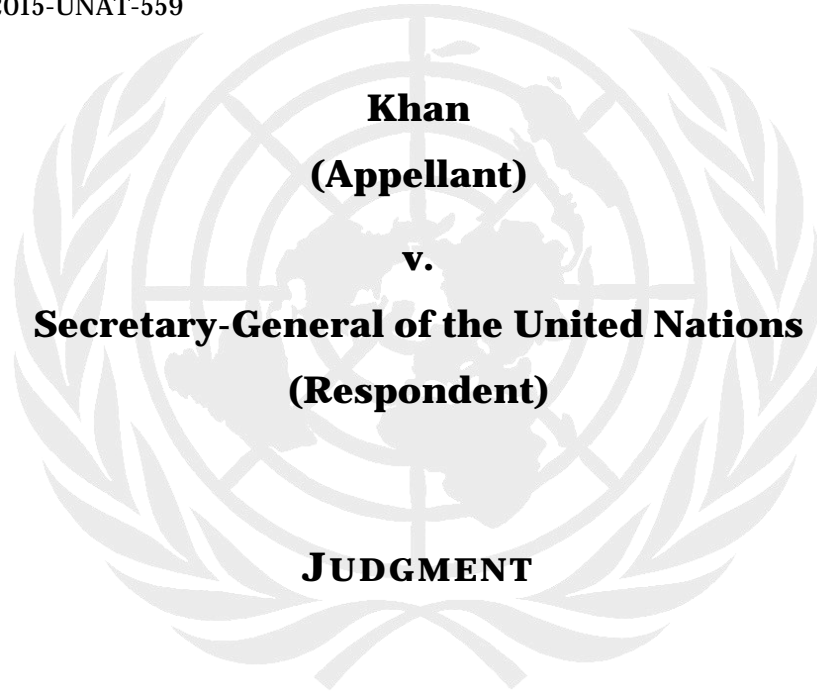




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2015-UNAT-559



**Khan
(Appellant)**

v.

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

JUDGMENT

Before: Judge Richard Lussick, Presiding
Judge Rosalyn Chapman
Judge Inés Weinberg de Roca

Case No.: 2014-645

Date: 2 July 2015

Registrar: Weicheng Lin

Counsel for Mr. Khan: Salim U. Shaikh

Counsel for Secretary-General: John Stompor

JUDGE RICHARD LUSSICK, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment No. UNDT/2014/090, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 27 June 2014 in the case of *Khan v. Secretary-General of the United Nations*. Mr. Nasir Khan appealed on 25 August 2014 and the Secretary-General answered on 27 October 2014.

Facts and Procedure

2. The Appellant entered into service with the United Nations Children's Fund (UNICEF) in Pakistan in February 2006, after which he held a series of appointments, both temporary and fixed-term. At the time of the contested decision, the Appellant was on a fixed-term appointment that he had held since July 2011.

3. On 1 April 2013, an Integrated Budget Review (IBR) of UNICEF Pakistan was approved. It determined that two posts would be abolished "due to necessities of service", one of them being the post encumbered by the Appellant.

4. On 23 April 2013, the Officer-in-Charge of UNICEF Pakistan informed the Appellant that his post would be abolished on 31 December 2013.

5. On 6 September 2013, the Appellant wrote to the Representative of UNICEF in Pakistan (the Representative) referencing the letter he received dated 23 April 2013 and requested that the decision to abolish his post be rescinded.

6. On 14 September 2013, the Representative informed the Appellant that he was "satisfied that the decision to abolish [his] post was taken in line with the criteria developed by this office" for the IBR exercise, and confirmed the reasoning behind the decision.

7. On 12 November 2013, the Appellant requested management evaluation of the decisions of 23 April 2013 and 14 September 2013.

8. On 16 December 2013, the Chief of the Policy and Administrative Law Section, Division of Human Resources, UNICEF, advised the Appellant that his request for management evaluation was time-barred pursuant to Staff Rule 11.2(c) as it was submitted more than seven months after the decision of 23 April 2013.
9. On 31 December 2013, the Appellant separated from service with UNICEF.
10. On 17 March 2014, the Appellant filed an application with the Dispute Tribunal contesting the abolishment of his post.
11. On 24 April 2014, the UNDT issued Order No. 98 (NY/2014) (Order) which ordered, inter alia, that the Secretary-General file his reply to the Appellant's application, and that the Appellant file a response to the Secretary-General's reply.
12. On 27 June 2014, the UNDT issued a summary judgment and dismissed the Appellant's application. Finding that the contested decision was first made on 23 April 2013, the UNDT held that the Appellant had failed to request management evaluation in accordance with the strict timelines required by Staff Rule 11.2(c), and consequently found that his UNDT application was not receivable.

