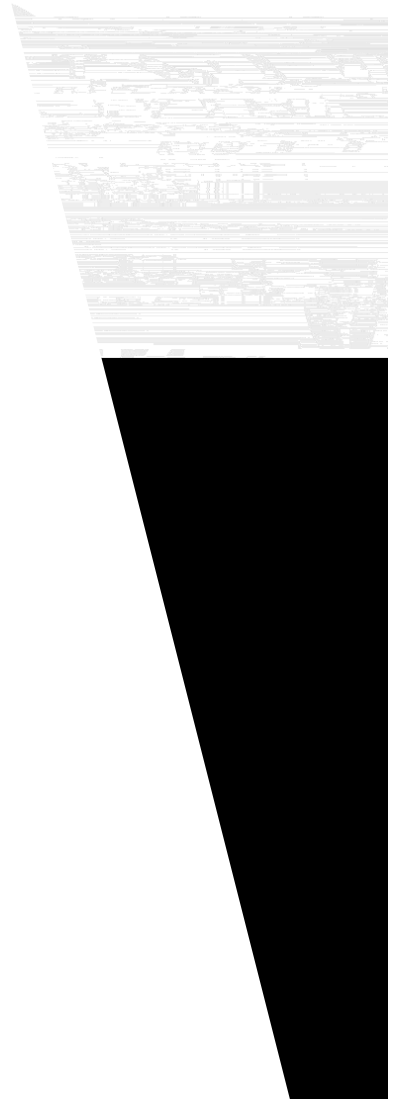


UNITED N



JUDGE MARTHA HALFELD , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against the decision of the Secretary General of the International Civil Aviation Organization (ICAO), dated 31 January 2018, to accept the Opinion of the Advisory Joint Appeals Board (AJAB or the Board) and reject Appeal No. 194. Mr. Tom Sylvester filed the appeal on 28 March 2018, and the Secretary General of ICAO filed her answer on 1 June 2018.

Facts and Procedure

2. At the time of the events that gave rise to Mr. Sylvester's appeal, he held the post of Chief Technical Advisor (Flight Operations)/Program Coordinator for the Cooperative Development of Operational Safety and Continuing Airworthiness Programme, South East Asia (COSCAP-SEA), at the ICAO Asia and Pacific (APAC) Office in Bangkok.

3. On 22 August 2016, Mr. Sylvester submitted a written complaint against Mr. Arun Mishra, Director of the ICAO APAC Office, alleging that a series of actions by Mr. Mishra undermined his capacity to perform his duties, subverted his performance assessment, undermined his contract renewal and damaged his professional reputation.

4. On 28 October 2016, the ICAO Secretary General advised Mr. Sylvester that, upon review of the Ethics Office's preliminary assessment report of his allegations, she had determined that "while there may have been procedural deficiencies in the execution of [Mr. Sylvester's] performance assessment, there [was] insufficient evidence to indicate that Mr. Mishra conducted the assessment in bad faith".

5. On 11 November 2016, Mr. Sylvester requested the ICAO Secretary General to review her decision of 28 October 2016 "not to refer [Mr. Sylvester's] complaint against Mr. Mishra for investigation". The ICAO Secretary General did not respond to Mr. Sylvester's 11 November 2016 request.

6.

**THE UNITED NATIONS APPEALS TRIBUNAL**

paragraphs 9 and 10 of Annex VIII to FSSR, a staff member who failed to observe the relevant time limits loses the right to appeal, unless the delay was waived, and advised Mr. Sylvester that he should provide the AJAB with relevant information as to why it was not possible for him to comply with the pertinent time limits, should he wish to request such a waiver.

12. On 31 December 2017, Mr. Sylvester submitted to the AJAB his request that the delay in the filing of his appeal be waived in view of exceptional circumstances.

13. On 10 January 2018, the AJAB issued its recommendation to the ICAO Secretary General with respect to Mr. Sylvester's request for a waiver of time limit, made pursuant to paragraph 10 of Annex VIII to FSSR, wherein the AJAB noted the following:

The Appeals Tribunal and the former Administrative Tribunal held that "exceptional circumstances" justifying a waiver are those "beyond his or her control that prevented the applicant from exercising the right of appeal in a timely manner" and that "place him in a practical situation such that he is completely incapable of respecting the time limits imposed on him".

The medical certificates and reports supplied by Mr. Sylvester to support his claim of "exceptional circumstances" either pre-dated the impugned administrative decision or were dated after the deadline for submission of his appeal had already passed, and were therefore not relevant to Mr. Sylvester's ability to submit a timely AJAB appeal within the 60-day period.

Evening assuming *arguendo* that the medical certificates and reports were relevant to the 60-day window established by the FSSR, Mr. Sylvester was able to successfully fulfil other like responsibilities—such as submitting his 10-page complaint against Mr. Mishra to the Ethics Officer on 13 June 2016; submitting his request for review to the ICAO Secretary General on 11 November 2016; and writing to the ICAO Secretary General about the status of his request for review on 11 January 2017—despite these same medical issues, which showed that he was not "completely incapable" of respecting the time limits.

Mr. Sylvester's claim that he "lacked knowledge" of the time limit for submitting his AJAB appeal was contradicted by the record, which shows that he was

**THE UNITED NATIONS**

for seeking management evaluation and that the UNDT has no jurisdiction or competence to waive such deadlines.

23. While the AJAB found that Mr. Sylvester's request to the ICAO Secretary General to review her 28 October 2016 decision not to refer his complaint against Mr. Mishra for investigation was timely submitted on 11 November 2016, it found that Mr. Sylvester's 27 February 2017 appeal was untimely since he was required to submit his appeal to the AJAB by no later than 14 January 2017.

24. After considering the explanations and documentation furnished by Mr. Sylvester in response to the AJAB's request for information as to why it was not possible for him to comply with the pertinent time limits, the AJ

28.



10. The staff member may request that in view of exceptional circumstances, the delay in filing the appeal be waived. The Board shall examine such request as a preliminary issue and make its recommendations thereon to the Secretary General for his decision.

32. The applicable law thus requires, as a first step, that the staff member concerned request review of the contested administrative decision within 30 calendar days from the date he received that decision. Mr. Sylvester fully complied with the above requirement, as evidenced by his 11 November 2016 request for review of the original administrative decision dated 28 October 2016 concerning the non-referral of his complaint for investigation.

33. As in the case at hand, if no answer is received within 30 calendar days of the receipt of the letter requesting review of the contested decision, the appeal shall be submitted within the following 30 calendar days. It is not disputed that the 60-day window for filing an appeal was from *11 November 2016 to 14 January 2017*, and that Mr. Sylvester's appeal, not submitted until March 2017 (or on 27 February 2017),<sup>4</sup> was far beyond the prescribed time frame. Nor is it challenged that Mr. Sylvester's alleged lack of knowledge is no excuse for that delay.<sup>5</sup>

34. Although not dispositive to the outcome of this case, we also take note of the fact that after having received the 25 October 2017 communication, whereby Mr. Sylvester was notified that his appeal to the AJAB had been considered untimely under paragraphs 9 and 10 of Annex VIII to the ICAO FSSR and was advised to submit relevant information as to why it was not possible for

36. In light of our jurisprudence, Mr. Sy

40. We are satisfied that the AJAB