



8. On 7 July 2023, the Secretary-General filed a motion for summary judgment, seeking dismissal of the application on the grounds that it was filed after the 90-day deadline stipulated in Article 8(1) of the Dispute Tribunal Statute (UNDT Statute) and Staff Rule 11.4(b).

9. On 14 July 2023, Mr. El-Anani responded to the motion for summary judgment.

The impugned Judgment

10. On 21 July 2023, the UNDT issued the impugned Judgment dismissing Mr. El-Anani's application as not receivable *ratione temporis*.

11. The UNDT found that, according to Article 8(1)(d)(ii) of the UNDT Statute and Staff Rule 11.4(b), in cases where management evaluation of the contested decision is not required, the application should be filed within 90 calendar days of the applicant's receipt of the administrative decision. In the present case, the evidence presented two Microsoft Outlook notification records acknowledged by Mr. El-Anani indicated that the contested Decision was delivered to and read by Mr. El-Anani on 28 March 2023. The UNDT found that Mr. El-Anani should therefore have filed his application no later than 26 June 2023, but he did not do so until 28 June 2023, two days past the 90-day deadline, which rendered his application time-barred.

12. In support of its finding, the UNDT highlighted, as the applicable legal framework, the UNDT Statute and Rules of Procedure (UNDT Rules), UNAT jurisprudence, and the United Nations Regulations and Rules. It refused to rely on "unspecified international law and Lebanese Law" asserted by Mr. El-Anani.

Submissions

Mr. El-Anani's Appeal

13. Mr. El-Anani requests that the Appeals Tribunal suspend the implementation of the contested Decision until the issuance of a final judicial decision in this matter, accept the appeal, and reverse the impugned Judgment. In the alternative, he requests that the matter be remanded to the UNDT for additional findings of fact, the "[a]nnulment of the administrative decision dated 27 March 2023 and [a] declaration [of his] innocence [of] any prohibited conduct". Mr. El-Anani also requests that the matter be referred to the

Ombudsman and/or to mediation. Lastly, he seeks that he be reinstated

18. Finally, Mr. El-Anani submits additional written testimonies and requests further fact-finding on both the merits of the contested Decision and the end date of his annual leave, should the case be remanded to the UNDT. He also argues that his request for legal representation by Office of Staff Legal Assistance (OSLA) was wrongly rejected.

The Secretary-General's Answer

19. The Secretary-General requests that the Appeals Tribunal uphold the impugned Judgment and dismiss the appeal.

20. The Secretary-General submits that the UNDT correctly found Mr. El-Anani's application not receivable *ratione temporis*. According to Article 8(1)(d)(ii) of the UNDT Statute and Article 7(1)(c) of the UNDT Rules, when a management evaluation is not required, an application must be filed within 90 calendar days of the applicant's receipt of the contested decision. Section 9.3 of ST/AI/2017/1 further specifies that a decision to separate or dismiss a staff member is "deemed to be received on the date the decision was electronically communicated". The UNDT correctly relied on the Microsoft Outlook notification records, concluding that Mr. El-Anani was notified of and read the contested Decision on 28 March 2023. Consequently, his filing on 28 June 2023 was two days past the deadline.

21. The Secretary-General

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administrative decision. Similarly, Article 7(1)(c) of the UNDT Rules requires that applications shall be submitted to the Dispute Tribunal through the Registrar within 90 calendar days of the receipt by the applicant of the administrative decision in cases where a management evaluation of the contested decision is not required. Staff Rule 11.4(b) further provides that where a staff member is not required to request a management evaluation, he or she may file an application directly with the UNDT within 90 calendar days from the date on which the staff member received notification of the contested administrative decision.

28. The UNDT found that Mr. El-Anani's application was not receivable *ratione temporis* in that two Microsoft Outlook notification records acknowledged by Mr. El-Anani indicated that the contested Decision had been delivered to and read by him on 28 March 2023 and that he was therefore required to file his application with the UNDT by no later than 26 June 2023. Since he did not file the application until 28 June 2023, two days past the 90-day deadline, his application was rendered time-barred.

29. Section 9.3 of ST/AI/2017/1, which concerns unsatisfactory conduct, investigations and the disciplinary process, provides that a decision to separate or dismiss the staff member under Staff Rule 10.2(a)(viii) or (ix) may be communicated in hard copy or electronically and will be deemed to have been received on the date the decision was electronically communicated.

30. A staff member cannot unilaterally determine the date of an admini0.00000912 0 6-GBn19()] TJET

been presented at the level of the Dispute Tribunal. Article 10 of the UNAT Rules similarly states that additional documentary evidence may be received in exceptional circumstances where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, provided that the additional written evidence was not known to the party seeking to submit the evidence and should not have been presented to the Dispute Tribunal. The purpose of this is, in the absence of exceptional circumstances, to prevent new evidence being produced for the first time on appeal when, given the United Nations' two-tier system for the administration of justice, this would result in no appeal in respect of that material and the issues it raises being available to the other party.⁶

32. Since no motion was filed seeking to have additional evidence admitted on appeal to show that Mr. El-Anani had not read the attachment to the 28 March 2023 e-mail, and that he had only been informed of the contested Decision on 30 March 2023, and no submissions were made to demonstrate exceptional circumstances justifying the admission of such evidence, it is not permissible for such new evidence to be admitted for the first time on appeal.

33. This Tribunal has repeatedly and consistently strictly enforced the statutory time limits which exist for filing applications and appeals. In doing so, it has recognized that strict adherence to filing deadlines ensures adherence to the goals of the current system of administration of justice established in 2009, namely the timely hearing of cases and rendering of judgments, with it having been found to be irrelevant whether a deadline is missed by several minutes, several hours or several days.⁷

34. The clear and unambiguous wording of Article 8(1)(d)(i)(a) of the UNDT Statute, confirmed by the jurisprudence of this Tribunal, is that it is the receipt of the respons g33(t)8(h)6(e)-5()-30

received constitutes an objective standard, regardless of whether the recipient knows it, reads

