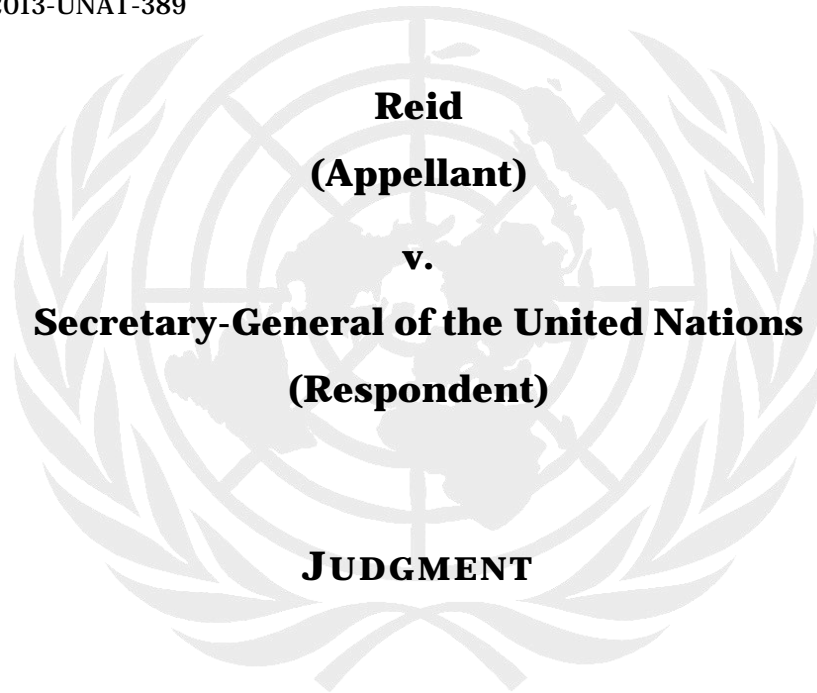




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-389



**Reid
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Inés Weinberg de Roca, Presiding Judge Luis María Simón Judge Richard Lussick
Case No.:	2013-443
Date:	17 October 2013
Registrar:	Weicheng Lin

Counsel for Mr. Reid:	Self-represented
Counsel for Secretary-General:	Zarqaa Chohan

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Timothy Bancroft Reid against Judgment No. UNDT/2012/188, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in Nairobi on 3 December 2012 in the case of *Reid v. Secretary-General of the United Nations*. Mr. Reid appealed on 8 February 2013 and the Secretary-General answered on 25 March 2013.

Facts and Procedure

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

... [Mr. Reid] filed [his] Application on 7 December 2011, alleging breach of contract and discrimination, following his [2007] application for the position of Chief of Staff (...) with the United Nations Mission in the Central African Republic and Chad (MINURCAT), which he was told he was selected for but was never issued a letter of appointment.^[2] [Mr. Reid] submits that, following several queries on the cause of the letter being held up, he came to find out that the position was being offered to a female candidate who was also a friend of the [newly-appointed] Special Representative to the Secretary-General (SRSG) of the Mission.

... [Mr. Reid] became aware of the decision on or around 29 February 2008. [He] received no written communication of the decision to not appoint him, or that the post ha[d] been filled. [The selected candidate was appointed to the position in June 2008.]

... [Mr. Reid] sought management evaluation of the impugned decision on 26 July 2011. The Management Evaluation Unit issued its decision on 8 September 2011, dismissing the request for management evaluation as time-barred.

... The [Secretary-General] filed his Reply to the Application on 16 January 2012, ... includ[ing] a motion for [the] Application to be dismissed on grounds of receivability.

... Having reviewed the submissions of the Parties, the [Dispute] Tribunal consider[ed] it necessary to first rule on whether the ... Application [was] receivable before adjudicating the matter on the merits.

3. The Dispute Tribunal found:

[Mr. Reid] first became aware that something was amiss in the recruitment process on 29 February 2008 when he was told that a 'hold had been put on' the issuance of his letter

¹ The following facts are taken from Judgment No. UNDT/2012/188, paragraphs 1–5.

² The Secretary-General concedes in his answer before the Appeals Tribunal that Mr. Reid was the second ranked candidate and that, when the first ranked candidate indicated her unavailability long-term, he was recommended for the position and informed he would assume his functions in March 2008.

of appointment by the SRSG. Subsequently, [he] was aware of the decision to appoint another candidate to the post in question in June 2008. Still later, circa April 2009, and from [his] own submissions, while in New York, he received what he called a ‘verbal apology’ (for the way things turned out) from the Assistant Secretary-General (...) for Peacekeeping Operations ...³

It noted that “any one of these ‘events’ would have been a suitable time for [Mr. Reid] to seek administrative review of the selection decision. He did not.” Indeed, rather than requesting review of the impugned decision in a timely manner, the UNDT recalled that Mr. Reid waited until 2011 to do so.

