



**Before:** Judge Joelle Adda

**Registry:** New York

**Registrar:** Pallavi Sekhri, Officer-in-Charge

KAMAL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

**ON RECEIVABILITY**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Jenny Kim, ALD/AS/OHR, UN Secretariat

## **Introduction**

1. On 29 January 2022, the Applicant, a former staff member who served as a Senior Interpreter (at the P-5 level) with the Department for General Assembly and Conference Management in New York (“DGACM”) until his retirement in August 2019, filed an application with the Dispute Tribunal contesting the decision to deny his request for an extension of the deadline for claiming his dependent repatriation benefits.

2. On 2 November 2022, the Respondent filed a motion to determine receivability as a preliminary matter.

3. On 7 November 2022, by Order No. 100 (NY/2022), the Tribunal granted the Respondent’s motion and decided to adjudicate the issue of receivability as a preliminary matter and directed the Applicant to make submissions on this subject, which he did on 16 November 2022 and 18 November 2022. The Respondent made an additional submission on 17 November 2022.

## **Factual background**

4. Prior to the Applicant’s retirement on 31 August 2019, he served as a Senior Interpreter at the P-5 level with DGACM in New York.

5. On 25 March 2021, the Applicant sent an email to the Executive Office of DGACM requesting different repatriation dates for his spouse and stepson. The Applicant also sought approval for extending the travel date deadline beyond 31 August 2021 in view of the COVID-19 pandemic.

6. On 27 September 2021, the Administrative Officer informed the Applicant that the Assistant Secretary-General of Human Resources (“ASG/OHR”) had decided not to grant his request for an exception to staff rule 7.3 (which provides for a two-year limit to return travel expenses for eligible family and dependents) as there were no

exceptional and compelling justifications warranting special consideration. The decision took into account the fact that the Applicant undertook separation travel within the two-year limit and that his spouse could have also travelled with him at that time as her passport had more than six months of validity at that point and she would have been eligible to exercise the entitlement.

7. On 28 September 2021, the Applicant filed a request for a management evaluation of the decision of the ASG/OHR.

8. On 29 October 2021, the Management Evaluation Unit (“MEU”) recommended upholding the decision not to grant the Applicant’s request for an extension of repatriation travel benefits for his spouse.

9. On 29 January 2022, the Applicant filed the present application.

## **Consideration**

### *Receivability*

10. Staff rule 11.4(a) provides that a staff member may file an application against a contested administrative decision, whether or not it has been amended by any management evaluation, with the Dispute Tribunal within 90 calendar days from the date on which the staff member received the outcome of the management evaluation.

11. Article 8.1(d)(i)(a) of the Dispute Tribunal’s Statute further provides that in cases where management evaluation of the contested decision is required, an application shall be receivable if it is filed within 90 calendar days of the applicant’s receipt of the response from management to his or her request for management evaluation.

12. The Respondent submits that the application is not receivable *ratione temporis* because, in accordance with art. 8.1 of the Dispute Tribunal’s Statute, the Applicant’s

application was not filed within the statutory deadline of 90 calendar days from his receipt of the response to his request for management evaluation.

13. To determine what date sets off the deadline to challenge a contested decision, the Tribunal will establish the date on which the staff member knew or reasonably should have known of the contested decision.

14. The record shows that the Applicant received a response to his request for management evaluation on 29 October 2021. On 29 October 2021, The Applicant therefore knew that MEU recommended upholding the ASG/OHR's decision not to grant the Applicant's request for an extension of repatriation travel benefits for his spouse.

15. The Applicant had 90 calendar days from 29 October 2021, (i.e. until 27 January 2022) to file his application with the Dispute Tribunal. The Applicant filed his application on 29 January 2022, two days late.

16. The Applicant maintains that his application is receivable. He relies on a copy of an email in which a counsel from the Office of Staff Legal Assistance erroneously advised the Applicant that "the calculation of 90 days runs from 30 October 2021". That erroneous email, however, does not have effect of extending the deadline for the filing of the application (see, *Scheepers*, 2012-UNAT-211). Furthermore, even if it is assumed, in the Applicant's favour, that he had 90 calendar days from 30 October 2021 (i.e., until Friday, 28 January 2022) to file his application, his application would remain time barred as he filed his application late on 29 January 2022.

17. Under art. 8.3 of the Dispute Tribunal's Statute, the 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". However, under the consistent jurisprudence of the Appeals Tribunal, such request for a suspension or waiver of the time-limit to file application must be filed before expiration of the relevant time-limit (see, for instance, *Thiam* 2011-UNAT-144, *Cooke* 2012-UNAT-275, and *Shehadeh*

2016-UNAT-689). In the present case, the Tribunal notes that the Applicant did not make a prior written request to suspend or waive the time limit to file the application under art. 8(3) of the Dispute Tribunal's Statute.

18. The record is clear that the application was filed only on 29 January 2022, therefore after 90 days from the date the Applicant was notified of the contested decision.

19. Time limits for formal contestations are to be strictly enforced. The Appeals Tribunal has held that a day late is by no means *de minimis* (*Rüger*, 2016-UNAT-693). The Dispute Tribunal has no discretion to waive the applicable deadlines in this case.

20. The application is therefore not receivable *ratione temporis* as time-barred.

21. Accordingly, the Dispute Tribunal is not competent to hear the application.

**Conclusion**

22. In light of the foregoing, this application must therefore be dismissed as not receivable *ratione temporis*.

*(Signed)*

Judge Joelle Adda

Dated this 27<sup>th</sup> day of December 2022

Entered in the Register on this 27<sup>th</sup> day of December 2022

*(Signed)*

Pallavi Sekhri, Officer-in-Charge, New York