



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

Judgment No. 2017-UNAT-731

**Nikwigize
(Appellant)**

v.

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

JUDGMENT

Before:	Judge Rosalyn Chapman, Presiding Judge Dimitrios Raikos Judge Martha Halfeld
Case No.:	2016-971
Date:	31 March 2017
Registrar:	Weicheng Lin

Counsel for Mr. Nikwigize:	Self-represented
Counsel for Secretary-General:	Nathalie Defrasne

JUDGE ROSALYN CHAPMAN, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal of Judgment on Receivability No. UNDT/2016/110, issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 16 August 2016, in the case of *Nikwigize v. Secretary-General of the United Nations*. Mr. Andre Nikwigize filed his appeal on 24 September 2016, and on 27 January 2017, the Secretary-General filed his answer.

Facts and Procedure

2. Mr. Nikwigize is a former staff member who served as a Senior Programme Officer, at the P-5 level in the New York office of the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing Countries (OHRLLS). He was separated from service on 30 November 2015, as the result of a disciplinary dismissal.

3. On 14 March 2016, Mr. Nikwigize filed an application with the Dispute Tribunal challenging his dismissal *inter alia* on the ground that the penalty of dismissal was disproportionate to the misconduct found by the Office of Internal Oversight Services (OIOS).

4. On 8 April 2016, in addressing the Secretary-General's claim that his application was not timely, Mr. Nikwigize requested that the UNDT waive the statutory deadline for filing an application. On 3 June 2016, in Order No. 124 (NY/2016), the UNDT ordered Mr. Nikwigize to produce relevant documentation to support the request for waiver, and the Secretary-General to file a response with other documentation.

5. On 10 June 2016, Mr. Nikwigize filed his response to Order No. 124 (NY/2016), in which he stated, in part:

... During the months of December 2015 and January 2016, I spent time exchanging emails with OHRM [Office of Human Resources Management] on the relocation process. Initially, I was expected to be relocated to Burundi, my home country, but due to current problems of security and conflicts in that country, I requested to be relocated to South Africa. The request was approved on 5 January 2016.

...

... After all the extensive exchange of emails..., I was able to travel to Johannesburg on 3 February 2016 and arrived the following day... .

... It took me more than one month to settle in Johannesburg and be connected to internet. Immediately, I started preparing the Application that I submitted to UNDT on 12 March 2016.

... For all these reasons, I maintain my appeal to accept my request to waive the 90 days' requirement.

6. On 13 June 2016, in accordance with Order No. 124 (NY/2016), the Secretary-General filed his response to Mr. Nikwigize's motion, contending the application was untimely and time-barred from being received.

7. On 16 August 2016, the UNDT issued Judgment on Receivability No. UNDT/2016/110, finding Mr. Nikwigize's application was untimely and not receivable *ratione temporis*, and denying his request to waive the statutory time for filing an application.

8. On 24 September 2016, Mr. Nikwigize filed an incomplete appeal of the UNDT Judgment, which he perfected on 9 November 2016, at the request of the Registry of the Appeals Tribunal. On 11 January 2017, the Registry transmitted the appeal to the Secretary-General. The Secretary-General timely filed his answer on 27 January 2017.

Submissions

Mr. Nikwigize's Appeal

9. The Appellant contends that there are "exceptional circumstances" justifying the filing of his application twelve days late in the Dispute Tribunal. "[T]he delays were due to time taken for moving to another country that is not [his] home country, and the difficulties to access internet and be able to file the case on time."

10. The UNDT erred by failing to consider mitigating circumstances as "exceptional circumstances" for allowing the late filing of the application. Moreover, the UNDT should have considered the nature of the application, which challenged a disciplinary measure of serious consequences.

The Secretary-General's Answer

11. The UNDT correctly found that the application was not receivable *ratione temporis*. It is well-established that the UNDT must strictly adhere to time limits for filing an application, to ensure the timely hearing of staff members' cases and the prompt rendering of judgments. The time for filing an application challenging a disciplinary measure is 90 days from the date the staff member is informed of the outcome of the disciplinary process. Mr. Nikwigize did not file within this time.

12. As to waiving the deadline for filing an application, the UNDT correctly determined that Mr. Nikwigize had not requested waiver, as he should have, before the time for filing the application had expired. Moreover, the UNDT further correctly determined that there were no exceptional circumstances to waive the filing deadline, as Mr. Nikwigize did not show any circumstances beyond his control. Thus, the UNDT did not err in refusing to waive the time limits for filing the application.

13. The Appellant does not show any error by the UNDT warranting reversal of the findings and conclusions of the Judgment. Rather, he merely disagrees with the outcome of the case and makes the same arguments he made before the UNDT. Thus, the Appellant has not satisfied the requirements of Article 2(1) of the Appeals Tribunal Statute.

Considerations

14. There is no dispute that Article 8(1)(d)(ii) of the UNDT Statute is the statutory provision governing the timeliness of Mr. Nikwigize's application to the Dispute Tribunal. Subsection (ii) provides that an application shall be receivable if it is filed "[i]n cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant's receipt of the administrative decision". And there is no dispute that an application challenging a disciplinary measure is a case where management evaluation of the contested decision is not required within the meaning of Article 8(1)(d)(ii).

15. In finding that Mr. Nikwigize's application was untimely and not receivable, the UNDT held:¹

... [I]t is uncontested that the disciplinary decision challenged by [Mr. Nikwigize] was communicated to him on 30 November 2015. Therefore, pursuant to art. 8.1(d)(ii) of the Dispute Tribunal's Statute, an appeal against this decision was to be filed within 90 days of communication, notably by 29 February 2016. It results that the application submitted on 12 March 2016 was filed after the mandatory time limit had expired.

16. The UNDT's legal conclusion is unassailable. Mr. Nikwigize's application was not receivable *ratione temporis*. Even Mr. Nikwigize acknowledges that his application was untimely. However, he claims that the UNDT erred in not waiving time for him to file the application due to exceptional circumstances. In this regard, Article 8(3) of the Dispute Tribunal's Statute provides that "[t]he 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".

17. In *Thiam*, the Appeals Tribunal held: "This Court can exercise its discretion under Article 7 of the Statute upon a written application for suspension, waiver, or extension of time limit by an appellant *prior* to the filing of an appeal."²

18. Applying the rationale of *Thiam*, the UNDT determined that Article 8(3) of the UNDT Statute could not assist Mr. Nikwigize:³

... The [Dispute] Tribunal further notes that no motion for waiving and[/]or suspending the deadline to file the application was filed before the expiration of the deadline or as part of the belated application. [Mr. Nikwigize] only submitted a request to waive the deadline for challenging the dismissal on 8 April 2016 and only after the Respondent had invoked that the application was time-barred and not receivable *ratione temporis*, as part of his comments to the receivability issue. It results that the motion was not only filed after the expiration of the statutory time limit to file an application [on] 29 February 2016, but was filed almost a month after the filing of the application on the merits.

¹ Impugned Judgment, para. 32.

² *Thiam v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-144, para. 18 (emphasis in original).

³ Impugned Judgment, para. 33.

19. We conclude that the UNDT correctly applied *Thiam* to Article 8(3) of the UNDT Statute. However, *Thiam* does not allow an applicant or appellant to request a waiver of the time limits for filing a late application or appeal in the untimely (or belated) application or appeal. Thus, the UNDT erred when it appeared to suggest that a waiver could be requested “as part of the belated application”.⁴

20. The Appeals Tribunal further determines that the UNDT also erred when it “review[ed] the reasons provided by the Applicant”, and determined “that they do not represent exceptional circumstances to justify the delay in filing the application”.⁵ As Mr. Nikwigize’s request for waiver was not filed before the statutory time limit for filing the application had lapsed,⁶ the UNDT had no jurisdiction or was not competent to consider whether there were exceptional circumstances to waive the deadline within the meaning of Article 8(3) of the UNDT Statute. Nevertheless, this error by the UNDT did not adversely affect the Dispute Tribunal’s ultimate conclusion that the application was not receivable *ratione temporis*.

Judgment

21. The appeal is denied; Judgment No. UNDT/2016/110 is affirmed.

⁴ *Ibid.*

⁵ *Ibid.*, para. 35.

⁶ See, e.g., *Harrich v. Secretary-General of the United Nations*, Judgment No. 2015-576, para. 25.

Original and Authoritative Version: English

Dated this 31st day of March 2017 in Nairobi, Kenya.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Raikos

(Signed)

Judge Halfeld

Entered in the Register on this 26th day of May 2017 in New York, United States.

(Signed)

Weicheng Lin, Registrar