



Judgment No. 2014-UNAT-472

Counsel for Appellant: Abdoulaye Diallo

Counsel for Respondent: Christopher M. Petras

JUDGE INÉS WEINBERG DE ROCA, PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. José Nianda-Lusakueno against the decision taken by the Secretary General of the International Civil Aviation Organization (Secretary General and ICAO, respectively) on 5 August 2013 in respect of ICAO Appeal No. 184. Mr. Nianda-Lusakueno appealed on 12 November 2013 and the Secretary General of ICAO answered on 10 January 2014.

Facts and Procedure

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13. Mr. Nianda-Lusakueno requests that the Appeals Tribunal order that his case be heard by the AJAB on the merits, or that he be reinstated in his former position and be paid the lost earnings and an unspecified amount of compensation for the suffering that he and his family had to endure.

The Secretary General's Answer

14. Mr. Nianda-Lusakueno failed to submit a request for administrative review within the 30-day time limit. As the Appeals Tribunal has no jurisdiction to waive the deadlines for administrative review, his appeal must be denied.

15. The 21 February 2013 e-mail from the DD/ADB to Mr. Nianda-Lusakueno was not a new decision, but a reiteration of the 14 December 2012 decision. Furthermore, it cannot be understood to constitute an extension or waiver, explicit or implied, of the time limits envisaged in Staff Rule 111.1.

16. There is no requirement for a staff member to exhaust the informal administrative remedies before pursuing formal review and appeal. While entertaining the possibility of Mr. Nianda-Lusakueno being confused about informal versus formal review procedures, and recommending that changes be made to Staff Rule 111.1 to clarify this distinction, the AJAB nevertheless rejected such possible confusion as a basis for a waiver of the 30-day time limit and unanimously advised the Secretary General of ICAO not to support Mr. Nianda-Lusakueno's request.

17. As it rejected Mr. Nianda-Lusakueno's appeal *ratione temporis*, the AJAB did not adjudge the substantive issues that he had raised. Consequently, Mr. Nianda-Lusakueno's plea for a decision on the merits is not properly before the Appeals Tribunal. If the Appeals Tribunal were to find Mr. Nianda-Lusakueno's appeal receivable, it should remand the present case to the AJAB for findings and recommendations on the merits.

18. The Secretary General of ICAO requests that the Appeals Tribunal deny the appeal in its entirety.

Considerations

19. Mr. Nianda-Lusakueno joined ICAO in 2003 as a G-3 Shipping Clerk. His appointment was extended until 31 December 2012. On 14 December 2012, he was offered an extension from 1 January to 31 March 2013 and was notified in writing that his
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