



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D 'APPEL DES NATIONS UNIES

Judgment No. 2015-UNAT-576

Harrich
(Appellant)

v.

Secretary-General of the United Nations
(Respondent)

JUDGMENT



Counsel for Mr. Harrich: Self-represented

Counsel for Secretary-General: Noam Wiener

JUDGE ROSALYN CHAPMAN , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal by Mr. Martin Harrich against Judgment No. UNDT/2014/109 and Order No. 256 (NY/2014), issued by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 1 August 2014, and 4 September 2014, respectively, in the matter of *Harrich v. Secretary-General of the United Nations*. Mr. Harrich filed his appeal on 28 October 2014, which he perfected on 31 October 2014. The Secretary-General filed his answer on 10 December 2014.

Facts and Procedure

2. On 15 September 2012, Mr. Harrich, a staff member of the Preparatory Commission for the Comprehensive Nuclear Test Ban Treaty Organization (CTBTO) in Vienna, Austria, sought to file an application with the Dispute Tribunal contesting the administrative decision not to afford him a repatriation grant and a lump sum shipping allowance upon his separation from the Executive Office, Office for the Coordination of Humanitarian Affairs (OCHA) and requesting compensation for moral damages. He perfected his appeal through the UNDT's electronic filing system on 15 October 2012. The Secretary-General filed his reply on 23 November 2012, claiming the application was not receivable *ratione temporis*.

3. On 1 August 2014, the UNDT issued Jud

6. On 4 September 2014, the UNDT issued Order No. 256 (NY/2014) denying the second motion for correction of judgment. Additionally, the UNDT determined that Mr. Harrich had abused the litigation process by bringing the second motion for correction of judgment, which was without statutory basis and another attempt to relitigate the claims presented in his application, and awarded as nHE t-23mawardein.1(i)wardedmou. 2t, USD 1,app.-1.732246.328,(m)8259 Oct 2014

Submissions

Mr. Harrich's Appeal

14.

the Secretary-General filed his observations objecting to the filing of the additional pleading from the Appellant.

18. As an initial matter, the Appeals Tribunal admonishes the Appellant for not complying with the Appeals Tribunal's procedures and the Registry's directions and not filing a motion requesting leave to file his reply to the Secretary-General's answer, before submitting the pleading to the Registry. As is evident from his prior filing of a motion to amend his appeal brief, the Appellant was aware that he was required to request the express permission of the Appeals Tribunal; however, he refused to comply with the Appeals Tribunal's procedures. Such conduct may be considered an abuse of process for which the Appeals Tribunal can award costs against the Appellant, pursuant to Article 9(2) of the Statute.

19. Article 31(1) of the Rules, Section II.A.3 of Practice Direction No. 1, and our jurisprudence provide that the Appeals Tribunal may allow an appellant to file a pleading after the answer to the appeal when there are exceptional circumstances justifying the motion.² The Appeals Tribunal finds *sua sponte* that there are exceptional circumstances that warrant allowing the Appellant to file his reply. As the Appellant's appeal brief solely addresses the merits of his claims and does not address whether the appeal is timely or receivable, which is the gravamen of the Secretary-General's answer, the Appellant will not have the opportunity to address the key issue before the Appeals Tribunal namely the receivability of the appeal, unless the Appeals Tribunal permits the Appellant to file his reply.³ Accordingly, the Appeals Tribunal orders the Registry to include the Appellant's reply as part of the case file.

The appeal of Judgment No. UNDT/2014/109

20. Pursuant to Article 7(1)(c) of the Statute, "[a]n appeal shall be receivable if [it] is filed within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal". The 60-days filing deadline was established by the General Assembly when it adopted resolution 66/237 on 24 December 2011.

² *Nielsen v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-542, para. 51; *Utkina v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-524, para. 16; *Wu v. Secretary-General of the United Nations*, Order No. 225 (2015) of 1 July 2015; *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, para. 36.

³ See *Christensen v. Secretary-General of the United Nations*, Order No. 62 (2011); *Thiam v. Secretary-General of the United Nations*, Order No. 33 (2011).

21. The Dispute Tribunal issued Judgment No. UNDT/2014/109 on 1 August 2014, and it is not contested that the Appellant received it on that date. Accordingly, pursuant to Article 7(1)(c) of the Statute, the Appellant had 60 calendar days thereafter, or until 30 September 2014, to file his appeal. However, the appeal was not filed until 31 October 2014, more than a month after the expiration of the filing deadline. Thus, the appeal of Judgment No. UNDT 2014/109 is not receivable *ratione temporis*.

22. The Appellant argues, however, that his appeal is timely because the 60-days deadline for filing an appeal runs from the date his second motion for correction of judgment was denied on 4 September 2014. There is no merit to this argument. The language of Article 7(1)(c) of the Statute explicitly provides that an appeal must be “filed within 60 calendar days *of the receipt of the judgement of the Dispute Tribunal*”.⁴ Article 7(1)(c) of the Statute does not allow for the limitations period to commence running from any date other than the date the judgment is received by the staff member.

23. In the context of filing an application before the UNDT, we have held that “[a] staff member cannot extend the statutory deadline for filing [...] by writing letters for reconsideration. Such conduct cannot and does not delay the running of the time limit.”⁵ This rationale applies equally to the filing of an appeal of a UNDT judgment. To hold otherwise would allow the parties to set their own deadlines for appealing a Dispute Tribunal judgment by filing post-judgment motions. Moreover, to commence the running of the time to file an appeal from the date of the UNDT’s ruling on an unsuccessful post-judgment motion would undermine the mandatory nature of the statutory deadline set forth in Article 7(1)(c), as well as the Appeals Tribunal’s jurisprudence holding that statutory deadlines should be strictly enforced.⁶

24. The Appellant requests, in his reply to the Secretary-General’s answer, that the Appeals Tribunal make “an exception to the time limits” for filing his appeal and waive or suspend the deadlines, pursuant to Article 7(3) of the Statute, claiming that he “never received a response to [his] justified and valid question regarding [his] official status with the Organization

⁴ Emphasis added.

⁵ *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275, para. 38. See also *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 31.

⁶ *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 38 and cites therein;

28. On 18 August 2014, Mr. Harrich filed a se

THE UNITED NATIONS APPEALS TRIBUNAL

Judgment No. 2015-UNAT-576

Original and Authoritative Version: English

Dated this 30th day of October 2015 in New York, United States.

(Signed)

Judge Chapman, Presiding

(Signed)

Judge Simón

(Signed)

Judge Thomas-Felix

Entered in the Register on this 18th December 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar