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UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D 'APPEL DES NATIONS UNIES

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McCluskey  
(Appellant)

v.

Secretary-General of the United Nations  
(Respondent)

JUDGMENT

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Before:	Judge Luis María Simón, Presiding Judge Sophia Adinyira Judge Rosalyn Chapman
Case No.:	2013-438
Date:	17 October 2013
Registrar:	Weicheng Lin

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**THE**

5. In June 2011, Mr. McCluskey asked DHRM for calculation of Option 4, and he received the calculation. However, when Mr. McCluskey inquired about the necessary steps to secure Option 4, DHRM responded that as he had opted for his contract extension, he was no longer entitled to Option 4.

6. After his separation from service, on 23 November 2011, Mr. McCluskey requested management evaluation of the decision not to make Option 4 available to him. He filed an application against the same decision with the Dispute Tribunal on 9 April 2012.

7. On 27 August 2012, the Dispute Tribunal issued Order No. 136 (GVA/2012) in respect of Mr. McCluskey's case, in which it invited the parties to file objections, if any, to its judgment being rendered without an oral hearing.

8. In Judgment No. UNDT/2012/184, the UNDT rejected Mr. McCluskey's application. The UNDT concluded that the application was not receivable as time-barred. As Mr. McCluskey requested management evaluation on 23 November 2011, he had to file an application with the Dispute Tribunal by 26 March 2012. However, Mr. McCluskey did not file until 9 April 2012.

9. In the same Judgment, the UNDT also concluded that Mr. McCluskey's application lacked merit. In the view of the UNDT, Mr. McCluskey's contractual situation was different from that of his four colleagues, and it was within the discretion of the Administration to differentiate between staff members who had accrued five years of service and those who had not, such as Mr. McCluskey.

### Submissions

#### Mr. McCluskey's Appeal

10. Mr. McCluskey requests that the Appeals Tribunal overturn the UNDT Judgment and order that Option 4 as originally offered to him be paid in full. Additionally, he requests compensation for the stress endured by him due to the overall mismanagement of his case.

11. Mr. McCluskey submits that the Office of Staff Legal Assistance (OSLA), which represented him before the UNDT, made a series of errors and failed to abide by its own Code of Conduct. The OSLA-assigned Legal Officer filed the underlying application for him with the UNDT on 9 April 2012, 13 days beyond the time limit.

12. Mr. McCluskey states that no OSLA representative ever alerted him to the possibility of his appeal being time-barred. He also states that he was not informed by OSLA of UNDT Order No. 136 (GVA/2012) and, consequently, could not make any comment concerning whether he wished an oral hearing or not.

13. Mr. McCluskey also makes submissions on the merits of his case. However, they are not summarized for the purpose of this Judgment.

#### The Secretary-General's Answer

14. The Secretary-General requests the Appeals Tribunal to affirm the UNDT Judgment and reject Mr. McCluskey's appeal as non-receivable and without merit.

15. The Secretary-General submits that the UNDT correctly concluded that the application was not receivable as it was time-barred. Mr. McCluskey requested management evaluation on 23 November 2011. Therefore, the deadline for responding to this request was 26 December 2011, and the deadline for Mr. McCluskey's application with the UNDT was 26 March 2012. The application filed by Mr. McCluskey on 9 April 2012 was, thus, time-barred. This decision of the UNDT is in line with the jurisprudence of the Appeals Tribunal.

16. The Secretary-General interprets Mr. McCluskey's blame on OSLA for missing the time limit for his UNDT application as an attempt to characterize his case as satisfying the exceptional cases criterium under Article 8(3) of the Statute of the UNDT. The Secretary-General submits that Mr. McCluskey's circumstances are not exceptional. It is a staff member's duty to adhere to deadlines and to diligently pursue his or her case. Mr. McCluskey did not, even after OSLA discontinued his representation, make a request for suspension or waiver of the filing deadline.

17. The Secretary-General's submissions on the merits of the case are not summarized for the purpose of this Judgment.

#### Considerations

18. The UNDT did not commit any error when it determined that the application before it was not receivable as it was time-barred.

**THE UNITED NATIONS APPEALS TRIBUNAL**

Judgment No. 2013-UNAT-384

Original and Authoritative Version: English

Dated this 17<sup>th</sup> Day of October 2013 in New York, United States.

*(Signed)*

Judge Simón, Presiding

*(Signed)*

Judge Adinyira

*(Signed)*

Judge Chapman

Entered in the Register on this 19<sup>th</sup> day of December 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar