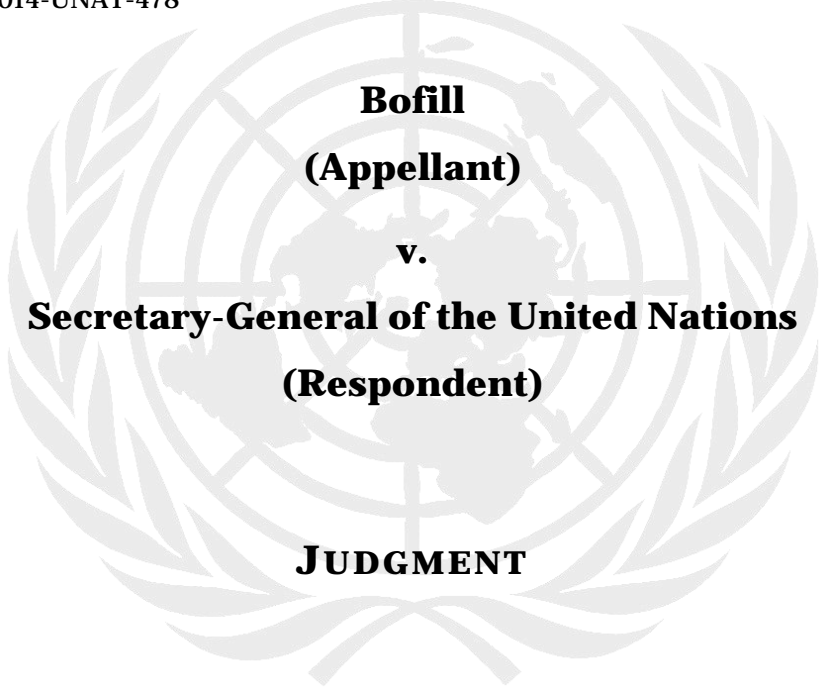




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2014-UNAT-478



**Bofill
(Appellant)
v.
Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Luis María Simón
Judge Mary Faherty

Case No.: 2014-551

Date: 17 October 2014

Registrar: Weicheng Lin

Counsel for Appellant: Self-Represented

Counsel for Respondent: Noam Wiener

JUDGE INÉS WEINBERG DE ROCA, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Marie-José Bofill against Summary Judgment No. UNDT/2013/141, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 13 November 2013. The Registry of the Appeals Tribunal received Ms. Bofill's perfected appeal on 10 January 2014, and the Secretary-General of the United Nations filed his answer on 13 March 2014.

Facts and Procedure

2. Ms. Bofill is a former staff member at the P-5 level with the Office of the United Nations High Commissioner for Refugees (UNHCR). On 13 February 2013, she was notified of the decision not to promote her to the D-1 level during the 2010 and 2011 Annual Promotions Sessions. On 1 April 2013, Ms. Bofill requested management evaluation of the decision not to promote her.

3. On 1 May 2013, she received an e-mail from the Office of the Deputy High Commissioner, which stated:

Please be informed that your request for management evaluation is currently under consideration. This message is without prejudice to your rights to file an appeal with UNDT and we draw your attention to the time limits for such filing in accordance with Article 8 of the UNDT Statute.

4. However, she did not receive any reply to her management evaluation request.

5. On 21 October 2013, in response to Ms. Bofill's query, the Office of the Deputy High Commissioner sent her an e-mail, stating in part:

Since no decision was taken on your request for management evaluation and given that the time limit for filing an application with the UNDT has now expired, I consider that the question of a response to your request is moot.

6. On 31 October 2013, Ms. Bofill submitted an application with the UNDT to contest her non-promotion decision as well as the lack of reply to her management evaluation request.

7. In Summary Judgment No. UNDT/2013/141, the Dispute Tribunal rejected Ms. Bofill's application. Given that she was notified of the contested decision on 1 April 2013, she should have appealed by 1 August 2013. However, Ms. Bofill did not apply to the Dispute Tribunal until 31 October 2013. Her application was therefore time-barred and would be beyond all applicable statutory deadlines, even assuming that she received a response to her management evaluation request on 1 May 2013 and that she was working in the field outside the UNHCR headquarters. The Dispute Tribunal did not find any evidence of exceptional circumstances to warrant a waiver or extension of the applicable time limits in her case.

Submissions

Ms. Bofill's Appeal

8. Ms. Bofill appeals the UNDT decision, claiming that it is "imbalance[d]". If she had let the deadline elapse, it was primarily because she was confused by the first sentence of the 1 May 2013 message from the UNHCR Administration.

9. She argues that she acted in good faith, with no legal counsel and had to be pro-active to protect her health. She adds that she cannot provide medical certificates because she took preventive measures.

10. She further submits that the UNHCR Administration distorted the spirit of the reform of the internal system of justice, as it misled staff and let time elapse in its favour.

11. Ms. Bofill requests that the Appeals Tribunal accept and remand her case to the UNDT as "exceptionally receivable".

The Secretary-General's Answer

12. The Secretary-General requests that the appeal be denied.

13. Ms. Bofill has not established any errors warranting reversal of the UNDT Judgment. Medical reasons and the absence of legal counsel do not constitute extraordinary circumstances warranting the waiver of time limits.

14. Finally, the Secretary-General recalls that the Appeals Tribunal decided in *Cooke* that the “UNDT cannot consider whether exceptional circumstances exist unless the applicant has submitted a prior written request for waiver”.¹

Considerations

15. The UNDT rejected the application of Ms. Bofill as time-barred.

16. Ms. Bofill appeals on the ground that she acted in good faith and did not benefit from legal counsel.

17. Article 8 of the UNDT Statute states, in part, that an application shall be receivable if:

(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[.]

18. Ms. Bofill was notified of the contested decision on 13 February 2013 and informed on 1 May 2013 by the Office of the Deputy High Commissioner that Article 8 of the UNDT Statute applied to her appeal. This circumstance is not disputed.

19. This Tribunal has repeatedly held that it “has been strictly enforcing, and will continue to strictly enforce, the various time limits”.² The Appeals Tribunal has followed the jurisprudence of the former Administrative Tribunal according to which only circumstances “beyond his or her control that prevented the applicant from exercising the right of appeal in a timely manner” may be considered “exceptional circumstances” justifying a waiver of the statutory time limit.³

¹ *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, para. 30.

² *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043, para. 21. See also *Ibrahim v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-069; *Harding v. Secretary-General of the United Nations*, Order No. 44 (2011); *Meron v. Secretary-General of the United Nations*, Order No. 42 (2011); *Islam v. Secretary-General of the United Nations*, Order No. 7 (2010).

³ *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029, para. 14.

20. Ms. Bofill appeals the UNDT Judgment arguing that she let the deadline elapse primarily because she was confused by the first sentence of the message of 1 May 2013 from the Office of the Deputy High Commissioner.

21. This circumstance, which M. Bofill reiterates before us, was considered by the UNDT in paragraphs 19-21 of its Judgment. The Appeals Tribunal is satisfied that the UNDT's pronouncement in this regard is in accordance with the established case law.

Judgment

22. The appeal is rejected.

Original and Authoritative Version: English

Dated this 17th day of October 2014 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Simón

(Signed)

Judge Faherty

Entered in the Register on this 22nd day of December 2014 in New York, United States.

(Signed)

Weicheng Lin, Registrar