4. With respect to the timeliness of the application, the Dispute Tribunal held as follows:

... [T]imelines before the Tribunal normally begin to run from the date of receipt of a decision by management evaluation or the expiry of the time allocated to the Management Evaluation Unit to respond i.e. ninety (90) days from the date of the receipt of a management evaluation decision or ninety days following the expiry of the thirty (30) or forty-five (45) day (depending on where the complaint was filed) deadline.

... But Article 7(1) (a) and (b) of the Rules must be read together with Article 8(3) and (4) [of the UNDT Statute] which prohibits the Tribunal from considering any application that is brought to it three (3) years after the issuance of the administrative decision that a potential applicant is seeking to challenge.

... In otherwise, the discretion afforded to the Tribunal by Article 8(3) of the Statute and Article 35 of the Rules must be read together with Article 8(4) of the Statute. The use of the words “notwithstanding” and “shall” in the latter Article leaves little room for interpretation on the spirit and intent of that provision.

... While some exceptions on the strictures of the applicable statutes of limitations have been granted by the Dispute Tribunal, these have been granted under very exceptional circumstances and the Tribunal has always explained those circumstances.

... The principles of ‘interest of justice’ and ‘exceptional circumstances’ which govern the application of Articles 35 and 8(3) of the Rules and Statute respectively must be applied against recognized and recognizable principles to avoid mystery as to where the law stands.

... [T]he Tribunal finds no exceptional circumstance or particular interest of justice that will be served by the Tribunal exercising its discretion in favour of the Applicant.⁴

³ Judgment No. UNDT/2012/188, paragraph 13.

⁴ *Ibid.*, para 18–23.

Accordingly, the application was dismissed as time-barred.

Submissions

Mr. Reid's Appeal

5. Mr. Reid notes that the Dispute Tribunal erred in fact when it referred to the successful candidate as a "female ... friend" of the SRSG. The appointee was, in fact, male.
6. He submits that the UNDT erred in law when it found his case to be time-barred, as it applied the deadlines established by Staff Rule 11.2(c). In fact, he argues that, at the time of the events in his case, the relevant rule was Staff Rule 11.2(a), which provided that the time limit for requesting administrative review commenced upon receipt of a written decision.
7. Mr. Reid argues that the Dispute Tribunal did not properly address the arguments he adduced on receivability or his right to an effective remedy.
8. He requests that the UNDT Judgment be vacated in order that his case can be considered on its merits.

The Secretary-General's Answer

9. The Secretary-General submits that the UNDT was correct in finding Mr. Reid's application time-barred and that it "properly declined to exercise its discretion to suspend or waive deadlines in the ... case".
10. He further submits that Mr. Reid has not established any reversible error on the part of the UNDT.
11. The Secretary-General requests the Appeals Tribunal to affirm the UNDT Judgment and to reject the appeal in its entirety.

Considerations

12. As a preliminary matter, Mr. Reid's request for an oral hearing is being denied because the Appeals Tribunal considers that it would not assist in deciding the case.

13. In the instant case, Mr. Reid became aware of the decision not to appoint him on or around 29 February 2008. In the absence of a written notice, the Appeals Tribunal accepts Mr. Reid's assertion and fixes that date for the purpose of establishing his deadlines to file before the UNDT.

14. As recalled in Article 7(6) of the Rules of Procedure of the UNDT, "[i]n accordance with article 8.4 of the Statute of the Dispute Tribunal, no application shall be receivable if filed more than three years after the applicant's receipt of the contested administrative decision". Moreover, as the Appeals Tribunal has previously held, "under Article 8(4) of the UNDT Statute, the UNDT cannot waive the time limit to file an appeal, more than three years after the applicant's receipt of the contested administrative decision".⁵ Given this absolute restriction on its judicial discretion, the Dispute Tribunal ought not to have entered into a review of the possible existence of exceptional circumstances justifying an extension of the time limit. As it concluded that neither the interests of justice nor any such exceptional circumstances existed, however, the Appeals Tribunal need not vacate its findings.

15. In addition to the foregoing, Mr. Reid requested management evaluation in July 2011, beyond the two-month time limit set out under former Staff Rule 111.2(a), and he did not allege any exceptional circumstances to justify the waiver of the time limit to appeal to the former Joint Appeals Board under former Staff Rule 111.2(f).

16. The Appeals Tribunal has repeatedly held that it "has been strictly enforcing, and will continue to strictly enforce, the various time limits".⁶

17. The complaint was filed beyond the time limit for administrative review or management evaluation and beyond the threshold for receivability established by the Statute and Rules of Procedure of the UNDT.

Judgment

18. The appeal is dismissed.

⁵ *Bangoura v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-268, para. 30.

⁶ *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043, para. 21.

Original and Authoritative Version: English

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

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Lussick

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

(Signed)

Weicheng Lin, Registrar