



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2020-1457

Fogarty
(Appellant)

v.

Secretary-General
of the International Maritime Organization
(Respondent)

ORDER No. 383 (2020)

1. On 19 December 2019, Ms. Margaret Mary Fogarty, a Senior Telephonist with the International Maritime Organization (IMO), filed an appeal with the Staff Appeals Board (SAB) of the IMO, against a decision taken by the Advisory Board on Compensation Claims (ABCC) that her illness was not directly related to her service with the IMO.
2. On 28 April 2020, the SAB, following a review of the evidence and merits of the case, issued a decision that the case should not be considered as service-incurred. Ms. Fogarty had 90 calendar days within which to appeal the SAB decision, i.e., by 27 July 2020.
3. On 14 September 2020, Ms. Fogarty filed a request for suspension, waiver or extension of the time limit to appeal. She explains that she intended to appeal the SAB decision to the United Nations Appeals Tribunal (Appeals Tribunal), but was not able to do so in a timely manner, because there was a death in the family and she had to take care of her elderly sick father. She has been on special leave without pay since 7 August 2019. Additionally, due to the Covid-19 pandemic, she could not find a lawyer to assist her in preparing her appeal. Ms. Fogarty therefore requests that the Appeals Tribunal waive the time limit and grant her an extension for additional two months counting from 14 September 2020.

4. On 28 September 2020, the Respondent filed his comments, stating that Ms. Fogarty's waiver and extension request should be rejected.

5. Article 7(3) of the Statute of this Tribunal provides that "[t]he Appeals 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". Article 30 of our Rules of Procedure allows this Tribunal to shorten or extend a time limit "when the interests of justice so require".

6. On the basis of Ms. Fogarty's submissions regarding the circumstances that prevented her from filing a timely appeal, this Tribunal finds that the principles of exceptional circumstances and interests of justice justify granting Ms. Fogarty's request for an extension of time. Although she has not produced evidence of the different factual circumstances surrounding her request, the facts as presented by her were not denied by the Respondent and some were even confirmed by the correspondence annexed to the Respondent's comments.

7. Furthermore, while it is true that a staff member can be self-represented before the internal justice system or request legal assistance from the Organisation or Agency for which she or he works, she or he can choose to have an independent or external lawyer represent her or his interests. In this context, the fact that Ms. Fogarty exchanged electronic communication with the Organisation from late April until mid-May 2020 for the purpose of gathering information or clarifying doubts about her situation does not invalidate her argument that she experienced extreme difficulties in finding an independent lawyer specialized in the matter to advise her in the appeals process.

8. The Appeals Tribunal hence finds that the pandemic and consequent lockdown caused by Covid-19, coupled with the irrefutable arguments relating to family care and plausible difficulties in finding a lawyer, are exceptional enough to justify the granting of Ms. Fogarty's request for time limit waiver and extension, under the applicable legal framework.

IT IS HEREBY ORDERED that Ms. Fogarty's request is **GRANTED**. She is to file her appeal no later than Monday, 16 November 2020.

Original and Authoritative Version: English

Dated this 28th day of September 2020
in Juiz de Fora, Brazil.

(Signed)
Judge Martha Halfeld,
First Vice-President

Entered in the Register on this 29th day
of September 2020 in New York, United States.

(Signed)
Weicheng Lin, Registrar