



# TRIBUNAL D 'APPEL DES NATIONS UNIES

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Case No. 2011-277

Rahman  
(Appellant)

v.

Secretary-General of the United Nations  
(Respondent)

## JUDGMENT

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Before:	Judge Richard Lussick, Presiding Judge Mary Faherty Judge Sophia Adinyira
Judgment No.:	2012-UNAT-260
Date:	1 November 2012
Registrar:	Weicheng Lin

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Counsel for Appellant: Bart Willemsen

Counsel for Respondent: Stéphanie Cartier

JUDGE RICHARD LUSSICK , Presiding.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Khalihur Rahman (Appellant) against Judgment No. UNDT/2011/183, rendered by the

6. In a memorandum dated 26 March 2009 to the Secretary-General of UNCTAD, the Acting Deputy Secretary-General of UNCTAD and Chairperson of the Ad Hoc Interview Panel reported on the completion of the work of the Ad Hoc Interview Panel for the vacant post of Director of DTL. He stated that the Ad Hoc Interview Panel

unanimously agreed that Mr. Khalilur Rahman (Bangladesh, D-1, internal candidate) fully met the requisite competencies for the post under review; that Mr. Charles Gore (United Kingdom, D-1, UNCTAD, internal candidate) met most of the requisite competencies required for the post; and, mindful of taking into account the need to include a woman candidate in the recommended list of candidates, that Ms. Anne Miroux (France, D-1, UNCTAD, internal candidate) met many of the requisite competencies for the post.

He also stated that the Ad Hoc Interview Panel unanimously recommended the above three candidates in an alphabetical order for review by the Senior Review Group. According to Mr. Rahman, he was not aware of this memorandum until more than a year later, on or around 15 July 2010.

7. On 5 June 2009, the Secretary-General<sup>11</sup> of UNCTAD informed all UNCTAD staff members of the appointment of Ms. Miroux as the Director of DTL.

8. After he learnt of the existence of the 26

Submissions

Mr. Rahman's Appeal

11. Mr. Rahman submits that the UNDT erred in law and/or fact in rejecting his application as not receivable *ratione temporis*, and that the case should therefore be remanded to the UNDT for adjudication on the merits.

12. Mr. Rahman maintains that the UNDT erred in law when it failed to address all of his principal arguments, in violation of the terms of Article 11(1) of the UNDT Statute, and when it failed to state the facts and law upon which its decision was based.

13. Mr. Rahman also submits that, at the time of the notification of the impugned decision on 5 June 2009, he had no reason to assume, let alone evidence to support, that the impugned decision was unlawful or otherwise improper and therefore did not have reasonable and good faith grounds to request management evaluation. In his view, it was the disclosure of the 26 March 2009 memorandum that triggered the time limit for appeal, as that memorandum provided him with a reasonable belief that there were grounds to request management evaluation.

14. Mr. Rahman avers that the UNDT should have followed its precedent in *Sefraoui*,<sup>2</sup> namely that the time limit started to run only when evidence arose based on which there could be a reasonable apprehension that there were grounds to request management evaluation of the impugned decision.

Secretary-General's Answer

15. The Secretary-General submits that the UNDT correctly concluded that Mr. Rahman's application was not receivable as it was time-barred, because he did not file his request for management evaluation within two months from the date he received written notification of the contested decision.

16. The Secretary-General also submits that, as consistently followed by the Appeals Tribunal, staff members are presumed to know the rules of the Organization, including the time limits for legal action.

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<sup>2</sup> *Ibid.*

17.



and law on which they were based and were sufficient to dispose of the application under consideration. The Appeals Tribunal finds that these decisions were correct and that the