Submissions

Mr. Khan's Appeal

13. The Appellant contests the UNDT Judgment and UNICEF's decision of 16 December 2013 which found that his request for management evaluation was time-barred. The UNDT committed "a gross error of Judgment" when it held that the Order "indicated" that "it would consider receivability as a preliminary issue". This is not based on fact and a plain reading of the Order evidences no such indication. The Appellant submits that the UNDT Judgment merely seeks "to avoid the labour to adjudicate the issues in their totality including the facts and the merits" and "was simply a result of judicial convenience or [...] judicial economy". The Appellant did not receive a fair trial by the UNDT.
14. The Appellant submits that the UNDT could have waived the time limit pursuant to Article 8(3) of the UNDT Statute and Article 9 of the UNDT Rules of Procedure given that notwithstanding that he was "genuinely ignorant" of the procedures of the Organization's

internal justice system, he diligently pursued the issue with UNICEF management. Further, the Appellant's UNDT application was submitted within 90 days of the decision of management evaluation, therefore rendering the issue of "receivability null and void".

15. The Appellant otherwise makes submissions concerning, inter alia, the correctness of the decision by UNICEF to abolish his post, and alleging impropriety in the manner in which the decision was reached. The Appellant requests the Appeals Tribunal to rescind the Judgment and reinstate him to his post as he had seniority over two other drivers who were allowed to keep their posts. He further requests the Appeals Tribunal "order payment of appropriate damages for causing unemployment on unjust and unethical grounds" and any other relief deemed fit.

The Secretary-General's Answer

16. The Dispute Tribunal correctly concluded that the Appellant's application was not receivable by reason of his failure to adhere to the deadline prescribed by Staff Rule 11.2(c) when he requested management evaluation more than four months after the deadline had passed. The UNDT also correctly applied the Appeals Tribunal's jurisprudence to hold that subsequent responses to a staff member's requests for reconsideration simply confirm the original decision and do not have the effect of suspending or re-starting the time limits for initiating formal proceedings.¹

17. The Appellant has not established any errors by the Dispute Tribunal warranting a reversal of the Judgment in accordance with Article 2(1)(e) of the Appeals Tribunal Statute. Regardless of whether the Order notified the Appellant that receivability would be preliminarily considered, the Appellant was aware that the issue was in contention given the Secretary-General raised the issue in his reply, and the Appellant thereafter submitted a response and presented arguments.

18. The Appellant also failed to establish that the UNDT erred in not waiving the deadline for management evaluation. Lastly, the Appellant failed to establish that UNICEF waived the deadline for requesting management evaluation and nothing in UNICEF's letter of 16 December 2013 can be construed as a waiver of the deadline for requesting management evaluation.

¹ *Cremades v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-271.

19. The Respondent requests the Appeals Tribunal to dismiss the appeal and affirm the UNDT Judgment. Should the Appeals Tribunal determine that the UNDT erred in concluding that the case was not receivable, the Respondent requests that the case be remanded to the Dispute Tribunal to be adjudicated on the merits.

Considerations

20. On 23 April 2013, Mr. Khan was informed by the Officer-in-Charge of the UNICEF Country Office in Pakistan that his post would be abolished on 31 December 2013.

21. On 6 September 2013, Mr. Khan requested the UNICEF Representative to revisit this decision. On 14 September 2013, the Representative replied to Mr. Khan confirming the decision.

22. On 12 November 2013, Mr. Khan submitted his request for management evaluation of the 23 April 2013 decision, almost seven months after he had received notification of the said decision. On 16 December 2013, Mr. Khan was informed that his request was time-barred.

23. Mr. Khan then filed his application with the UNDT contesting that decision. The UNDT decided that as he had failed to comply with the deadline for filing his request for management evaluation, which was accordingly time-barred, his application to the UNDT was consequently not receivable.

24. In reaching that decision, the UNDT was cognizant of the applicable statutory law and jurisprudence. It considered that it had jurisdiction under Article 2(1) of the UNDT Statute to hear applications appealing administrative decisions when a staff member has previously submitted the impugned decision for management evaluation. It considered Staff Rule 11.2(c), whereby a request for management evaluation shall not be receivable unless it is sent within 60 calendar days from receipt of the contested administrative decision. It noted that pursuant to Article 8(3) of the UNDT Statute, the UNDT shall not suspend or waive the deadlines for management evaluation. It noted that the UNDT “has no jurisdiction to waive deadlines for management evaluation” or to make any exceptions thereto.²

² Impugned Judgment, para. 23, citing *Ajdini et al. v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108, *Sethia v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-079, and *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

25. Indeed, the Appeals Tribunal has repeatedly and consistently held that the UNDT has no jurisdiction to waive deadlines for management evaluation.³

26. This Tribunal agrees with the UNDT's finding that the 23 April 2013 decision constituted the contested administrative decision in the case. The reply of 14 September 2013 confirming that decision does not constitute a new administrative decision.

27. Mr. Khan submits that the UNDT was factually wrong in stating that its Order No. 98 (NY/2014) indicated that it would consider receivability as a preliminary issue and that the UNDT thereby committed "a gross error of Judgment". Mr. Khan also claims that he did not receive a fair trial because the hearing before the UNDT was limited to such an issue.

28. This Tribunal agrees with Mr. Khan that the Order makes no reference to considering receivability as a preliminary issue. However, Mr. Khan has not established that such an error resulted in a manifestly unreasonable decision or had any effect at all on the decision.

29. Further, Mr. Khan's claim that he did not receive a fair trial cannot be sustained. Mr. Khan has not demonstrated how the decision to consider receivability as a preliminary issue had any effect on his rights to due process and a fair trial. On the contrary, it is a matter of record that the issue of receivability was raised in the Secretary-General's reply which Mr. Khan received, following which he filed a response in which he argued the issue.

30. Mr. Khan also argues that he had "no standard of education" and "was genuinely ignorant of the procedure on the new UN internal justice system" which was "never widely publicized to the staff of the country office" and that the UNDT "may have been benevolent ... and waive[d] the time limit under Art. 8.3 of the UNDT Statute".

31. This Tribunal rejects that argument. First, it is the staff member's responsibility to ensure that he or she is aware of the applicable procedure in the context of the administration of justice at the United Nations. Ignorance cannot be invoked as an excuse.⁴ Moreover, the

³ *Nianda-Lusakueno v. Secretary General of the International Civil Aviation Organization*, Judgment No. 2014-UNAT-472, para. 29, and cites therein; *Eggesfield v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-402, para. 23, and cites therein; *Wu v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-301, para. 26.

⁴ *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, citing *Kissila v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-470, para. 24, *Christensen v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-218 and *Jennings v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-184; see also *Scheepers v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-211.

“new internal justice system” had been in force for well over three years when Mr. Khan received his letter of termination. Further, as mentioned earlier, Article 8(3) of the UNDT Statute specifically precludes the UNDT from suspending or waiving the deadlines for management evaluation.

32. Mr. Khan further submits that as the letter from UNICEF’s Policy and Administrative Law Section dated 16 December 2013 informing him that his request was time-barred advised that “recourse lies with the UNDT and must be initiated within ninety (90) calendar days from the date of receipt of this letter”, his “submission to the UNDT was, therefore, within the limitation period of 90 days since the Application was submitted on 11 March 2014. Hence, it renders their plea of receivability null and void.” This submission is without merit. Mr. Khan is confusing an application to the UNDT, to which this letter was referring, with an application for management evaluation. The letter cannot be construed as a waiver by the UNICEF Administration of the deadline for requesting management evaluation.

33. This Tribunal is satisfied that the UNDT properly considered the facts and the applicable statutory law and jurisprudence in arriving at its decision that Mr. Khan’s application was not receivable.

34. Having failed to demonstrate that the UNDT committed any error of law or any error of fact resulting in a manifestly unreasonable decision, Mr. Khan’s appeal cannot succeed.

Judgment

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

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Lussick, Presiding

(Signed)

Judge Chapman

(Signed)

Judge Weinberg de Roca

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar