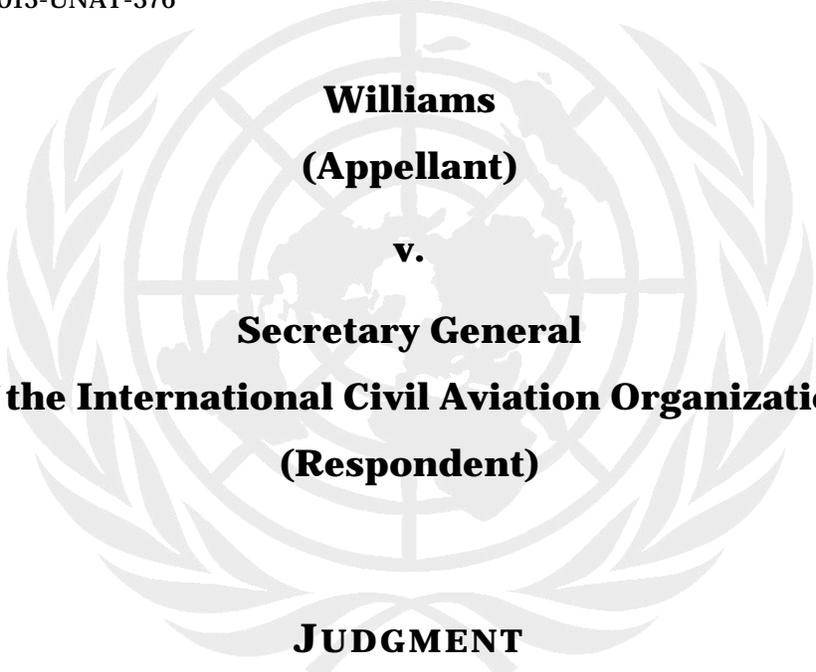




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2013-UNAT-376



**Williams  
(Appellant)**  
**v.**  
**Secretary General  
of the International Civil Aviation Organization  
(Respondent)**

**JUDGMENT**

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

**Case No.:** 2013-428

**Date:** 17 October 2013

**Registrar:** Weicheng Lin

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**Counsel for Appellant:** Mareco M. Edwards

**Counsel for Respondent:** Christopher M. Petras

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Gil Bradley Williams of the decision of the Secretary General of the International Civil Aviation Organization (Secretary General and ICAO, respectively), dated 19 September 2012, to accept the recommendation of the Advisory Joint Appeals Board (AJAB) in Appeal No. 178 not to waive the time limit for Mr. Williams to seek administrative decision review.

### **Facts and Procedure**

2. Mr. Williams began employment with ICAO on 12 October 2010 as Chief, Field Operations Section, Technical Cooperation Bureau (TCB), at the P-5 level, Step 1, on a three-year fixed-term appointment. His appointment required a one-year probationary period and was subject to the ICAO Staff Regulations, known as the Service Code, and the ICAO Staff Rules.

3. In September 2011, Mr. Williams was informed that, due to concerns about his performance, his probationary period would be extended for six months, or until 10 April 2012. He was also advised that his performance would be reviewed before the end of February 2012.

4. On 24 January 2012, Mr. Williams sent the Secretary General a memorandum, in which he offered to resign “without prejudice”, stating: “In light of the current disagreement in leadership style between [Director/TCB (D/TCB)] and myself, I feel that the most appropriate way ahead is for me to offer my resignation without prejudice. I must make it clear that I do not agree with the claims that have been made about my performance ...”.

5. In the same memorandum, Mr. Williams also made various requests for compensation, entitlements, benefits and other matters for the Secretary General to approve.

6. On 26 January 2012, the Secretary General acknowledged receipt of Mr. Williams’s resignation and set the effective date of his resignation as 31 March 2012. The Secretary General also agreed to certain benefits and entitlements for Mr. Williams, albeit substantially different than those requested.

7. On 29 June 2012, Mr. Williams filed an appeal with the AJAB of “the terms afforded to [him] by the Secretary General upon [his] resignation from ICAO, which was effective 31 March 2012”.

8. On 8 August 2012, the AJAB sent Mr. Williams a letter referring to Staff Rule 111.1, paragraph 5, and informing him that “[i]n order to permit the [AJAB] to complete its consideration of the receivability of [his] submission and its competence regarding the matter”, he should advise it of the administrative decision he was appealing and the date he had requested the Secretary General to review that decision, and he should provide a copy of his request for review.

9. On 21 August 2012, Mr. Williams sent a responding letter to the AJAB, acknowledging that he had *not* sought review from the Secretary General and requesting that the Secretary General “waive the procedural requirements and the delay to allow [him] to submit [his] appeal ... in accordance with Staff Rule 111.1[,] paragraph 8”. To support his request for a waiver of time, Mr. Williams explained:

... I was so demoralized and in total state of shock and fearful of any type of reprisal ... the Secretary [General] of ICAO and the Executives of TCB ... could have waged against me (e.g. unnecessary retaining my final payments and emoluments), that I did not formally request the Secretary General to review the above-mentioned administrative decisions that forced me out of the Organization under duress ...

10. In his letter of 21 August 2012 to the AJAB, Mr. Williams also set forth a number of complaints about his treatment and multiple allegations of violations of the terms of his contract and the Staff Regulations and Rules.

11. On 28 August 2012, the AJAB issued its recommendation with respect to Appeal No. 178. First, the AJAB concluded that Mr. Williams’s appeal was not receivable under Staff Rule 111.1, paragraph 5, since he had not sought administrative review from the Secretary General. Second, the AJAB concluded that the appeal was not timely under Staff Rule 111.1, paragraph 7. Finally, the AJAB concluded that Mr. Williams had not shown “exceptional circumstances” for a waiver of time to seek review under Staff Rule 111.1, paragraph 8. Based on these legal conclusions, the AJAB unanimously recommended that Mr. Williams’s request for a waiver of time under Staff Rule 111.1, paragraph 8, be denied.

12. On 29 August 2012, the AJAB’s recommendation on Appeal No. 178 was sent to the Secretary General. On 19 September 2012, the Secretary General accepted the AJAB’s recommendation and denied Mr. Williams’s request for a waiver of time under Staff Rule

111.1, paragraph 8; thus, the Secretary General did not receive the appeal for review. Mr. Williams was notified of this decision on 2 October 2012.

13. On 2 January 2013, Mr. Williams, proceeding *pro se*, appealed the Secretary General's decision to the Appeals Tribunal, without submitting an appeals brief. On 9 January 2013, Mr. Williams requested an extension of time to file his brief, stating he had recently retained counsel. By Order No. 121 (2013), this Tribunal granted Mr. Williams an extension of time until 13 February 2013, and the appeals brief was filed on that date.

14. By Order No. 145 (2013), the Appeals Tribunal rejected Mr. Williams's motion for stay of proceedings and by Order No. 161 (2013), it denied Mr. Williams's motion for the filing of additional pleadings.

### **Submissions**

#### **Mr. Williams's Appeal**

15. Mr. Williams asserts that the death of his father constituted "exceptional circumstances" for a waiver of time to seek review within the meaning of Staff Rule 111.1, paragraph 8. He argues that the grieving process is "unpredictable" and he was so bereft that he "was unable to articulate the primary reasons (death of his father) he was unable to meet the original filing deadline" when he initially submitted his appeal to the AJAB.

16. Mr. Williams also addresses the merits of his many allegations that ICAO did not meet its contractual obligations toward him and treated him unfairly or otherwise failed to comply with mandatory legal requirements. Among other things, he claims he was not provided with Performance and Competency Evaluation reports or given transparent feedback, was subjected to a hostile work environment, was constructively terminated, and the unauthorized extension of his probation forced him to resign. He argues that the Administration exhibited the same type of behaviour toward him that the Appeals Tribunal found violated due process in *Ortiz*.<sup>1</sup>

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<sup>1</sup> *Ortiz v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2012-UNAT-231.

17. Mr. Williams requests that the Appeals Tribunal remand the case to the AJAB for consideration of the merits of his claims or, in the alternative, address the merits of his claims. Mr. Williams also requests other remedies, including his reinstatement, payment of certain benefits and entitlements, and an award of compensation.

**Secretary General's Answer**

18. The Appeals Tribunal does not have authority to waive the deadline for administrative review under Staff Rule 111.1, paragraph 5, since administrative review is comparable to management evaluation and Article 7(3) of the Appeals Tribunal Statute (Statute) and the jurisprudence of the Appeals Tribunal preclude such waivers. Thus, the appeal must be denied.

19. Mr. Williams cannot for the first time on appeal proffer a new reason or new facts, i.e., his father's death, to support his contention that "exceptional circumstances" existed to waive the time limit for seeking review under Staff Rule 111.1. Mr. Williams was aware of his father's death when he made his request for waiver to the AJAB, and chose not to raise his father's death before the AJAB. Under Article 2(5) of the Statute and the jurisprudence of the Appeals Tribunal, the Appeals Tribunal is precluded from considering new facts on appeal. In any event, despite his father's death, Mr. Williams managed to carry out numerous administrative and legal responsibilities during the time he should have been appealing to the AJAB; thus, his grief over his father's death does not constitute "exceptional circumstances" and the appeal must be denied.

20. The Appeals Tribunal is not competent to address the merits of Mr. Williams's substantive claims when those claims have not been adjudged before the AJAB. Article 2(10) of the Statute requires that the Appeals Tribunal hear appeals of ICAO matters only after they are considered by a "neutral first instance process" that includes a written record and decision containing reasons, fact and law. For ICAO, the "neutral first instance process" is the AJAB (unless the staff member and Secretary General have agreed to submit the matter directly to the Appeals Tribunal, which was not done in Mr. Williams's case). Since Mr. Williams's appeal was not received by the AJAB, it did not address the merits of his claims and the merits are not properly before the Appeals Tribunal.

21. Mr. Williams's appeal is not receivable *ratione materiae* because he does not contest an administrative decision but challenges his own voluntary resignation, which was made in anticipation of a decision not to retain him and to "avoid any negative impact to [his] employment record".

### **Considerations**

22. As a preliminary matter, Mr. Williams requests an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). This Tribunal does not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. Thus, Mr. Williams's request for an oral hearing is denied.

23. Effective 1 July 2009, the United Nations and ICAO entered into a written agreement providing the Appeals Tribunal with "competen[ce] to hear and pass judgement on an application filed by staff members of [ICAO]" "in accordance with Article 2, paragraph 10 of the Statute".

24. Article 2(10) of the Statute provides:

The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to accept the terms of the jurisdiction of the Appeals Tribunal, consonant with the present statute. ... Such special agreement may only be concluded if the agency, organization or entity utilizes a neutral first instance process that includes a written record and a written decision providing reasons, fact and law. ...

25. Article XI of the ICAO Service Code (Staff Regulations 11.1 through 11.5) sets forth a staff member's right to seek administrative review and ICAO Staff Rule 111.1. contains provisions governing the procedures for such review. These authorities establish the AJAB as the "neutral first instance process". Specifically, Staff Regulation 11.2 requires the Secretary General to establish rules consistent with the Service Code which include "provision for an Advisory Joint Appeals Board that will submit its findings and recommendations to the

Secretary General for his decision” and Staff Regulation 11.3 sets forth the composition of the AJAB. Staff Rule 111.5 provides that “[a] staff member shall have the right to appeal to the United Nations Appeals Tribunal ... under Regulation 11.5 of the Service Code ... after review, findings and recommendations of an Advisory Joint Appeals Board. ...”

26. The relationship between ICAO and the Appeals Tribunal has been explained by this Tribunal in *Ortiz*:

... [A]n appeal [is] referred to the Appeals Tribunal, not directly against the original administrative decision, but against the final decision taken by the Secretary-General upon completion of the first-instance procedure. It is this Tribunal’s business to deliberate upon AJAB’s conclusions and recommendations and the reasons ... There should normally be no need for any other evidence than that submitted to AJAB.

... Nevertheless, it should be borne in mind that ... the appeal is directed against an administrative decision, taken by an executive authority, and not against a judgment delivered by a professional, independent court of first instance deciding on the issue itself.

