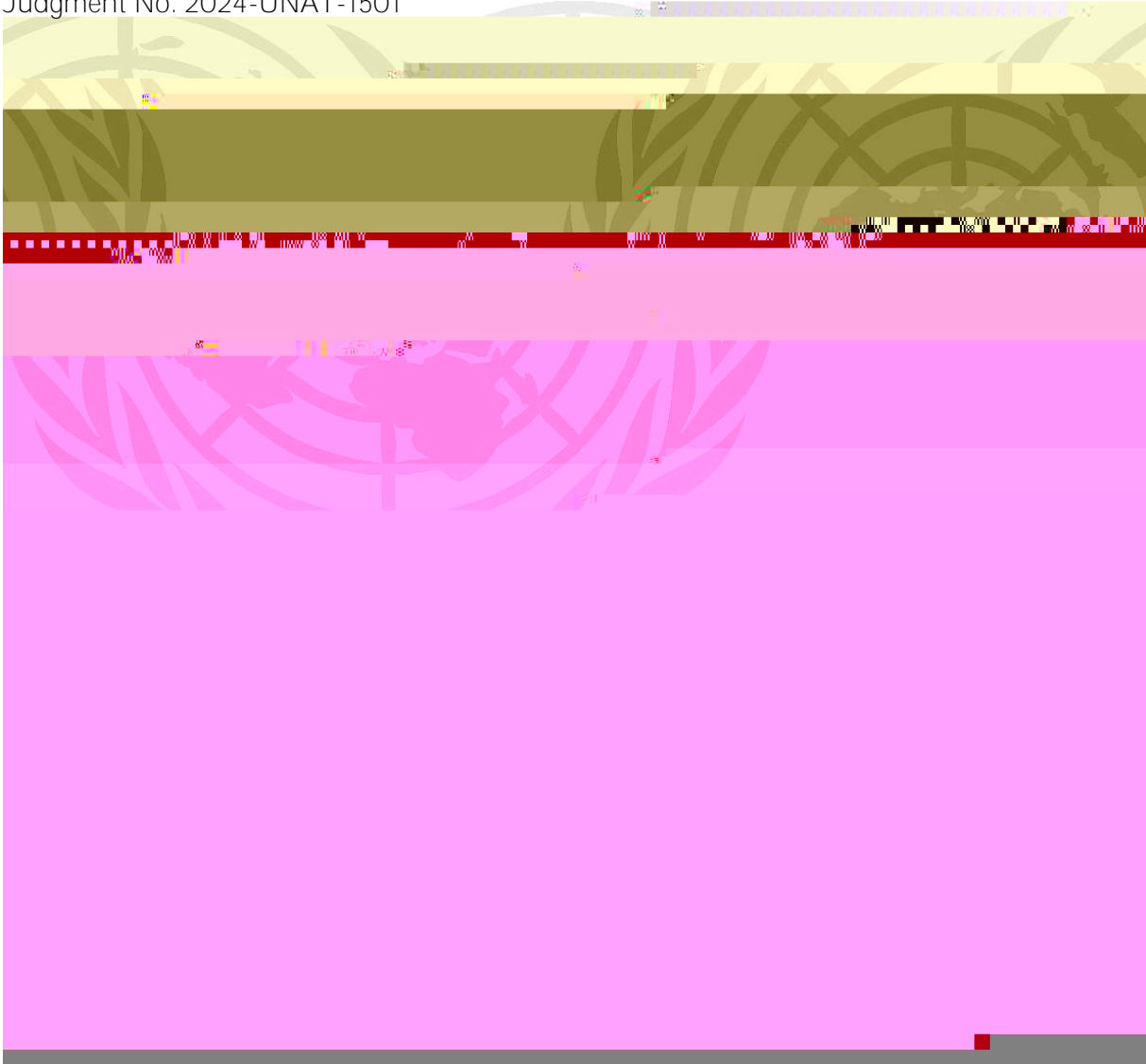


Judgment No. 2024-UNAT-1501



Counsel for Appellant: Self-represented

Counsel for

1. Kamran Ali Khan, a former staff member with the United Nations Children's Fund (UNICEF), has filed an appeal of S

7. On 1 February 2022 and while the investigation was still underway, Mr. Khan was assigned “on loan” to the United Nations Population Fund (UNFPA) based in Addis Ababa, Ethiopia.

