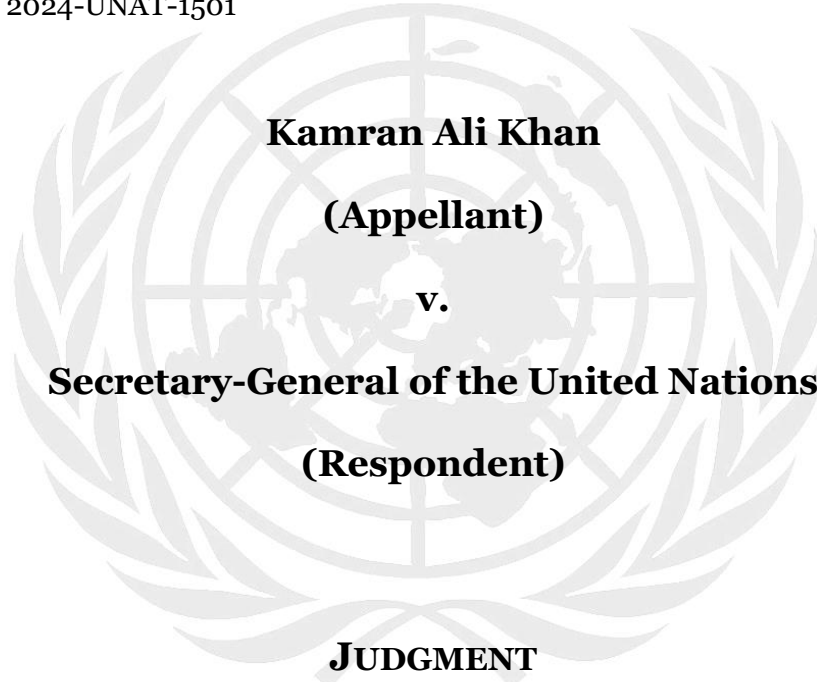




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2024-UNAT-1501



Before:	Judge Graeme Colgan, Presiding Judge Nassib G. Ziadé Judge Abdelmohsen Sheha
Case No.:	2023-1860
Date of Decision:	25 October 2024
Date of Publication:	13 December 2024
Registrar:	Juliet E. Johnson

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

JUDGE GRAEME COLGAN, PRESIDING.

1. Kamran Ali Khan, a former staff member with the United Nations Children’s Fund (UNICEF), has filed an appeal of Summary Judgment No. UNDT/2023/081 (impugned Judgment),¹ in which the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) found his application not receivable.

2. In his application before the UNDT, Mr. Khan had contested the decision dismissing him from service with UNICEF (contested Decision). The ground for summary dismissal of Mr. Khan’s claims as not receivable was that they had not been filed with the UNDT within the statutory time limit. The impugned Judgment and its reasoning relied on an earlier interlocutory decision by the Dispute Tribunal not to allow Mr. Khan’s request for an extension of time to file his application (Order).²

3. For the reasons set out below, we grant the appeal, reverse the impugned Judgment and remand the proceeding to the Dispute Tribunal for adjudication on its merits by another Judge.

Facts and Procedure

4. Because these are important to the determination of the appeal, we set them out in detail. This is a somewhat more comprehensive account of relevant events than was recorded in the impugned Judgment but is based on admissible and undisputed facts from the evidence presented before the UNDT. Our account also refers to events related to the interlocutory application to extend the time for filing the substantive application with the UNDT, which it refused.

5. On 1 April 2020, Mr. Khan joined UNICEF as a Security Officer based in Pakistan, after a career with a variety of United Nations organizations in different theatres in Pakistan, Yemen, and Nigeria starting in 2010.

6. On 4 January 2021, a report was made to UNICEF of possible misconduct by Mr. Khan. An investigation of this allegation was undertaken which included an interview of Mr. Khan.

¹ *Khan v. Secretary-General of the United Nations*, Judgment No. UNDT/2023/081.

² Order No. 007 (NBI/2023) issued on 9 January 2023.

7. On 1 February 2022 and while the investigation was still underway, Mr. Khan was assigned “on loan” to the United Nations Population Fund (UNFPA) based in Addis Ababa, Ethiopia.

8. On 30 June 2022, Mr. Khan was served with a copy of the UNICEF investigation report. On 17 August 2022, he was charged with misconduct. That same day Mr. Khan was put on administrative leave without pay (ALWOP) and he returned to his home town (Swabi) in Pakistan.

9. It is undisputed that, during the mid-to-later months of 2022, Mr. Khan’s home town in Pakistan had been experiencing prolonged and severe flooding resulting in deaths, homelessness and subsequent sustained disruptions to electricity and associated infrastructural services including internet connections.

10. Because of the severe consequences of infrastructure damage and loss of, or damage to, his personal effects, including his laptop computer, Mr. Khan and his family relocated temporarily to Islamabad between August and mid-September 2022. He subsequently returned to his home town to assist with rebuilding and restoration efforts. His internet access, including access to e-mails, was through a local internet café. The weak internet access had limited bandwidth capacity and precluded or at least made it very difficult to read complex or lengthy attachments to e-mails. Mobile phone access was, however, available to Mr. Khan in his hometown.

11. In September 2022, Mr. Khan participated remotely, probably from Islamabad, in the investigation of the allegations against him by making submissions to UNICEF’s investigators. During the same month, he obtained an extension of time to respond to the allegations against him due to his displacement from his home as a result of the earlier monsoon flooding of his home town and surrounding areas. He complied with this extended deadline on 30 September 2022.

12. On 10 October 2022, the Administration decided that the charges against Mr. Khan had been established by clear and convincing evidence and that he was to be dismissed from his position with UNICEF.

13. On 11 October 2022, there were a number of e-mail exchanges between United Nations officials responsible for the investigation’s outcome, discussing how to notify Mr. Khan of the decision. These exchanges indicated that the Administration was aware that he was in a flood-

affected region of Pakistan and concerned whether he was contactable by e-mail and by telephone.³ Eventually it was decided that he should be informed orally by phone that he could expect notification of the investigation's outcome and the Administration's decision via e-mail, but without disclosing the outcome in the phone call.⁴ The call occurred as planned, but Mr. Khan was not told when he could expect to receive the decision.⁵

14. Since the decisions about the misconduct allegations were made by UNICEF Headquarters in New York, which was operating nine to 10 hours behind Pakistan (depending on seasonal clock adjustments), it has been necessary to determine carefully what the time and date stamps on e-mails record about their sending and receipt times.

15. On 11 October 2022, the official notice of the contested Decision was sent from UNICEF to Mr. Khan's work e-mail address. The e-mail with the contested Decision attached, sent by the Administrative Law Unit, indicates a timestamp of 6:24:41 PM Pakistan time (PST), corresponding to approximately 9:24 AM the same day New York Time (NYT). Although after office or normal United Nations working hours in Pakistan where Mr. Khan was based, this contested Decision was regarded by the Administration as having been transmitted to Mr. Khan on that date (11 October) at the time of arrival in Mr. Khan's e-mail inbox.

16. On 8 January 2023, Mr. Khan, by his lawyer, requested by motion a waiver of the time limitation in the following words: "[a]ny delay in the submission of my Application may graciously be condoned".⁶

17. On 9 January 2023, the Dispute Tribunal, by Order, denied Mr. Khan's request for an extension of time to file his application.

18. On 10 January 2023, Mr. Khan filed his comprehensive and detailed application with the UNDT, wherein, among other things, he contended that he had received the contested Decision on 26 October 2022.

19. On 21 June 2023, the UNDT held a Case Management Discussion (CMD) of Mr. Khan's case, conducted remotely. On the following day, the UNDT issued Order No. 111 (NBI/2023) addressing the disclosure and filing of documents, lists of witnesses and other procedural

³ Appeal Form Annex 8 (Abdullah Fadil E-mail to UNICEF NYHQ 7:43 AM).

⁴ Appeal Form Annex 9 (E-mail NYHQ LAW UNIT 6:11 AM NYT).

⁵ Appeal Form Annex 8.1 (Abdullah Fadil E-mail to UNICEF NYHQ at 02:59).

⁶ Appeal Form Annex 3 (Extension Request by Mr. Khan to UNDT), para. V(viii).

issues. Mr. Khan responded to this Order in a timely way. The UNDT also advised that it would issue a ruling on receivability.

The impugned Judgment

20. This concise impugned Judgment makes reference to, and cannot be considered in isolation of, the Order and its reasoning made by the Dispute Tribunal a very short time before Mr. Khan purported to file his application. The Order was made *ex parte*, meaning the Secretary-General was not heard before the Order was made. However, the circumstances were urgent and Mr. Khan needed to know the outcome of his motion as time was, from the UNDT's view at least, fast running out.

21. In making the Order on 9 January 2023, the UNDT applied Article 8(3) of the Statute of the Dispute Tribunal (UNDT Statute) which permits the suspension or waiver of deadlines “for a limited period of time and only in exceptional circumstances”. The Dispute Tribunal found that the circumstances claimed by Mr. Khan—hardships in collecting information and evidence, communication and network breakdowns caused by major flooding in Pakistan, and limited recourse to legal representation—were not exceptional but rather “generic and unsubstantiated”. Mr. Khan was criticised for not providing documentary evidence showing that he had been personally affected by flooding. He was found to have been aware of the charges against him since August 2022 and the disciplinary measures taken against him since October 2022. The UNDT concluded that Mr. Khan “took no action until now to retain legal representation”. Mr. Khan was also criticised for not offering evidential support that he did not receive the contested Decision until 26 October 2022. The Dispute Tribunal stated that it was “not convinced that [his] deadline ha[d] not already lapsed”.⁷

22. The impugned Judgment concluded that Mr. Khan was officially notified of his dismissal for misconduct on 11 October 2022. This finding was on the basis that he had been informed on that date that he “would shortly receive a decision letter regarding his disciplinary case”. The UNDT determined that the letter containing the contested Decision was sent by e-mail to Mr. Khan's United Nations e-mail address on 11 October 2022 at “09:25 AM, Eastern

⁷ Order, para. 6.

Standard Time i.e. 19:25 Pakistan Standard Time”. The UNDT concluded that Mr. Khan “was therefore notified of the contested decision on 11 October 2022”.⁸

23. The UNDT found that Mr. Khan was required to submit his application within 90 days, and when counting from 12 October 2022, the deadline expired on 9 January 2023. As his application was filed on 10 January 2023, it was held not receivable and was dismissed summarily. The UNDT further confirmed that, with regard to Mr. Khan’s request for extension of time denied on 9 January 2022, there was “no reason to afford any waiver or extension to the time limit for filing required by the UNDT’s Rules of Procedure”.⁹

Submissions

Mr. Khan’s Appeal

24. Mr. Khan requests that the Appeals Tribunal reverse and remand the impugned Judgment and declare that his application filed with the UNDT was timely and hence receivable.

25. First, Mr. Khan submits that the impugned Judgment incorrectly determined that the contested Decision was delivered on 11 October 2022. He argues that the e-mail records indicate that the contested Decision was sent on 11 October 2022 at 6:24:41 PM (NYT), which corresponds to 12 October 2022 at 4:24:41 AM (PST), the time zone in which Mr. Khan resided. Therefore, Mr. Khan asserts that the 90-day time limit commenced on 13 October 2022 and concluded on 10 January 2023.

26. Second, Mr. Khan contends that the impugned Judgment wrongly concluded that he had been able to receive and respond to the contested Decision before 26 October 2022 by e-mail. He asserts that a deadly flood, which constituted a *force majeure* event, severed his internet connection, preventing him from receiving the contested disciplinary decision until 26 October 2022. Mr. Khan further argues that, despite the Respondent’s concerns about his access to the UNICEF e-mail address, the contested Decision was nevertheless sent via e-mail only. Moreover, Mr. Khan maintains that his acknowledgment of the contested Decision was a “decisive factor” in determining the 90-day time limit, and therefore, the deadline for his application should be, at the latest, 26 January 2023.

⁸ Impugned Judgment, paras. 11-12.

⁹ *Ibid.*, para. 13.

