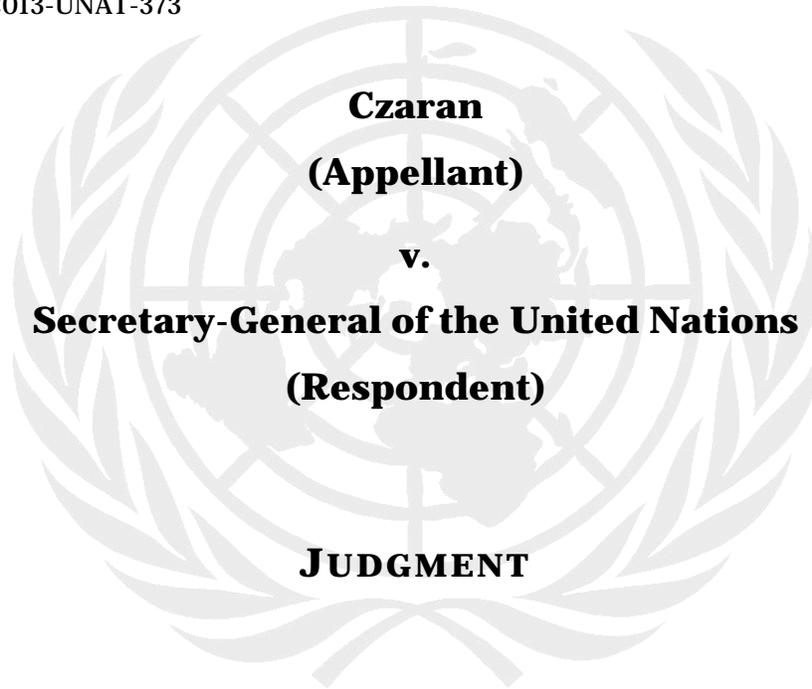




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-373



**Czaran
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Mary Faherty, Presiding Judge Luis María Simón Judge Rosalyn Chapman
Case No.:	2012-424
Date:	17 October 2013
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Stéphanie Cartier

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Lorant Czarán against Judgment No. UNDT/2012/133, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Geneva on 4 September 2012 in the case of *Czarán v. Secretary-General of the United Nations*. Mr. Czarán appealed this Judgment on 11 December 2012 and the Secretary-General answered on 19 February 2013.

Facts and Procedure

2. The facts established by the Dispute Tribunal in this case, which are not contested, read as follows:¹

... [Mr. Czarán] entered the service of the United Nations Secretariat in New York in 2002.

... In April 2008, the position of Programme Officer at the P-4 level in the Office for Outer Space Affairs (“OOSA”) in Bonn, Germany, was advertised on Galaxy, the former online United Nations jobsite. The vacancy announcement stated, inter alia, that as Head of the United Nations Platform for Space-based Information for Disaster Management and Emergency Response (“UN-SPIDER”), the incumbent of the post would be responsible for all administrative activities related to the UN-SPIDER office in Bonn. [Mr. Czarán] was appointed to that post on 30 October 2008 on a fixed-term contract.

... During 2010, the Internal Audit Division of the United Nations Office of Internal Oversight Services carried out an audit to determine how to improve arrangements to support programme delivery in OOSA. In its report dated 11 February 2011, the Internal Audit Division recommended, in particular, that the organization structure should be reviewed to assess the merits of consolidating UN-SPIDER. In February 2011, OOSA also finalized a document setting out its strategic discretion and operational priorities for the medium-term 2011 to 2013.

... In a memorandum dated 4 May 2011, the Deputy Director-General of the United Nations Office at Vienna (“UNOV”) and Director of OOSA requested the Director-General of UNOV to approve the reorganization of OOSA and, in particular, the introduction within the Office of a rotation system for staff members at the P-4 level on the two posts of Heads of the UN-SPIDER offices in Bonn and Beijing. The Director-General of UNOV approved the reorganization of the aforementioned Office in late May 2011.

... By memorandum dated 7 September 2011, the Deputy Director-General of UNOV and Director of OOSA informed [Mr. Czarán] of the decision to transfer him to

¹ The following facts are taken from Judgment No. UNDT/2012/133, paragraphs 3-13.

Vienna; in exchange, a Programme Officer based in Vienna would be transferred to Bonn. She explained that that course of action had been decided upon further to the report by the Internal Audit Division “with the aim of giving everyone an equal chance at getting experience in holding a leadership position and working in a duty station outside Vienna” and that it would take place within two months of notification of the decision.

... On 4 November 2011, [Mr. Czarán] requested a management evaluation of the aforementioned decision.

... [Mr. Czarán] was transferred on 5 December 2011.

... By letter dated 15 December 2011, sent on 19 December 2011 by email, [Mr. Czarán] was informed that the Secretary-General had decided to uphold the contested decision.

... On 23 March 2012, [Mr. Czarán] submitted an application challenging the decision to transfer him to Vienna. The [Secretary-General] submitted his reply on 26 April 2012.

...

... By Order No. 132 (GVA/2012) dated 22 August 2012, the [Dispute] Tribunal informed the parties that it considered that an oral hearing was not necessary and gave them one week to file any objections. On 29 August 2012, both parties responded to Order No. 132. Counsel for the [Secretary-General] confirmed that she agreed with the [Dispute] Tribunal’s position that a hearing was not necessary in the case. Counsel for [Mr. Czarán], however, requested that an oral hearing take place in order to explain the facts and the circumstances in which [Mr. Czarán] had acknowledged receipt of the response to his request for a management evaluation.

3. The Dispute Tribunal concluded that Mr. Czarán’s application was not receivable as it was not filed within the 90-day time limit provided for in Article 8 of the Statute of the Dispute Tribunal.

4. The Dispute Tribunal found that Mr. Czarán was aware that the Secretary-General had responded to his request for management evaluation as of 19 December 2011, and it was his responsibility “to read that response as soon as possible so that he could submit an administrative appeal, if necessary, within the relevant time limits”. Moreover, the UNDT held:

Even assuming, ... that for four days, it was practically impossible for him to read the attachment to the email sent to him on 19 December 2011, he still had sufficient time as from 23 December 2011, i.e. 87 days, to submit his application ... Indeed, the 90-day time limit for staff members to submit an application after receiving a response

to a request for a management evaluation is sufficiently long to allow them to address, as in this case, any technical problems with transmission of the letter and any difficulties that the staff member encounters in taking note of the Administration's response.

5. Moreover, the Dispute Tribunal noted that even if the 90-day period was construed as commencing 23 December 2011, Mr. Czarán did not meet his deadline as he actually filed his application 91 days later.

Submissions

Mr. Czarán's Appeal

6. Mr. Czarán submits that his application to the UNDT was timely or should have been considered as such. Although he saw an e-mail on his mobile phone from the Management Evaluation Unit on 19 December 2011, he did not know that it contained the management evaluation decision. For personal reasons, he was not able to read the e-mail until 23 December 2011. As such, he believed that his deadline was 23 March 2012.

7. In any event, he contends that the UNDT should have taken account of the special circumstances of his case: the burdens of family issues, the move to Vienna, and the fact that his Office of Staff Legal Assistance (OSLA) lawyers were situated in Geneva and New York made it difficult to respond, even within the 90-day period he had calculated.

8. Mr. Czarán avers that the UNDT erred in not exercising its discretion and refusing to consider the merits of his case.

9. He requests rescission of the impugned administrative decision and adequate compensation for the moral injury and extended stress he suffered.

The Secretary-General's Answer

10. The Secretary-General contends that Mr. Czarán has failed to establish any error warranting reversal of the UNDT Judgment. The UNDT did not have the competence to suspend or waive the time limit for submission of an application, as Mr. Czarán never requested same, as required by Article 8(3) of the UNDT Statute.

11. The Secretary-General submits that the UNDT correctly concluded that Mr. Czarán failed to file his application in a timely manner. Having received the management evaluation on 19 December 2011, his application was due on 19 March 2012 (the 90th day, 18 March 2012, being a Sunday). Furthermore, the Secretary-General submits that Mr. Czarán's application was still late even if his deadline commenced on 23 December 2011, as he alleges.

12. The Secretary-General therefore requests the Appeals Tribunal to affirm the UNDT Judgment, and to dismiss the appeal in its entirety. In the event that the Appeals Tribunal considers the application was receivable, the Secretary-General requests that the case be remanded to the UNDT for consideration on its merits.

Considerations

13. Having considered both parties' submissions, the Appeals Tribunal was satisfied that the issues could be determined without the requirement of an oral hearing and therefore did not grant Mr. Czarán's request for an oral hearing.

14. In this appeal, the issue to be determined is whether the UNDT correctly decided that Mr. Czarán's application to the Dispute Tribunal was not receivable since he had not submitted his application within the time period prescribed by the UNDT Statute and by the Staff Rules.

15. Article 8 of the UNDT Statute provides:

1. An application shall be receivable if:

...

(c) An applicant has previously submitted the contested administrative decision for management evaluation, where required; and

(d) The application is filed within the following deadlines:

(i) In cases where a management evaluation of the contested decision is required:

(a) within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or

(b) within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices.

...

16. Since it is not disputed that a response was received by Mr. Czarán from the Administration, Article 8(1)(d)(i)(a) of the UNDT Statute is particularly applicable to the facts of the present case.

17. The 90-day time limit for the submission of an application to the UNDT is reiterated in Staff Rule 11.4 which provides

(a) A staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the United Nations Dispute Tribunal within ninety calendar days from the date on which the staff member received the outcome of the management evaluation or from the date of expiration of the deadline specified under Staff Rule 11.2(d), whichever is earlier.

18. In the course of his submissions, Mr. Czarán takes issue with the Dispute Tribunal's finding that he "knew, as from 19 December ... 2011, that the Secretary-General had responded to his request for a management evaluation but that he did not read the contents of that response until four days later".

19. For the Appeals Tribunal to interfere with the Dispute Tribunal's finding in this regard, we have to be satisfied that the Dispute Tribunal erred on a question of fact resulting in a manifestly unreasonable decision. In making its finding on the state of Mr. Czarán's knowledge as of 19 December 2011, the Dispute Tribunal relied on Mr. Czarán's own submissions to the Dispute Tribunal which show that the subject of the e-mail received by Mr. Czarán on 19 December 2011 contained the term "Evaluation Letter" and that the name of the attachment included the term "ME letter". In this circumstance, we do not find that the Dispute Tribunal was manifestly unreasonable or indeed in any way unreasonable in concluding, effectively, that Mr. Czarán (even if he did not read it on the date in question) was on notice from 19 December 2011 that he had received a response from the Management Evaluation Unit (MEU) and that the time limit for him to challenge that response before the UNDT commenced from that date.

20. Furthermore, we do not regard as manifestly unreasonable the Dispute Tribunal's conclusion that it was Mr. Czarán's responsibility to read the MEU response as soon as possible so that he could submit an application to the UNDT within the relevant time period. Nor, having regard to the particular circumstances of this case and notwithstanding the fact that he was

travelling over a period of days between 19 December and 23 December 2011, do we find any error on the part of the UNDT when it determined that from 23 December 2011, Mr. Czarán still had 87 days of the statutory 90-day time limit to submit his application. The UNDT correctly determined that

the 90-day time limit for staff members to submit an application after receiving a response to a request for a management evaluation is sufficiently long to allow them to address, as in this case, any technical problems with transmission of the letter and any difficulties that the staff member encounters in taking note of the administration's response.

21. We do not, in those circumstances, find any merit in Mr. Czarán's contention that "the countdown of days" for his application to the Dispute Tribunal commenced on 23 December 2011. Furthermore, we note the Dispute Tribunal's observation that even had the countdown of days started on 23 December 2011 (the day Mr. Czarán read the letter of 15 December 2011), his application was still not received until 23 March 2011, a total of 91 days after 23 December 2011 and a timeframe which was still beyond the 90-day time limit provided for in the UNDT Statute and the Staff Rules.

22. Article 8(3) of the UNDT Statute provides, *inter alia*, "[t]he Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines [for the filing of an application] for a limited period of time and only in exceptional cases". The Dispute Tribunal did not embark on such a consideration because Mr. Czarán did not apply for an extension of time.

23. In his appeal to this Tribunal, Mr. Czarán argues that the UNDT "could have exercised its jurisdiction in considering the case based on its merits, and not based on a four-day delay as interpreted".

24. Having regard to this particular ground of appeal, the question for the Appeals Tribunal is whether the Dispute Tribunal erred in law and/or failed to exercise its jurisdiction in declining to consider Mr. Czarán's case on its merits.

25. In *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, paragraph 29, we stated as follows:

Mr. Cooke did not submit a prior written request for waiver, as required by Article 8(3) of the UNDT Statute. Under Article 8(3) of the UNDT Statute, the

applicant's submission of a written request for waiver is a prerequisite, or condition precedent, to the UNDT being competent to waive the filing deadline in Article 8(1). The UNDT cannot infer such request has been made where there is no prior written request from the applicant. The UNDT simply cannot ignore the statutory requirement of a written request and, nevertheless, waive the filing deadline; it is not competent to do so. Yet, that is what the UNDT did in the present case. In so doing, the UNDT exceeded its competence and committed an error of law.

26. In the absence of a prior written request from Mr. Czarán for a suspension or waiver of the time limit for the filing of his application, the UNDT was not competent to consider the issue. Accordingly, in noting the absence of any request from Mr. Czarán for an extension of time, the UNDT acted properly and, in effect, properly concluded that it was not competent to embark upon a consideration of Mr. Czarán's application. Thus, we find no error of law or failure of jurisdiction on the part of the UNDT.

27. At paragraphs 4 to 7 of his submissions to this Tribunal, Mr. Czarán effectively argues that there were exceptional circumstances to which the Dispute Tribunal should have had regard, therefore allowing it to consider his case on its merits. Mr. Czarán states as follows:

... We have clearly stated in our submissions the circumstances at that time, including the fact that I had a death in my close family that required my attention during those days, that I was already travelling on vacation, and that I informed my OSLA lawyers about the fact that I took note of the MEU response on 23rd December only.

... It was because of this that we worked with OSLA together assuming a 23rd March 2011 deadline to submit, and did not even consider having to do it earlier.

... Had we been aware of the fact that we were in delay, we could have certainly submitted our request one or two days earlier. Had we been aware of a delay, we could have asked for an extension, as the UNDT also refers to such an option in its judgement, and we assume it could have been then granted.

We just did not think any of that was needed.

... The Court could also have given consideration to the fact that I was working in Vienna, with my OSLA support lawyers based in New York and in Geneva, and that I had a very busy schedule moving and adjusting to Vienna in that same period, travelling on family visits to New York for many weeks, and a number of important events I had to organize as part of my new job requirements in early February 2011, and all those made our coordination of a submission with OSLA more difficult and time-consuming; no one can assume that 87 or 90 days are all that easy to make a proper submission in such circumstances, as it is mentioned in the judgement.

28. While the absence of any prior written request for a suspension or waiver of the applicable time limit renders moot Mr. Czarán's argument that there were exceptional circumstances, it is nevertheless our finding that there is nothing in the arguments advanced by Mr. Czarán to persuade us, with respect to this case, that there existed exceptional circumstances, as defined in our jurisprudence.

29. Finally, we turn to Mr. Czarán's contention that the responses made by the Secretary-General to the UNDT, in answer to Mr. Czarán's application, "could mislead the judge or put the Applicant in a bad light" and the contention that "such untrue information might easily influence the judge and put the Applicant in a disadvantage, and it is my opinion that it might have also had a role in negatively influencing the decision taken in this case at the UNDT".

30. We reject Mr. Czarán's observations in this regard. We note the detailed legal and factual considerations embarked on by the UNDT on the question of receivability and we are entirely satisfied that no extraneous factors influenced the Dispute Tribunal's properly concluded determination on receivability.

31. Mr. Czarán has not persuaded this Tribunal that there is any merit in his appeal and it is thus dismissed.

Judgment

32. The Judgment of the UNDT is upheld.

Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)

Judge Faherty, Presiding

(Signed)

Judge Simón

(Signed)

Judge Chapman

Entered in the Register on this 19th day of December 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar