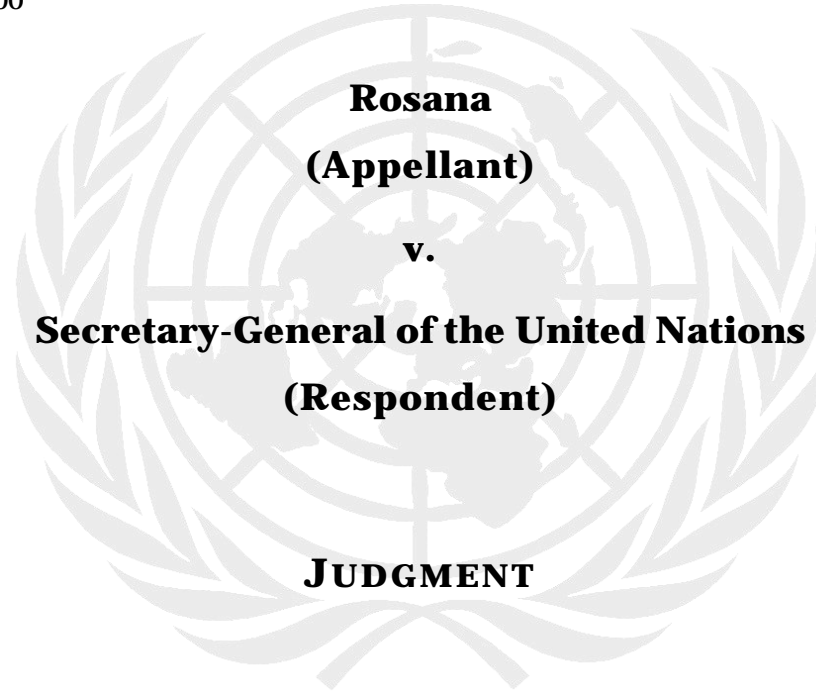




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2012-300



Before:	Judge Luis María Simón, Presiding Judge Sophia Adinyira Judge Rosalyn Chapman
Judgment No.:	2012-UNAT-273
Date:	1 November 2012
Registrar:	Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Stéphanie Cartier

JUDGE LUIS MARÍA SIMÓN, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Priscilla Rosana against Judgment No. UNDT/2011/217, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 29 December 2011 in the case of *Rosana v. Secretary-General of the United Nations*. Ms. Rosana appealed on 27 February 2012, and the Secretary-General answered on 30 April 2012.

Synopsis

2. The Tribunal holds that an appellant may not set a date arbitrarily for the time limit to start to run for the purpose of requesting management evaluation, by sending an ultimatum to the Administration in respect of her petition and announcing that she would interpret the failure to respond as an administrative decision of refusal.

3. The UNDT can set a date on which the time to file such a request starts to run, provided that it is established that an implied administrative decision was adopted and that the staff member was well aware of it for the purpose of requesting management evaluation.

4. If the request for management evaluation is time-barred, the application before the UNDT is not receivable because the Statute forbids waiving time limits for management evaluation.

5. That being the case, this Tribunal dismisses the Appeal and affirms the Dispute Tribunal's Judgment, which was not based on an error of law as alleged by Ms. Rosana.

Facts and Procedure

6. Ms. Rosana joined the United Nations Environment Programme (UNEP) in the Department of Early Warning and Assessment (DEWA) as a Programme Assistant in April 1991. Her last position at DEWA/UNEP before she retired on 31 August 2009 was Programme Assistant at the G-5 level.

7. In 2008, the UNEP Administration decided to reclassify several posts to higher levels, including the one held by Ms. Rosana.

8. On 25 February 2008, Ms. Rosana wrote to DEWA/UNEP requesting a timely reclassification of her post, or an extension of her contract beyond retirement age, so that she could apply and compete for the post. She did not receive any response.

9. In emails dated 26 May 2009 and 3 June 2009, Ms. Rosana requested a meeting with the Human Resources Officer regarding the timely reclassification of her post. On 11 June 2009, the Human Resources Officer advised Ms. Rosana to speak with the DEWA/UNEP Director about this matter.

10. Ms. Rosana's post was reclassified upwards on 26 June 2009, and it was advertised on 21 July 2009.

11. After her retirement, on 8 October 2009, Ms. Rosana wrote a memorandum to the DEWA/UNEP Director and Deputy Director regarding her reclassified post and requested a response by 20 October 2009. Again, she did not receive any response.

12. On 3 December 2009, Ms. Rosana filed a request for management evaluation, alleging that UNEP's failure to upgrade her post in a timely manner prevented her from being able to apply and compete for the reclassified post.

13. On 15 January 2010, Ms. Rosana received a response from the Chief of the Management Evaluation Unit (MEU), stating that her request for management evaluation had been denied as it was time-barred.

14. Ms. Rosana appealed to the UNDT on 19 April 2010. In Judgment No. UNDT/2011/217, the UNDT determined that the application was not receivable, as the UNDT had no jurisdiction to entertain it. However, the UNDT was critical of the Respondent on several procedural accounts. It found that the failure of the Administration to respond to Ms. Rosana's queries constituted an implied and therefore appealable decision. Nonetheless, the UNDT ruled that Ms. Rosana was not entitled to set a date (20 October 2009) arbitrarily on which the Respondent's lack of a response would be presumed to be an implied administrative decision and then use that date as the start of the time limit for her management evaluation request. In the view of the UNDT, her retirement date of 31 August 2009, rather than 20 October 2009, ought to have served as the implied date on which an administrative decision was taken. Calculating the 60-day time limit as of 31 August 2009, the UNDT concluded that Ms. Rosana's request for

management evaluation filed on 3 December 2009 was well outside the time limit, and that it was not empowered to suspend or waive the deadline for management evaluation.

Submissions

Ms. Rosana's Appeal

15. Ms. Rosana submits that the UNDT erred in law when it made her retirement date the conclusive date of an implied decision. The time limit should have started to run from 8 October 2009, when she gave an ultimatum to the UNEP Administration.

16. Ms. Rosana requests that this Tribunal overturn the UNDT Judgment and remand the case to the UNDT for determination on the merits.

Secretary-General's Answer

17. The Secretary-General submits that the UNDT correctly concluded that Ms. Rosana's request for management evaluation was not receivable as it was time-barred, because she did not file her request within two months as set forth in Staff Rule 11.2(c).

18. The Secretary-General also submits that the UNDT properly determined that the time limit for requesting management evaluation started to run from Ms. Rosana's retirement date of 31 August 2009 as, on that date, she was necessarily made aware that the reclassification request that she had filed before retirement had not been given positive consideration.

Considerations

19. The main issue in the present case is the receivability of Ms. Rosana's application. Her request for management evaluation was filed after sixty calendar days from the date of the notification of the impugned administrative decision.

20. Staff Rule 11.2(c) provides:

A request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within sixty calendar days from the date on which the staff member received notification of the administrative decision to be contested.

Moreover, the Statute of the UNDT establishes, in Article 8(1)(c), that an application shall be receivable if “[a]n applicant has previously submitted the contested administrative decision for management evaluation, where required”. On the same line, Article 8(3) of the UNDT’s Statute reads:

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.

21. The above-referenced period of sixty days must be considered to have run from the date of the staff member’s retirement on 31 August 2009. At that time, the staff member certainly knew that her petition for reclassification of her post or extension of her contract beyond retirement age would not be granted, which thus constitutes the implied administrative decision impugned. Ms. Rosana was necessarily aware of the negative result of her petition when she retired, because her retirement made it impossible to extend her contract.

22. The date of 20 October 2009 was established unilaterally by the Appellant in her favour. It cannot stand as the beginning point of the 60-day time limit within which to file a request for management evaluation.

23. This Tribunal holds that the UNDT correctly established that the silence of the UNEP/DEWA management constituted an implied administrative decision, and that this decision was taken on 31 August 2009.

24. An appellant may not unilaterally determine the date of the administrative decision by sending an e-mail to the Administration expressing an ultimatum to adopt a decision. If that were the case, no management review would ever be time-barred because the staff member could always prevent that possibility by simply sending an e-mail to the Administration stating that if his or her request is not analyzed by an arbitrarily chosen date it would be interpreted as an implied decision of refusal.

25. The date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine. On the date of her retirement on 31 August 2009, Ms. Rosana already knew what the administrative decision about her petition was: an implied refusal. As the request for management evaluation was filed on 3 December 2009, well outside the time-frame mentioned, the request had to be

considered as time-barred. In order to comply with the previously-mentioned rules, Ms. Rosana only had until 30 October 2009 to file a request for management evaluation.

26. As the submission for management evaluation was time-barred, Ms. Rosana's judicial application was not receivable and the merits of her case could not be examined.

27. In view of the foregoing, the UNDT did not err on a question of law within the meaning of Article 2(c) of the Statute of the Appeals Tribunal, and its Judgment is affirmed.

Judgment

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

Original and Authoritative Version: English

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

(Signed)

Judge Simón, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Chapman

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

(Signed)

Weicheng Lin, Registrar