



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

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Judgment No. 2021-UNAT-1078

**Abdalla Mohammed Abdalla  
(Respondent)**

**v.**

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

**JUDGMENT**

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Before:	Judge Martha Halfeld, Presiding Judge Kanwaldeep Sandhu Judge Dimitrios Raikos
Case No.:	2020-1405
Date:	19 March 2021
Registrar:	Weicheng Lin

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Counsel for Respondent: Ron Mponda

Counsel for Appellant: André Luiz Pereira de Oliveira

**JUDGE MARTHA HALFELD, PRESIDING.**

1. Abdalla Mohammed Abdalla, a former staff member previously serving as Assistant Protection Officer with the United Nations High Commissioner for Refugees (UNHCR or Agency) in Khartoum, Sudan, filed a motion for extension of time to start an application at the United Nations Dispute Tribunal (Dispute Tribunal or UNDT). By Order No. 103 (NBI/2020) of 28 May 2020, the UNDT extended the time for filing an application to 24 July 2020.<sup>1</sup> On 29 June 2020, the Secretary-General filed an appeal to the United Nations Appeals Tribunal (Appeals Tribunal) contesting the Order. We dismiss the appeal, as irreceivable.

**Facts and Procedure**

2. On 4 February 2020, the Division of Human Resources (DHR/UNCHR) informed Abdalla Mohammed Abdalla (Mr. Abdalla) that he was being dismissed from service for serious misconduct (the Contested Decision). The dismissal was based on documented accounts of Mr. Abdalla requesting and taking money from refugees who were under UNHCR's protection. Mr. Abdalla took approximately a total of USD 2,500 from refugees.

3. On 17 February 2020, the DHR/UNHCR requested Mr. Abdalla to confirm receipt of the Contested Decision. On 21 February 2020, he acknowledged receipt of the Contested Decision. On 27 February 2020, he asked the Organization to advise him “on the count of date considered as elapse of time for [him] to submit [his] appeal process.” And on 28 February, Mr. Abdalla was told “[t]he deadline to appeal is 90 days from date of receipt, which in your case is *90 days from 21 February 2020*” (emphasis added).

4. On 22 May 2020 (a day after the deadline had elapsed), Mr. Abdalla filed a motion for extension of time to file an application with the UNDT (the Motion). No response to the Motion was requested from the Organization by the Dispute Tribunal.

5. On 28 May 2020, the UNDT issued Order No. 103 (the Order) extending the time for filing an application to 24 July 2020, holding that “as the circumstances facing global populations are unusual, the Tribunal is minded to exercise a degree of leniency with the deadline for the filing of this application.”

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<sup>1</sup> *Abdalla v. Secretary-General of the United Nations*, Order No. 103 (NBI/2020), dated 28 May 2020 (Impugned Order).

## Submissions

### The Secretary-General's Appeal

6. The Secretary-General filed a timely appeal arguing (i) that his appeal is receivable and (ii) that the UNDT erred in law and exceeded its jurisdiction by deciding on a motion that had been filed beyond the statutory deadline.

7. Relying on the jurisprudence of the Appeals Tribunal, the Secretary-General argued that “judgment” in Article 2(1) of the Appeals Tribunal Statute (Statute) includes a decision or order and that the Order is subject to appeal because it addresses a jurisdictional matter. Thus, the Secretary-General posited that because the UNDT exceeded its jurisdiction by deciding on a motion that had been filed after the statutory deadline, the instant appeal is receivable.

8. Also relying on the jurisprudence of this Tribunal, the Secretary-General argued that statutory deadlines should be strictly enforced and that the UNDT has the authority to exercise its discretion under Article 8(3) of the Dispute Tribunal Statute (UNDT Statute) to grant an extension, only when such request has been filed within the statutory timeframe.

9. In the present case, the Contested Decision was first received by Mr. Abdalla on 4 February 2020. Article 8(4) of Administrative Instruction UNHCR/AI/2018/18 (Administrative Instruction on Misconduct and the Disciplinary Process) establishes that “a decision to separate or dismiss the staff member under staff rule 10.2 (a) (viii) or (ix) will be deemed to be received on the date the decision was electronically communicated.”

10. Nevertheless, after Mr. Abdalla acknowledged receipt on 21 February 2020, the Organization responded to his inquiry that “[t]he deadline to appeal [was] 90 days from date of receipt, which in [his] case [was] 90 days from 21 February 2020.”

11. Thus, it must have been clear to Mr. Abdalla that the latest he could file for an appeal or request an extension must be on or before 21 May 2020.

12. Finally, the Secretary-General also argued that there was no evidence that the circumstances relied upon by the UNDT to grant the motion, presumably the global pandemic, specifically prevented Mr. Abdalla from electronically and remotely filing his application in a timely fashion.

13. The Secretary-General requested the Appeals Tribunal to reverse the Order and find that the UNDT erred on a question of fact and law and exceeded its competence by finding that the Motion was receivable outside the statutory timeframe.