27. Third, Mr. Khan argues that the UNDT overlooked the fact that his Motion for an extension of time, filed on 8 January 2023, temporarily suspended the time limit until the issuance of the Order on 9 January 2023. Consequently, Mr. Khan contends that his application, submitted the very next day on 10 January 2023, did not lack due diligence and should be deemed within the prescribed time limit.

28. Fourth, Mr. Khan asserts that the UNDT erred in concluding that “there is no reason to afford any waiver or extension to the time limit for filing the application”. He emphasizes that, in addition to the devastation caused by the flood, his counsel had been occupied with the care of his (counsel’s) spouse who was gravely ill from 15 November 2022 and died on 8 January 2023. Mr. Khan contends that these exceptional circumstances warrant a waiver of the strict time limit.

29. In conclusion, Mr. Khan contends that the UNDT failed to exercise jurisdiction vested in it, and that his application was filed within time.

The Secretary-General’s Answer

30. The Secretary-General requests that the Appeals Tribunal affirm the impugned Judgment and dismiss the appeal.

31. First, the Secretary-General submits that the UNDT correctly held that Mr. Khan’s application was time-barred and not receivable for lateness. He argues that the UNDT accurately found that Mr. Khan received the contested Decision on 11 October 2022, which required him to file his application by 9 January 2023 at the latest. However, Mr. Khan filed his application on 10 January 2023, missing the deadline by one day and rendering the case inadmissible.

32. Second, the Secretary-General contends that the date of receipt of the contested Decision was 11 October 2022, not 12 October 2022. He asserts that the e-mail records indicate that the contested Decision was delivered on 11 October 2022 at 6:24:41 PM (PST), which corresponds to 9:25 AM on the same day in New York (NYT). The Secretary-General further argues that Mr. Khan failed to provide any evidence to support his claim that the contested Decision was received on 12 October 2022 at 4:24 AM.

33. Third, the Secretary-General maintains that the timing of Mr. Khan's acknowledgment of receipt of the contested Decision is entirely irrelevant to determining the applicable time limit for filing with the UNDT.

34. Fourth, the Secretary-General asserts that the death of Mr. Khan's counsel's wife does not justify the late submission of the application. He contends that Mr. Khan is introducing an entirely new argument for the first time, which should therefore be dismissed. Furthermore, the Secretary-General argues that the records indicate that Mr. Khan did not contact his counsel until 3 January 2023. The period of inactivity preceding his late engagement with his counsel suggests that Mr. Khan had ample time to prepare and submit his application within the prescribed time limit.

35. The Secretary-General requests the Appeals Tribunal to dismiss Mr. Khan's appeal.

Considerations

An oral hearing of the appeal

36. These are our reasons for having declined the request for an oral hearing of the appeal as sought by Mr. Khan. His grounds for seeking an oral hearing were that the case demanded an orderly presentation and elaboration by his counsel.

37. While the default practice is that appeals are heard on papers and written submissions filed, if the Appeals Tribunal is satisfied that an oral hearing will enable it to determine the case more expeditiously and fairly, then an oral hearing may be directed.¹⁰

38. We were not satisfied that an oral hearing is necessary in Mr. Khan's case. The issues for decision are limited, clear, and well evidenced by documents and written submissions made by the parties. For these reasons, we declined to hold an oral hearing.

New evidence on appeal

39. Mr. Khan purported to rely on new evidence and arguments which, in addition to the consequences of the flooding in Pakistan, are alleged to have affected the delay in filing his proceedings.

¹⁰ Article 18 of the Rules of Procedure of the Appeals Tribunal.

40. In addition to the circumstances affecting Mr. Khan personally on and after 11 October 2022, he now asserts that there were notable circumstances affecting his counsel on whose advice and actions Mr. Khan depended. On 15 November 2022, Mr. Khan's counsel's spouse was hospitalised in critical condition and remained in the Intensive Care Unit (ICU), dying on 8 January 2023. Under these circumstances, Mr. Khan argues that he would probably not have received the prompt and detailed attention by his lawyer that it otherwise would have.

41. However, this information did not form part of his application to the UNDT for a time extension or was otherwise brought to the Dispute Tribunal's attention at any point thereafter. There is no explanation why it was not made known to the UNDT. As a result, it was not addressed by the Dispute Tribunal.

42. Mr. Khan has not sought the necessary leave from the UNAT to adduce this evidence on appeal for the first time. Instead, he has simply purported to include it within the documentary materials in support of his appeal. The Secretary-General objects to its admission and says that this additional information should not be admitted or considered in the appeal.

43. Article 2(5) of the Statute of the Appeals Tribunal (UNAT Statute) provides that:

In exceptional circumstances, and where the Appeals Tribunal determines that the facts are likely to be established with documentary evidence, including written testimony, it may receive such additional evidence if that is in the interest of justice and the efficient and expeditious resolution of the proceedings. Where this is not the case, or where the Appeals Tribunal determines that a decision cannot be taken without oral testimony or other forms of non-written evidence, it shall remand the case to the Dispute Tribunal. The evidence under this paragraph shall not include evidence that was known to either party and should have been presented at the level of the Dispute Tribunal.

44. While this evidence, including the supporting documentary evidence may be admissible "in the interests of justice and the efficient and expeditious resolution of the proceedings", Article 2(5) ultimately precludes it from our consideration. That is because the hospitalisation on 15 November 2022 and the unfortunate death of the lawyer's wife on 8 January 2023 was known to Mr. Khan before the UNDT rendered the impugned Judgment on non-receivability on 31 July 2023. During this six-month period, Mr. Khan could have submitted this evidence to the UNDT but he did not. Notably, the UNDT held a CMD with the

parties, but the consequential Order No. 111 (NBI/2023) did not disclose any reference to this ground for extension of time.

45. Under these circumstances, the UNAT is not able to consider the hospitalisation and subsequent death of Mr. Khan's lawyer's wife. We have decided to address the appeal without reference to this evidence.

The substantive appeal

46. We conclude first that the UNDT erred in fact and in law by determining that, even if Mr. Khan was out of time to file his proceedings, the circumstances were not exceptional and warranted a one-day extension. The UNDT erred in law by misapplying the legal test in light of the facts before it and thereby not considering the case on its merits. The circumstances leading to a very minor delay for Mr. Khan's filing were exceptional, and it should be in the interests of justice to allow the minimal extension of time.

47. We address whether Mr. Khan filed his proceedings with the UNDT within the time limit. Article 8(1)(d)(ii) of the UNDT Statute provides that appeals must be filed "within 90 calendar days of the applicant's receipt of the administrative decision". The emphasis is on the *receipt* of the decision by the applicant. The time limit in the UNDT Statute does not differentiate the time of sending and the time the applicant electronically receives the communication. The UNDT Statute provides that the time limit begins when the applicant receives the decision. Given the near-instantaneous nature of electronic receipt by an inbox of an e-mail following its sending, and the global distribution of staff across various time zones and their abilities to receive work-related communications, where timing of receipt is in issue, careful consideration needs to be given on a case-by-case basis to the facts and realities of different circumstances. It is not always accurate to assume that a decision is received on the same day it is sent, regardless of the time or day, nor that the time limit for challenging the decision begins immediately upon sending.

48. Section 9.3 of the Administrative Instruction ST/AI/2017/1 (Unsatisfactory conduct, investigations and the disciplinary process) states materially in relation to the receipt of a decision such as that which was sent to Mr. Khan in this case: "[t]he date of receipt by the staff member of the decision shall be determined in accordance with section 2.4. However, a

decision to separate or dismiss the staff member...will be deemed to be received on the date the decision was electronically communicated”.

49. Because of the qualifier in Section 9.3 relating to decisions to dismiss or separate (as was the contested Decision), the definition of receipt in Section 2.4—allowing for consideration of “circumstances beyond a staff member’s control that impeded the staff member’s receipt of the documentation”, is excluded. These decisions are often the most serious and momentous cases for staff members.

50. There have been at least three judgments of the UNAT confirming this position. In *El-Anani*,¹¹ relying on *Zaqqout*,¹² the Appeals Tribunal confirmed that this objective assessment of receipt is unaffected by the staff member’s knowledge even if sent during a staff member’s annual leave or outside working hours.

51. Moreover, in *Temu*¹³, where notice of the administrative decision triggering the period for challenge was sent and received electronically at 9:03 PM, after working hours, this was nevertheless deemed to have been received by the staff member on that same day.

52. It is important to acknowledge that staff members must generally adhere to the specified time limits. Failure to do so puts staff at risk of loss altogether of their rights to challenge administrative decisions. However, in relation to Section 9.3 of the Administrative Instruction, we note the applicability of Article 8(3) of the UNDT Statute that in an exceptional case, it is still open for the UNDT to waive or extend this limitation to ensure that its application is just. In this case, the relevant applicable circumstances included that the decision was “received” outside normal business hours, by a staff member on ALWOP, without any precise indication as to when it would be sent, despite a communication by phone that it would be coming, and when electronic communications or internet access were limited.

53. In the present case, Mr. Khan was informed by telephone on 11 October 2022 that he should expect a decision of the outcome of the contested Decision. However, he was given no information during that call when he would receive the result of the investigation against him.

¹¹ *El-Anani v. Secretary-General of the United Nations*, Judgment No. 2024-UNAT-1466, paras. 34 and 36.

¹² *Ismail abed allah Zaqqout v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2022-UNAT-1346, para. 66.

¹³ *Hoyce Temu v. Secretary-General of the United Nations*, Judgment No. 2021-UNAT-1174, para. 33.

54. There was evidence suggesting that, at least at first blush and as Mr. Khan contends, he received the contested Decision through UNICEF's email system on 12 October 2022 (PST). However, we are persuaded that the UNDT was correct in concluding that the contested Decision was received in Mr. Khan's e-mail inbox on 11 October, but outside local office hours. However, given the uncertainty earlier that day about when this advice of decision would be received, it would have been unreasonable to expect Mr. Khan to monitor his e-mail inbox constantly and potentially for very long periods including after business hours even if he had been able to do so without his laptop computer.

55. Given the exceptional factors in this case, the date of receipt of the administrative decision by Mr. Khan should have been extended by several hours at least to be the following business day, 12 October 2022 (PST). As a result, the 90-day filing period would have expired at the end of 10 January 2023, by which time Mr. Khan had filed his proceedings earlier that day, making his application, within time, albeit barely.

56. Mr. Khan's explanation made to the Dispute Tribunal was that he did not receive advice of the contested Decision until 26 October 2022. There was no evidence adduced to contradict that. His case maintains that a combination of his relocation from the city of Islamabad to his home town in a relatively isolated and flood-damaged part of Pakistan, his inability to communicate using his damaged laptop, his inability to receive complex and lengthy documents such as the contested Decision at an operating internet café, all may well have meant that it was not until about 15 days after the sending of the contested Decision that he received (as opposed to having been deemed to have received) and was able to read it. Mr. Khan's correspondence generated immediately after that date tended to corroborate his account of these events.

57. However, even if the UNDT correctly disregarded Mr. Khan's statement to this effect, we conclude that his application should have been accepted as filed within the time limit. The UNDT wrongly declined to suspend, waive or extend the time for doing so.

58. The statutory scheme governing proceedings before the UNDT as the first instance independent judicial body allows for extensions or waivers in exceptional circumstances that occasionally arise. This scheme allows the UNDT to take account of and balance the administrative desirability of adherence to limitations with the reality that, on occasion, strict compliance may be impractical or unjust. When exceptional circumstances are established,

relevant considerations affecting the exercise of this discretion include, *inter alia*, the reasons for the delay, the length of the delay, the prejudice caused to the Organization or others, the responsibility for the delay, and the ascertainable effects of granting relief from such delay.

59. As we have already noted, the UNDT's Statute states that the limitation period for filing begins from the date the administrative decision is received by the staff member. In all but the rarest of cases, in the absence of evidence to the contrary, the receipt date of an e-mail or other electronic communication is deemed the date of its receipt, especially if the staff member is at work and expecting to receive electronic communications as a part of their duties. As this case illustrates, however, that is not always so.

60. A *force majeure* (or external and overwhelming event beyond the control of the parties) or other out-of-the-ordinary circumstances may prevent immediate access to e-mail by the staff member. In such cases, the Administration cannot assume necessarily that the sending of a communication guarantees its immediate receipt by the staff member on the same day.

61. In this case, the length of the delay was extremely minimal: only one day at most. There is no prejudice to the Administration or to any other persons, nor is it conceivable that any such prejudice could have arisen in these circumstances. But ultimately, an applicant such as Mr. Khan must establish that the circumstances responsible for the delay were "exceptional". There are two key features of this test that we elaborate on. First, "exceptional" means other than, or out of, the ordinary, or unusual. The circumstances are "the exception rather than the rule" as it is sometimes expressed. The second is that if there are several relevant circumstances, these should be assessed together to establish whether these "circumstances" (the UNDT Statute uses the plural term) were exceptional.

62. There were several circumstances that are relevant to this consideration in Mr. Khan's case. First, he had difficulty in receiving and reading e-mails and especially e-mails containing detailed text. These arose from the infrastructural consequences of the severe flooding of his home district where he was when the communication about the Respondent's decision was sent to him. Second, while he had been advised by telephone earlier in the day to expect a communication, this did not include advice about when the contested Decision might be receivable by him. Third, accepting the Secretary-General's submission about the time of receipt of his e-mail at the relevant server accessible by Mr. Khan, this was, at about either of 6:25 PM or 7:25 PM on Tuesday 11 October 2022 (PST), after usual business or office hours.

It would have been unreasonable to have expected Mr. Khan, even if his internet café had been open for business then, to wait there constantly checking his e-mail, especially without knowing when the communication would arrive. None of these circumstances, individually or collectively, could be said to have been unexceptional or, as the UNDT described them, “generic”.

63. Based on the exceptional circumstances outlined above, it is in the interests of justice to grant an extension of time to at least the following day when his application was filed and the UNDT erred in declining to do so.

64. There are several associated submissions which we should address briefly. The Secretary-General has sought to persuade us that allowing the time limitation period to run from 26 October 2022 would permit the staff member to choose or dictate when he or she can file proceedings by determining the date of their receipt.

65. First, we note that our decision does not require such a lengthy extension of 15 days. But in any event, we reject that draconian categorisation of the consequences of a successful appeal by Mr. Khan. Because of our conclusion that the circumstances of Mr. Khan’s receipt of the contested Decision were exceptional and that the interests of justice warrant a one-day extension for filing his application, the Secretary-General’s premonition of a figurative floodgates’ opening does not arise. Each case of a request for such an extension must be determined on its merits and this does not, by any stretch of the imagination, allow a staff member to dictate when the limitation period will begin to run.

66. The impugned Judgment focused on the times of the flood events in Pakistan, which occurred in August and September 2022. The Dispute Tribunal doubted that these circumstances would have hindered Mr. Khan from receiving an e-mail containing the contested Decision one to two months later. While the rain may have stopped and floodwaters may have receded, that approach did not take account of the infrastructure damage caused by the floods and the consequent disruptions to electronic communications especially in affected rural areas in which Mr. Khan was then located. These are the circumstances set this case apart from others.

67. It was wrong of the Dispute Tribunal to have preferred its own account of the flooding events but to have ignored Mr. Khan’s undisputed account of the effects of these on him. The

Dispute Tribunal erred in fact and in law by taking the unduly narrow approach to this question and thereby incorrectly determining the non-receivability of his pleadings.

68. In these circumstances, the UNDT's impugned Judgment cannot stand and must be reversed. Another UNDT Judge should now hear and determine Mr. Khan's substantive proceedings.

Judgment

69. Mr. Khan's appeal is granted, and Judgment No. UNDT/2023/081 is reversed. The proceeding is remanded to the UNDT for decision by another Judge on its merits.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.



Judge Colgan, Presiding



Judge Ziade



Judge Sheha

Judgment published and entered into the Register on this 13th day of December 2024 in New York, United States of America.



Juliet E. Johnson, Registrar