8. On 30 June 2022, Mr. Khan was served with a copy of the UNICEF investigation report. On 17 August 2022, he was charged with misconduct. That same day Mr. Khan was put on administrative leave without pay (ALWOP) and he returned to his home town (Swabi) in Pakistan.

9. It is undisputed that, during the mid-to-later months of 2022, Mr. Khan's home town in Pakistan had been experiencing prolonged and severe flooding resulting in deaths, homelessness and subsequent sustained disruptions to electricity and associated infrastructural services including internet connections.

10. Because of the severe consequences of infrastructure damage and loss of, or damage to, his personal effects, including his laptop computer, Mr. Khan and his family relocated temporarily to Islamabad between August and mid-September 2022. He subsequently returned to his home town to assist with rebuilding and restoration efforts. His internet access, including access to e-mails, was through a local internet café. The weak internet access had limited bandwidth capacity and precluded or at least made it very difficult to read complex or lengthy attachments to e-mails. Mobile phone access was, however, available to Mr. Khan in his hometown.

11. In September 2022, Mr. Khan participated remotely, probably from Islamabad, in the investigation of the allegations against him by making submissions to UNICEF's investigators. During the same month, he obtained an extension of time to respond to the allegations against him due to his displacement from his home as a result of the earlier monsoon flooding of his home town and surrounding areas. He complied with this extended deadline on 30 September 2022.

12. On 10 October 2022, the Administration decided that the charges against Mr. Khan had been established by clear and convincing evidence and that he was to be dismissed from his position with UNICEF.

13. On 11 October 2022, there were a number of e-mail exchanges between United Nations officials responsible for the investigation's outcome, discussing how to notify Mr. Khan of the decision. These exchanges indicated that the Administration was aware that he was in a flood-

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33. Third, the Secretary-General maintains that the timing of Mr. Khan's acknowledgment of receipt of the contested Decision is entirely irrelevant to determining the applicable time limit for filing with the UNDT.

34. Fourth, the Secretary-General asserts that the death of Mr. Khan's counsel's wife does not justify the late submission of the application. He contends that Mr. Khan is introducing an entirely new argument for the first time, which should therefore be dismissed. Furthermore, the Secretary-General argues that the records indicate that Mr. Khan did not contact his counsel until 3 January 2023. The period of inactivity preceding his late engagement with his counsel suggests that Mr. Khan had ample time to prepare and submit his application within the prescribed time limit.

35. The Secretary-General requests the Appeals Tribunal to dismiss Mr. Khan's appeal.

36. These are our reasons for having declined the request for an oral hearing of the appeal as sought by Mr. Khan. His grounds for seeking an oral hearing were that the case demanded an orderly presentation and elaboration by his counsel.

37. While the default practice is that appeals are heard on papers and written submissions filed, if the Appeals Tribunal is satisfied that an oral hearing will enable it to determine the case more expeditiously and fairly, then an oral hearing may be directed.¹⁰

38. We were not satisfied that an oral hearing is necessary in Mr. Khan's case. The issues for decision are limited, clear, and well evidenced by documents and written submissions made by the parties. For these reasons, we declined to hold an oral hearing.

39. Mr. Khan purported to rely on new evidence and arguments which, in addition to the consequences of the flooding in Pakistan, are alleged to have affected the delay in filing his proceedings.

¹⁰ Article 18 of the Rules of Procedure of the Appeals Tribunal.

40. In addition to the circumstances affecting Mr. Khan personally on and after 11 October 2022, he now asserts that there were notable circumstances affecting his counsel on whose advice and actions Mr. Khan depended. On 15 November 2022, Mr. Khan's counsel's spouse was hospitalised in critical condition and remained in the Intensive Care Unit (ICU), dying on 8 January 2023. UO g11.04 Tf7912 O 612 792 reWñBT/F2 11.04 Tf1 O O 1 289.85 24.6 Tm0B7q0.000

54. There was evidence suggesting that, at least at first blush and as Mr. Khan contends, he received the contested Decision through UNICEF's email system on 12 October 2022 (PST). However, we are persuaded that the UNDT was correct in concluding that the contested Decision was received in Mr. Khan's e-mail inbox on 11 October, but outside local office hours. However, given the uncertainty earlier that day about when this advice of decision would be received, it would have been unreasonable to expect Mr. Khan to monitor his e-mail inbox constantly and potentially for very long periods including after business hours even if he had been able to do so without his laptop computer.

55. Given the exceptional factors in this case, the date of receipt of the administrative decision by Mr. Khan should have been extended by several hours at least to be the following business day, 12 October 2022 (PST). As a result, the 90-day filing period would have expired at the end of 10 January 2023, by which time Mr. Khan had filed his proceedings earlier that day, making his application, within time, albeit barely.

56. Mr. Khan's explanation made to the Dispute Tribunal was that he did not receive advice of the contested Decision until 26 October 2022. There was no evidence adduced to contradict that. His case maintains that a combination of his relocation from the city of Islamabad to his home town in a relatively isolated and flood-damaged part of Pakistan, his inability to communicate using his damaged laptop, his inability to receive complex and lengthy documents such as the contested Decision at an operating internet café, all may well have meant that it was not until about 15 days after the sending of the contested Decision that he received (as opposed to having been deemed to have received) and was able to read it. Mr. Khan's correspondence generated immediately after that date tended to corroborate his account of these events.

57. However, even if the UNDT correctly disregarded Mr. Khan's statement to this effect, we conclude that his application should have been accepted as filed within the time limit. The UNDT wrongly declined to suspend, waive or extend the time for doing so.

58. The statutory scheme governing proceedings before the UNDT as the first instance independent judicial body allows for extensions or waivers in exceptional circumstances that occasionally arise. This scheme allows the UNDT to take account of and balance the administrative desirability of adherence to limitations with the reality that, on occasion, strict compliance may be impractical or unjust. When exceptional circumstances are established,

It would have been unreasonable to have expected Mr. Khan, even if his internet café had been open for business then, to wait there constantly checking his e-mail, especially without knowing when the communication would arrive. None of these circumstances, individually or collectively, could be said to have been unexceptional or, as the UNDT described them, "generic".

63. Based on the exceptional circumstances outlined above, it is in the interests of justice to grant an exten~~612 79()~~] TJ(~~612 79()~~] TJ(~~612 79()~~] TJ(~~612 79()~~] TJ(~~612 79()~~] TJ(~~612 79()~~] TJ(~~612 79()~~] TJ(~~612 79()~~]

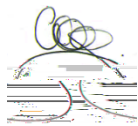
Dispute Tribunal erred in fact and in law by taking the unduly narrow approach to this question and thereby incorrectly determining the non-receivability of his pleadings.

68. In these circumstances, the UNDT's impugned Judgment cannot stand and must be reversed. Another UNDT Judge should now hear and determine Mr. Khan's substantive proceedings.

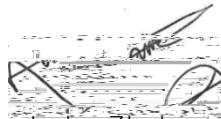
69. Mr. Khan's appeal is granted, and Judgment No. UNDT/2023/081 is reversed. The proceeding is remanded to the UNDT for decision by another Judge on its merits.

Original and Authoritative Version: English

Decision dated this 25th day of October 2024 in New York, United States.



Judge Colgan, Presiding



Judge Ziade



Judge Sheha

Judgment published and entered into the Register on this 13th day of December 2024 in New York, United States of America.

Juliet E. Johnson, Registrar