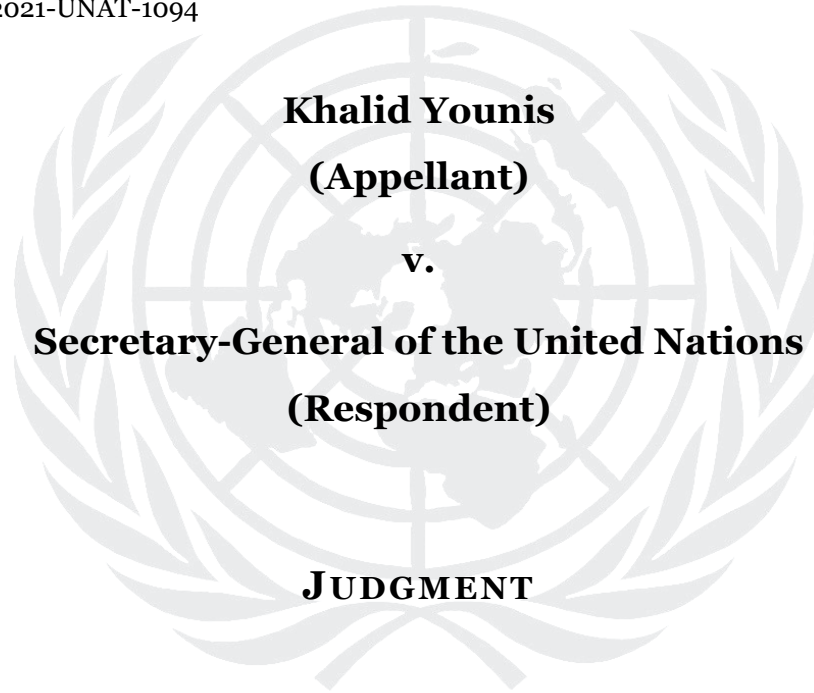




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2021-UNAT-1094



**Khalid Younis
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Sabine Knierim, Presiding Judge Martha Halfeld Judge John Raymond Murphy
Case Nos.:	2020-1413
Date:	19 March 2021
Registrar:	Weicheng Lin

Counsel for Appellant:	Self-represented
Counsel for Respondent:	Francisca Lagos Pola

JUDGE SABINE KNIERIM, PRESIDING.

1. Mr. Khalid Younis contested the decision to deny him certain daily subsistence allowance (DSA) and additional terminal expenses in respect of his official travel from Sudan to Italy and back to Sudan. The United Nations Dispute Tribunal dismissed his application as irreceivable *ratione temporis*. For reasons set out below, we affirm.

Facts and Procedure

2. Mr. Younis is Chief Transport Officer at the United Nations Mission in Darfur (UNAMID) on a continuing appointment based in El Fasher.

3. On 23 May 2019, Mr. Younis went on an official travel to attend a training session at the Global Service Centre in Brindisi, Italy. The duration of his official travel was originally from 23 May to 3 June 2019. But due to the deteriorating security situation in Khartoum, his return flight to El Fasher on 3 June was suspended, and he was permitted to stay in Khartoum and travel back to El Fasher on 6 June 2019. Disagreement arose subsequently as to what Mr. Younis was entitled to in terms of the DSA and the terminal expenses for his official travel to and from Brindisi including his stay in Khartoum.

4. On 1 November 2019, Mr. Younis filed with the Management Evaluation Unit (MEU) a request for management evaluation of the decision to deny him certain DSA and additional terminal expenses.

5. On 21 December 2019, a Management Evaluation Officer, MEU, wrote an e-mail to Mr. Younis, informing the latter that the MEU was still in the process of gathering additional information and asking Mr. Younis to “bear with” the MEU. During the ensuing months through early April 2020, Mr. Younis followed up with reminder e-mails to the MEU, and the MEU responded some time with new questions for clarification, and some time with an update on its investigation.

6. On 23 June 2020, the Under-Secretary-General for Management Strategy, Policy and Compliance (USG for Management) informed Mr. Younis of the outcome of the management evaluation that the contested decision was upheld.

7. On 1 July 2020, Mr. Younis filed an application with the Dispute Tribunal to challenge the Administration's interpretation of rules pertaining to unpaid DSA and other travel expense entitlements.

8. In Judgment on Receivability No. UNDT/2020/112 dated 8 July 2020, the Dispute Tribunal rejected Mr. Younis' application as not receivable *ratione temporis*. It found that the deadline for Mr. Younis to file an UNDT application was 16 March 2020. As Mr. Younis submitted his UNDT application on 1 July 2020, his application was time barred as per Article 8(1)(d)(i)(b) of the UNDT Statute and could not be considered further.

Submissions

Mr. Younis' Appeal

9. Mr. Younis requests that the Appeals Tribunal order that the Dispute Tribunal "reconsider" his UNDT application.

10. He states that he requested a management evaluation on 1 November 2019, and was waiting for the MEU to take a decision before he approached the Dispute Tribunal. The MEU was involved in the negotiations to resolve his case. He kept reminding the MEU and was reassured by the MEU colleagues that they were working on his case and that his case was still under consideration.

