



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

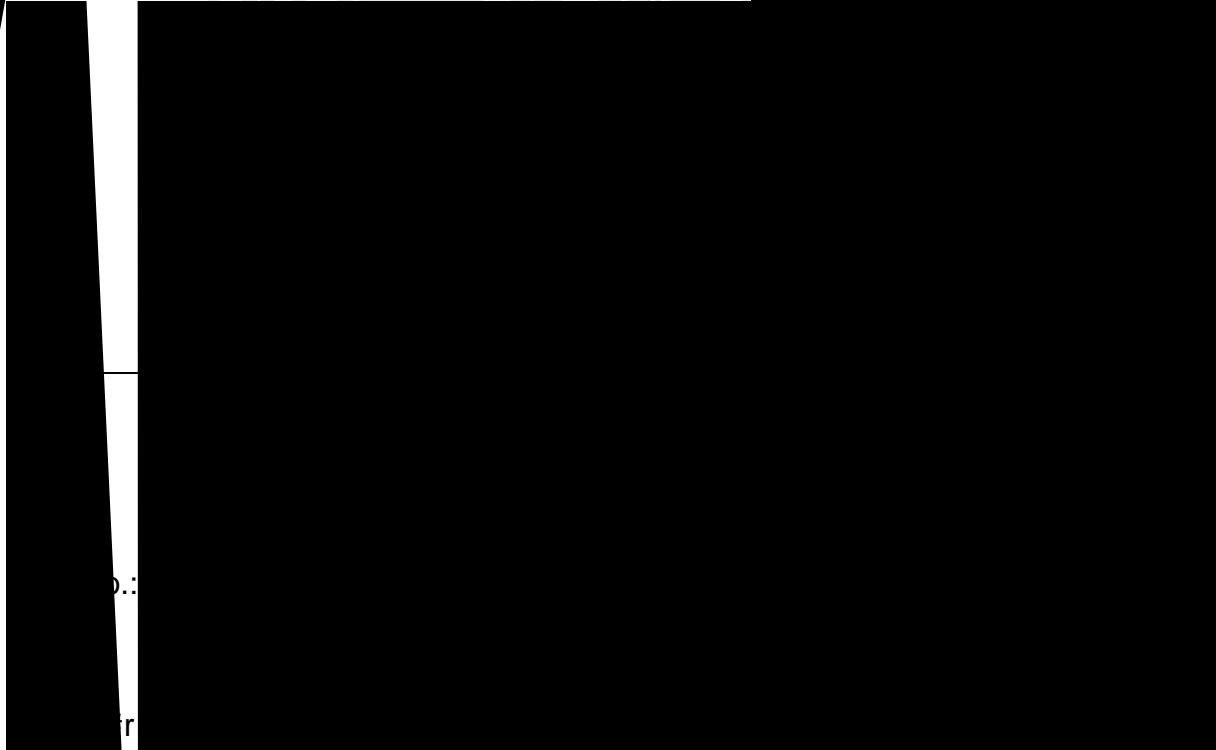
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No. 2019-UNAT-941

Dieng
(Appellant)

v.

Secretary-General of the United Nations



Counsel for Mr. Dieng:

Elina Dagnac

Counsel for the Secretary-General:

Christine Van den Berg

UNITED STATES OF AMERICA (OS) PRESIDING

1. The United Nations Appeals Tribunal ("Tribunal") has rendered its judgment on appeal (Case No. UNAT/2019/014) rendered by the United Nations Dispute Tribunal ("DIT") in Nairobi on 40 January 2019 in the case of Dieng v. Secretary-General of the United Nations. Mr. Dieng filed the appeal on 26 February 2019 and the appeal was filed in the Tribunal on 2 April 2019.

* act% an\$ Pr! ce\$+re

2.

the #luation -#s (omitted\$ if earlier\$ unless the deadline +#s been extended 1! the &(ret#r!)ener#l to #ilit#te efforts for inform#l resolution under the #us8i(es of the %ffi(e of the %m1udsm#n.

F. %n 15 %(to1er 2016\$ Mr. Dieng re(ei ed the MEU's res8onse to his reBuest for m#n#gement e #luation - +i(+ #d ised +im t+#t the (ontested de(ision +#d been u8+eld.

5. .! e-mail d#ted 16 %(to1er 2016\$ the MEU (onfirmed t+#t its de(ision of 15 %(to1er 2016 -#s issued 8rior to the e38ir#tion of the UNDT's 90-(#lend#r d#! de#dline 9i.e. 24 %(to1er 2016: #nd t+#t #((ording!+ his re(ei8t of the m#n#gement e #luation resulted in setting # ne- de#dline for su1mitting +is #88li(ction\$ in #((ord#n(e -it+ the A88e#ls Tri1un#l's +olding in Neault.² The MEU #d ised t+#t 6t+e (lo(0 st#rts ti(ing from !esterd#! -+en !ou re(ei ed the Dm#n#gement e #luationE letter. An 8r#(ti(#! terms\$!ou +# e 90 (#lend#r d#!s from 15 %(to1er 2016\$ to file !our #88li(ction - it+ the UNDT.H

6. .! letter d#ted 5 No em1er 2016\$ Mr. Dieng -#s informed t+#t +is fi3ed-term #88ointment -ould not 1e rene-ed 1e!ond 41 De(em1er 2016.

9. T+#t s#me d#!\$ Mr. Dieng filed +is #88li(ction 1efore the UNDT (+#llenging the de(ision to re#ssign +im from the C*U to the %J&/\$UNAMAD.

10. %n 40 J#nu#r! 2019\$ the UNDT issued Judgment on /e(ei #ilit! No. UNDT;2019;014 dismissing Mr. Dieng's #88li(ction #s not re(ei #1le. The UNDT noted t+#t Mr. Dieng +#d filed +is reBuest for m#n#gement e #luation on 1 June 2016 #nd #((ording!+ the MEU's res8onse to +is reBuest -#s due 1! 1F Jul! 2016. &in(e on t+#t d#te\$ Mr. Dieng +#d not !et re(ei ed # res8onse to +is reBuest\$ the 90-d#! time limit for filing #n #88li(ction 1efore the UNDT st#rtd to run. , is #88li(ction to the UNDT -#s t+erefore due 1! 14 %(to1er 2016! !et\$ Mr. Dieng did not file +is #88li(ction until 5 No em1er 2016. The UNDT found t+#t the f#(t t+#t Mr. Dieng re(ei ed # res8onse to +is reBuest on 15 %(to1er 2016 did not reset the (lo(0 for filing #n #88li(ction - it+ the UNDT #s it -#s re(ei ed #fter the e38ir#tion of the 90-d#! time limit to #88e#l to the UNDT. The UNDT t+erefore (on(luded t+#t Mr. Dieng's #88li(ction -#s time-1#rred.

² Neault v. Secretary-General of the United Nations\$ Judgment No. 2014-UNAT-44<.

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Judgment No. 2019-UNAT-941

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The Secretary-General's Answer

15.

20.

24. Article 591 of the UNDT Rules of Procedure provides that where a management election is required, the election shall be submitted to the UNDT within 90 days of the receipt of the election by the Secretary-General or 90 days of the relevant deadline for the communication of a response to a management election request. Article 40 of the Rules of Procedure provides that, except in cases of disputes arising from other offices.

25. Rule 11.2 provides in relevant part:

Staff Rule 11.2,

Management Election

9C:

9C: A request for a management election shall not be received if the

staff member received notification of the administrative decision to be contested. This deadline may be extended if the Secretary-General is sending efforts for information

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44. With regard to Mr. Dieng's contention that 6 June 2016 should be the date of his request for management e #lu#tion from - i(+ #l su1seBuent de#dlines should be counted - e find it - it+out merit for t-o reasons. First, as noted, Mr. Dieng's communication to the MEU of 6 June 2016 did not constitute a request for management e #lu#tion but a mere submission of his management e #lu#tion request of 1 June 2016 in that it provided additional information to the MEU. Second, Mr. Dieng - #nted to submit a - #ne- H request for management e #lu#tion on 6 June 2016, he should have filed his first submission to the MEU on 1 June 2016. Moreover, he should have done so in time, manner - i(+ is not the case here since 6 June 2016 - #s - ell 1e!ond t+e time limit for filing a request for management e #lu#tion that is 14 June 2016, given that Mr. Dieng - #s notified of the contested administrative decision on 4 April 2016. An - #!\$ resubmitting a request for management e #lu#tion (which does not reset the date management e #lu#tion is sought or the date from - i(+ the time limits for filing a submission for a review ensues. Therefore, the deadline for filing a submission - ould have been earlier.⁹

45. Further, Mr. Dieng argues that the MEU (confirmed the in - riting that the relevant date for (filing) ensuing deadlines - #s 24 July 2016 and hence his submission - #s filed in time, manner 1#sed on that date, he - #s entitled to relief on it for purposes of exercising his rights to the internal justice system.

46. The focus of this claim is borne out by the content of the letters that the MEU sent to Mr. Dieng on 6 June 2016 and 16 October 2016 respectively. As reflected on 6 June 2016, Mr. Dieng received a non-acknowledgment letter from the MEU - i(+ informed him inter alia that:¹⁰

Jour (correspondence dated 1, 2, 4 and 5 June 2016 and addressed to the Management E #lu#tion Unit, MEU: request for management e #lu#tion (concerning the decision to resign you from the Child Protection Unit to the office of the Joint Representative - #s received at this office on 14 and 6 June 2016 respectively. C

9C:

*Please also note that pursuant to article 11.29d, the management e #lu#tion in your case is to be completed - it+in 4 (calendar) days of receipt of your completed request or no later than

the Tribunal in the MEU -ill (ont#(t !ou to so #d ise. An #n! e ent\$ 8le#se 1e #d ised t+#t\$ 8ursu#nt to &t#ff /ule 11.49#:\$ t+e 90-d#! de#dline for filing #n #88li(#tion to t+e United N#tions Dis8ute Tri1un#l\$ s+ould !ou -is+ to do so\$ -ill st#rt to run from , - &+ly , . /O\$or t+e d#te on -+i(+ t+e m#n#gement e #lu#tion -#s (om8leted\$ if e#rlier\$ unless t+e de#dline +#s 1een e3tended 1! t+e &e(ret#r!-) ener#l to f#(ilit#te efforts for inform#l resolution under t+e #us8i(es of t+e %ffi(e of t+e %m1udsm#n.

45. 7+ile on 16 %(to1er 2016\$ t+e MEU #d ised Mr. Dieng #s follo-s:

*le#se 1e #d ised t+#t #s indi(#ted in our #(0no-ldgement letter of 6 June 2016\$!our

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