... Therefore, the Appeals Tribunal’s Statute is only applicable to such an appeal insofar as, and on condition that, its provisions are compatible with the judgment of an appeal directed against a decision taken by an executive authority.<sup>2</sup>

27. Staff Rule 111.1 governs the review of an administrative decision contested by an ICAO staff member. Of particular importance to the pending appeal are paragraphs 5, 7 and 8, which provide:

5. A staff member who wishes to appeal the [administrative] decision ... shall, as a first step, address a letter to the Secretary General requesting that the decision be reviewed. Such a letter shall be sent within 30 calendar days of the time the staff member received notification of the decision in writing.

...

7. A staff member who fails to observe the time limits indicated in [paragraph] 5 ... shall lose the right to appeal, unless the delay is waived under [paragraph] 8 below.

8. The staff member may request that in view of exceptional circumstances, the delay in filing the appeal be waived. The [AJAB] shall examine such request as a preliminary issue and make its recommendations thereon to the Secretary General for his decision.

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<sup>2</sup> *Ortiz*, paras. 33 to 35.

28. The AJAB found that since Mr. Williams “had not requested the Secretary General to review his decision(s)”, as required under paragraph 5, his appeal was “time-barred” under paragraph 7 unless he could show “exceptional circumstances” to waive the delay in filing under paragraph 8. Mr. Williams concedes that he never sought administrative review by the Secretary General. The AJAB determined that the reasons proffered by Mr. Williams in his letter of 21 August 2012 - he was “so demoralized and in total state of shock and fearful of any type of reprisal” - did not constitute “exceptional circumstances” to waive the time limit for seeking review. Based on this conclusion, the AJAB determined Mr. Williams’s appeal was not receivable and made this recommendation to the Secretary General.

29. The Secretary General accepted the AJAB’s recommendation not to waive the time limit and not to receive the appeal, and notified Mr. Williams of the decision.

30. Article 7(3) of the Appeals Tribunal Statute provides, in part, that “[t]he Appeals Tribunal shall not suspend or waive the deadlines for management evaluation”. This provision is identical to Article 8(3) of the United Nations Dispute Tribunal (UNDT) Statute.

31. This Tribunal has consistently opined that Article 8(3) of the UNDT Statute must be read literally to prohibit the UNDT from waiving the deadlines for seeking management evaluation; thus, the UNDT has no jurisdiction or competence to waive such deadlines.<sup>3</sup>

32. The Secretary General contends that administrative review by ICAO is the equivalent of management evaluation under Article 7(3) of the Appeals Tribunal Statute, and Article 7(3) must be interpreted in the same manner as Article 8(3) of the UNDT Statute. Applying Article 7(3), the Secretary General argues, prohibits this Tribunal from waiving the deadline by which Mr. Williams was required to seek administrative review by the Secretary General. This Tribunal agrees. Thus, the Secretary General’s decision not to waive the time limit for Mr. Williams to seek review should be affirmed.

33. Moreover, even assuming *arguendo* this Tribunal could review the reasons, conclusions and recommendation of the AJAB, which the Secretary General accepted, we would determine that the Secretary General acted properly since Mr. Williams had not shown

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<sup>3</sup> See *Ajdini 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; *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

exceptional circumstances in his letter of 21 August 2012 to waive the deadline for administrative review.<sup>4</sup>

34. This Tribunal does not have jurisdiction or competence to address the merits of the substantive claims Mr. Williams raises on appeal since the AJAB did not consider the merits of those claims as the “neutral first instance process”.

### **Judgment**

35. The Secretary General’s decision is affirmed and the appeal is dismissed.

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<sup>4</sup> Yet, on appeal, Mr. Williams raises a new explanation for his failure to timely seek administrative review from the Secretary General -- his grief over his father’s death. New grounds cannot be raised on appeal when those grounds were not presented in the “neutral first instance process” before the AJAB although the staff member was aware of them. See *Shakir v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-056. In any event, as the Secretary General notes, grief over his father’s death would not constitute “exceptional circumstances” - especially when viewed against the many administrative and legal procedures with which Mr. Williams was involved during the period he should have sought review from the Secretary General.

Original and Authoritative Version: English

Dated this 17<sup>th</sup> day of October 2013 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Simón

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

*(Signed)*

Weicheng Lin, Registrar