11. Mr. Younis maintains that the Dispute Tribunal erred in dismissing his application on the ground of time bar, because he timely filed his UNDT application on 1 July 2020 after having received the outcome of the management evaluation dated 23 June 2020. There was no point of engaging the Dispute Tribunal when the MEU was working on his case.

The Secretary-General's Answer

12. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Younis' appeal in its entirety.

13. The Secretary-General submits that Mr. Younis submitted a request for management evaluation on 1 November 2019. Given that he did not receive a response from the USG for Management within 45 calendar days (16 December 2019) of filing his management evaluation request, Mr. Younis was required under Article 8(1)(d)(i)(b) of the

UNDT Statute to file an application with the UNDT within 90 calendar days of 16 December 2019, i.e., by 16 March 2020. As Mr. Younis filed his UNDT application only on 1 July 2020, the UNDT was correct in finding that it had not been filed by the statutory deadline and rejecting it as not receivable *ratione temporis*.

14. The Secretary-General also submits that there is no evidence on record of Mr. Younis having filed a request for suspension or waiver of the statutory time limits, nor was there any showing of exceptional circumstances.

15. The Secretary-General further submits that Mr. Younis has failed to show that the Dispute Tribunal erred in law or fact or reached a clearly unreasonable decision when it concluded that his application was irreceivable *ratione temporis*. Mr. Younis' arguments about him waiting for a decision by the MEU and receiving assurances from the MEU that his case was still under consideration have no merit. The UNDT Statute specifically contemplates circumstances where the MEU fails to provide a response to a management evaluation request within the 30- or 45-day response period and dictates that the 90-day time limit for filing an UNDT application runs from the expiry date of the relevant response period. In the present case, the USG for Management responded to Mr. Younis' management evaluation request on 23 June 2020, long after the expiry of the 90-day period for filing an UNDT application. Consequently, the receipt of the response on 23 June 2020 did not reset the clock for filing an UNDT application. Neither did the ongoing exchanges with the MEU reset the clock for filing an UNDT application.

Considerations

16. The only issue on appeal is whether it was erroneous of the UNDT to apply Article 8(1)(d)(i)(b) of its Statute and dismiss Mr. Younis' application as not receivable *ratione temporis*.

17. Article 8 of the UNDT Statute provides:

1. An application shall be receivable if:

(a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute;

(b) An applicant is eligible to file an application, pursuant to article 3 of the present statute;

(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;

...

3. The Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

18. We cannot detect any errors in the UNDT Judgment, which is in accord with the consistent jurisprudence of the Appeals Tribunal.

19. In *Dieng*, we held:¹

... In the present case, Mr. Dieng submitted his request for management evaluation on 1 June 2018. The MEU's response should have been made within 45 calendar days or no later than 16 July 2018. However, the MEU responded to his request on 17 October 2018, which was more than 45 calendar days from the date of his request. Mr. Dieng filed his application with the UNDT on 7 November 2018, which is within 90 calendar days of the MEU's response but more than 90 calendar days from the date by which the MEU should have responded, that is 16 July 2018, and therefore was well beyond the deadline by which he should have filed his application, i.e. 15 October 2018.

... Therefore, this Tribunal finds that the UNDT initially did not make any error of law in concluding that Mr. Dieng's application of 7 November 2018 was not receivable *ratione temporis* because it was filed outside the regulatory time limit. The MEU's response of 17 October 2018, which was received after the expiration of that 90-day period, did not reset the clock for Mr. Dieng to file an application with the UNDT.

¹ *Dieng v. Secretary-General of the United Nations*, Judgment No. 2019-UNAT-941, paras. 27-29.

... Besides, having reviewed the documents on file, we find, contrary to Mr. Dieng's claims, that neither his communications to the MEU of 2, 3 and 7 June 2018, whereby he supplemented his management evaluation request of 1 June 2018, nor the MEU's acknowledgement letter of 8 June 2018 could have, or did have, the effect of extending the statutory deadlines for Mr. Dieng to file his application with the UNDT.

20. It is well settled that ongoing exchanges with the MEU do not extend or re-set the applicable time limits.²

21. In the present case, as Mr. Younis filed his request for management evaluation on 1 November 2019, the "relevant response period" expired after 45 days on 16 December 2019. Mr. Younis had 90 days after that (until 16 March 2020) regardless of his dealings with the MEU. As the response period expired and Mr. Younis did not file his application within 90 days, the UNDT had no jurisdiction to examine the merits of his claim. The filing of a response by the MEU more than 90 days later after the expiration of the 45-day time limit (on 23 June 2020) does not change the situation.

² *Lemonnier v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-679, para. 42.

Judgment

22. The appeal is dismissed and Judgment No. UNDT/2020/112 is affirmed.

Original and Authoritative Version: English

Dated this 19th day of March 2021.

(Signed)

Judge Knierim, Presiding
Hamburg, Germany

(Signed)

Judge Halfeld
Juiz de Fora, Brazil

(Signed)

Judge Murphy
Cape Town, South Africa

Entered in the Register on this 22nd day of April 2021 in New York, United States.

(Signed)

Weicheng Lin, Registrar