



gment No. 2024-UNAT-1454



**THE UNITED NATIONS APPEALS TRIBUNAL**

*Procedure before the Dispute Tribunal*

8. On 3 March 2023, Ms. Yu filed an application with the UNDT, contesting UNCTAD's "[n] on-reappointment of temporary contract after mandatory separation, and withholding fix[ed]-term appoint[me nt] following selection without giving any reason for doing so".

9. On 18 April 2023, the Secretary-General filed a motion to have the issue of receivability determined as a prelimin.8 ( .5 (i)-4.5 (52-9.1 (a67-3.m)-3.5 ( t)-6.7 (e-4.5 (,)-5.7 ( and)-6.1 (.8 (i)6.4 (.)

15. The UNDT further concluded that, according to Article 15(7) of the UNDT Rules, Ms. Yu's references to her discussions with the Ombudsman and the outcome documents were to be struck from the record.<sup>4</sup>

*Procedure before the Appeals Tribunal*

16. On 22 July 2023, Ms. Yu filed an appeal against the impugned Judgment with the Appeals Tribunal, to which the Secretary-General responded on 25 September 2023.

Submissions

Ms. Yu's Appeal

17. Ms. Yu requests that the Appeals Tribunal:

- 1) Set aside the impugned Judgment in its entirety.
- 2) Repeal the decision allowing the Secretary-General's motion to exclude confidential and privileged materials related to discussions with the Ombudsman from the record.
- 3) Acknowledge the receivability of Ms. Yu's application to the UNDT, taking into account the mediation process.
- 4) Provide unequivocal guidance on the interpretation of the terms "receipt" and "as appropriate" as specified in Article 7(1)(a) of the UNDT Rules.
- 5) Remand the case to the UNDT for a merits-based review, with full consideration of all evidence and arguments presented by Ms. Yu.

18. First, Ms. Yu submits that the impugned Judgment erred in removing materials related to discussions with the Ombudsman from the record. She asserts that, although Article 15(7) of the UNDT Rules precludes submitting all documents and oral arguments during the mediation process to the Dispute Tribunal, the Dispute Tribunal must "determine the extent and dates of the Mediation Division's involvement" in receivability matters.<sup>5</sup> Therefore, the Dispute Tribunal misinterpreted this Article and should have considered the dates related to mediation efforts for receivability purposes.

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<sup>4</sup> *Ibid.*, paras. 19-21.

<sup>5</sup> Ms. Yu relies on *Applicant v. Sec s*

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- a. Geneva Registry: Applications from staff assigned at the time of the contested

of her appointment) . Accordingly, the said mediation process has no bearing on the deadline for Ms. Yu's application. The breakdown of mediation on 16 December 2022 cannot constitute a different starting point for the 90 -day period stipulated for application submission , as Ms. Yu asserts.

42. Secondly, Ms. Yu contends that the filing deadline of the application should begin from the date she acknowledged receipt of the management evaluation outcome on 6 December 2022 and that the Dispute Tribunal made an erroneous citation of the *Temu* Judgment.

43. In *Temu*,<sup>14</sup> we clarified the event that triggered the time limit for filing an application before the Dispute Tribunal:

(...) According to the clear and unambiguous wording of Article 8(1)(d)(i)(a) of the UNDT Statute, and confirmed by the jurisprudence of the Appeals Tribunal, it is the receipt of the management evaluation which triggers the time limit for filing an application to the UNDT, and not the moment when the staff member or her legal representative could reasonably be assumed to have taken notice of this response.

44. As correctly noted by the Dispute Tribunal, Ms. Yu received the management evaluation outcome on 2 December 2022 at 7:42 p.m. (Geneva time). This receipt triggered the 90-day time limit for filing an application, rather than her acknowledgement of receipt on 6 December 2022.

Ms. Yu's interpretation of the "receipt" is incorrect. The Dispute Tribunal's finding that the receipt of the management evaluation outcome on 2 December 2022 at 7:42 p.m. (Geneva time) triggered the 90-day time limit for filing an application is correct. Ms. Yu's interpretation of the "receipt" is incorrect. The Dispute Tribunal's finding that the receipt of the management evaluation outcome on 2 December 2022 at 7:42 p.m. (Geneva time) triggered the 90-day time limit for filing an application is correct.

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90 days of receiving a response from management evaluation, if management evaluation was mandatory for his or her claim.

50. Ms. Yu requested management evaluation of the contested decision (as was mandatory for her claim) and she was notified the outcome of the management evaluation on 2 December 2022. Therefore, the calculation of the time limit of 90 days for Ms. Yu's application commenced on 3 December 2022, the day after. Ms. Yu's speculation that "as appropriate" in Article 7(1)(a) alters the time frame for submission of her application is untenable.

51. Additionally, Article 7(5) of the UNDT Rules provides additional relief for the parties, stating:

In exceptional cases, an applicant may submit a written request to the Dispute Tribunal seeking suspension, waiver or extension of the time limits referred to in article 7.1 above. Such request shall succinctly set out the exceptional circumstances that, in the view of the applicant, justify the request. The request shall not exceed two pages in length.

52. However, Ms. Yu did not request an extension of the time limits from the UNDT prior to the expiry of the 90-day period.

53. Further more, we recall what we have said in *Ah*<sup>18</sup>

This Tribunal has repeatedly and consistently strictly enforced the time limits for filing applications and appeals. Strict adherence to filing deadlines assures one of the goals of the current system of administration of justice established in 2009: the timely hearing of cases and rendering of judgments. It is irrelevant whether a deadline is missed by several minutes, several hours or several days.

54. Consequently, as correctly found by the UNDT, Ms. Yu failed to file her application within the stipulated time frame, and thus her application was not receivable *ratione temporis*.

*Whether the Dispute Tribunal erred in granting the Secretary-General's motion to strike from the record privileged and confidential materials pertaining to discussions with the Ombudsman*

55.

discussed earlier, we have determined

Judgment

58. Ms. Yu's appeal is dismissed and Judgment No. UNDT/2023/033 is hereby affirmed.

Original and Authoritative Version: English

Decision dated this 28<sup>th</sup> day of June 2024 in New York, United States.

*(Signed)*

Judge Gao, Presiding

*(Signed)*

Judge Savage

*(Signed)*

Judge Sheha

Judgment published and entered into the Register on this 25<sup>th</sup> day of July 2024 in New York, United States.

*(Signed)*

Juliet E. Johnson, Registrar