Judgment No. 2017-UNAT-731

Counsel for Mr. Nikwigize: Self-represented

Counsel for Secretary-General: Nathalie Defrasne

> … 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.

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 writte

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

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

(Signed)	*(Signed)*	*(Signed)*
Judge Chapman, Presiding	Judge Raikos	Judge Halfeld

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

(Signed)

Weicheng Lin, Registrar