**Mr. Abdalla's Answer**

14. Mr. Abdalla's primary argument was that the delay of one day is a mere technicality and denying him the right to challenge the Contested Decision would defeat the ends of justice.

15. Mr. Abdalla also countered the appeal on the premise that the UNDT can consider granting an extension on an *ex parte* basis without needing a response from the Secretary-General.

16. Additionally, Mr. Abdalla also requested this Tribunal to read Article 8(3) in conjunction with Article 8(4) of the UNDT Statute, which states that an "application shall not be receivable if it is filed more than three years" whereas in the instant case, the delay was only by one day.

17. Without providing specifics, Mr. Abdalla also submitted that the disruptions occasioned by the global pandemic, namely internet outages, made it difficult for him to file the Motion on time.

18. Finally, Mr. Abdalla concluded by stating that a reversal of the instant Order would be tantamount to ousting the original jurisdiction of the UNDT to determine whether a matter is within its jurisdiction or not.

**Considerations**

*(Ir)receivability of the appeal*

19. The issue for consideration in the present appeal is whether the UNDT exceeded its jurisdiction when it issued Order 103 (NBI/2020) whereby it granted Mr. Abdalla an extension of time to file his application. According to the Secretary-General, the UNDT exceeded its jurisdiction because the Motion therefor had been filed beyond the statutory deadline, which is in clear contradiction with the Appeals Tribunal case law.

20. Our jurisprudence is well established that interlocutory appeals on matters of evidence, procedure, and trial conduct are not receivable.<sup>2</sup> The general principle underlying the right to appeal under Article 2(1) of the Statute is that only appeals against final judgments will be receivable. Nevertheless, when it is clear that the UNDT has exceeded its jurisdiction or competence, an appeal of an interlocutory order may be receivable. The import of our jurisprudence on the receivability of appeals against interlocutory orders is that the excess of jurisdiction or competence must be “clear” or “manifest.”<sup>3</sup>

21. In *Reilly*, we decided:<sup>4</sup>

The impugned Orders are case management or interlocutory orders. Article 2(1) of the Statute provides that the Appeals Tribunal can hear an appeal from a “judgment” rendered by the Dispute Tribunal. It does not clarify whether the Appeals Tribunal may only hear an appeal from a final judgment of the Dispute Tribunal or whether an interlocutory or interim decision made during the course of the Dispute Tribunal’s proceedings may also be considered a judgment subject to appeal.

However, the Appeals Tribunal has previously held that appeals against most interlocutory decisions will not be receivable, in particular, decisions on matters of evidence, procedure, and trial conduct. An interlocutory appeal is only receivable in cases where the Dispute Tribunal has clearly exceeded its jurisdiction or competence.

Whether an interlocutory appeal will be receivable depends on the subject-matter and consequences of the impugned decision and whether the impugned decision goes directly to the merits of the case. As established in *Bertucci*, the appellant has the onus of proving that the Dispute Tribunal has clearly exceeded its jurisdiction or competence.

22. The appellant has the onus of proving the Dispute Tribunal “clearly” exceeded its jurisdiction or competence. This will not be the case in every interlocutory decision by the UNDT, even when the UNDT makes an error of law: “[i]f the UNDT errs in law in making this

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<sup>2</sup> *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005, para. 11. Also, *Nadeau v. Secretary-General of the United Nations*, 2020-UNAT-1058, paras. 17-18; *Hassan v. Secretary-General of the United Nations*, 2019-UNAT-943, paras. 17-18.

<sup>3</sup> *Elhabib v. Secretary-General of the United Nations*, 2016-UNAT-655, para. 32.

<sup>4</sup> *Reilly v Secretary-General of the United Nations*, Judgment No. 2019-UNAT-975, paras. 27 to 29 (footnotes omitted) (emphasis in original), citing *Villamorán v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-160; *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-062; *Kasmani v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-011; *Onana v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-008; and *Tadonki v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-005.

decision and the issue can be properly raised later in an appeal against the final judgment on the merits, there is no need to allow an appeal against the interlocutory decision.”<sup>5</sup>

23. In the present case, the Appeals Tribunal is satisfied that there is no reason to depart from its jurisprudence and thus finds the appeal as non-receivable. The Appeals Tribunal has consulted the UNDT site and found out that Mr. Abdalla did not file an application within the extended time limit. The case was thus disposed of without application by means of Order No. 169 (NBI/2020) issued on 2 September 2020, which was after the filing of the present appeal. This renders the instant appeal inevitably moot and is thus not receivable.

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<sup>5</sup> *Nadeau*, *ibid*, para. 27; *Wasserstrom v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-060, para. 19; see also *Chemingui v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-641, para. 18.

**Judgment**

24. The appeal is dismissed as non-receivable.

Original and Authoritative Version: English

Dated this 19<sup>th</sup> day of March 2021.

*(Signed)*

Judge Halfeld, Presiding  
Juiz de Fora, Brazil

*(Signed)*

Judge Sandhu  
Vancouver, Canada

*(Signed)*

Judge Raikos  
Athens, Greece

Entered in the Register on this 31<sup>st</sup> day of March 2021 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar