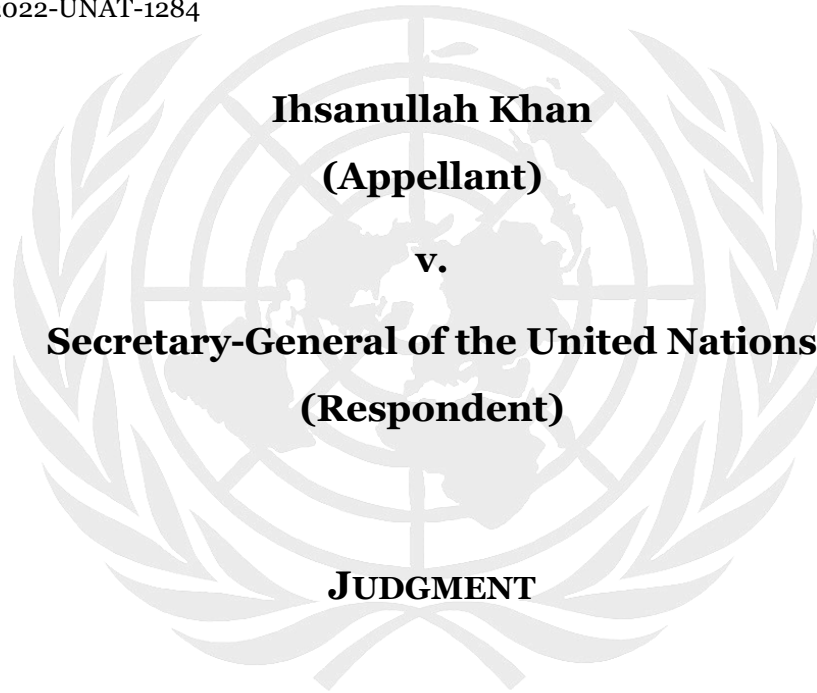




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2022-UNAT-1284



Ihsanullah Khan

(Appellant)

v.

Secretary-General of the United Nations

(Respondent)

JUDGMENT

Before:	Judge Graeme Colgan, Presiding Judge John Raymond Murphy Judge Martha Halfeld
Case No.:	2021-1639
Date of Decision:	28 October 2022
Date of Publication:	9 December 2022
Registrar:	Juliet Johnson

Counsel for Appellant: Self-represented

Counsel for Respondent: Sylvia Schaefer

JUDGE GRAEME COLGAN, PRESIDING.

1. Ihsanullah Khan appeals Judgment No. UNDT/2021/117 (impugned Judgment or UNDT Judgment) of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) which declared unreceivable his claims to financial assistance with the costs associated with his severe illness, evacuation and treatment abroad. The UNDT so concluded because Mr. Khan did not seek management evaluation of the Respondent's decision refusing his claims within 60 days of notification to him of the decision, as required by Staff Rule 11.2(c). The UNDT was clearly sympathetic to his plight, and noted that Mr. Khan's medical condition and lack of legal representation may have made it more difficult for him to take that necessary step of seeking management evaluation. Nevertheless, the Dispute Tribunal concluded that its Statute precluded it jurisdictionally from extending that time limit to so as to render his case receivable.
2. For the reasons set out below, the United Nations Appeals Tribunal (Appeals Tribunal or UNAT) dismisses the appeal and affirms the UNDT Judgment.

Facts and Procedure

3. Despite this being an appeal against a Judgment on Receivability and not on the merits of the underlying claims, we will set out the factual background in some detail.
4. Mr. Khan is a Senior Protection Officer with the United Nations High Commissioner for Refugees (UNHCR) stationed in Khartoum, Sudan. On the morning of 4 May 2019, Mr. Khan experienced severe symptoms of illness, including difficulty in moving his left arm and left leg, double vision, vertigo and speech difficulty. He was rushed to a hospital where he was examined and was prescribed some antibiotics. However, his condition did not improve.
5. On 16 May 2019, a Magnetic Resonance Imaging (MRI) brain scan was performed on Mr. Khan, which showed an “[i]ll defined area of abnormal signal involving the left side of the pons, midbrain and left cerebellar peduncle ...”¹
6. On 20 May 2019, Mr. Khan consulted a neurologist. In his examination report of the same date, the neurologist noted that the MRI “showed brain stem infarction” and advised Mr. Khan to “travel to Pakistan (his home country) for more investigations and

¹ Pons is a part of the human brain stem, a structure that links one's brain to the spinal cord. Cerebellar peduncles connect the cerebellum to the brain stem.

management because this type of infarction is dangerous (near the vital center) ...” Mr. Khan had requested Peshawar, Pakistan, as the place for further examinations and treatment as he had family support there. At the request of the UNHCR’s HR Officer, Mr. Khan also saw a United Nations physician.²

7. Later on 20 May 2019, the UNHCR Medical Section at Headquarters in Geneva (Medical Section) issued a response to Mr. Khan’s request for medical travel, and authorised Other Medical Travel (OMT), but not medical evacuation (Medevac), of Mr. Khan from Khartoum to Islamabad, Pakistan, for four days. We describe this as the first contested decision.³ Moreover, it was decided that Mr. Khan’s travel was to be without escort or daily subsistence allowance (DSA) (the second contested decision).

8. Still on 20 May 2019, as a follow-up to the response from the Medical Section, an HR Officer with UNHCR Sudan asked UNHCR Headquarters to consider “approv[ing] a family member to accompany [Mr. Khan]”, because she observed “while walking [Mr. Khan] is limping and cannot use one of his arms, so I find it a bit risky for him to travel alone especially on a such long flight”. The Chief of the Medical Section immediately responded by saying that “I cannot endorse family accompany. As said, I discussed the case with [Dr.] Iman. [Mr. Khan] is fit [for] flight. If the flight is too long, I can endorse OMT up to cost Amman ... where facilities are available, but always without accompany.” The HR Officer forwarded the Medical Section Chief’s message to Mr. Khan. In an e-mail sent about an hour later, Mr. Khan asked the HR Officer and the Chief of the Medical Section why he had been instructed to travel on OMT, and not on Medevac, and why he had to travel without an accompanying person.

9. On 22 May 2019, not having heard from UNHCR Headquarters, Mr. Khan followed up with an e-mail message to the Chief of the Medical Section, in which he stated that he still had double vision and could not move around without help. Mr. Khan informed the Chief of the

² Dr. Iman from the United Nations Development Programme in Khartoum saw Mr. Khan at her clinic on 20 May 2019.

³ According to the International Civil Service Commission, as of 1 January 2019, both Khartoum and Islamabad were classified as C duty stations, whereas Peshawar was classified as an E duty station. “A to E duty stations are rated on a scale that assesses the difficulty of working and living conditions from A to E, with A being the least and E, the most difficult. Categories are arrived at through an assessment of the following six discrete factors: health, security, local conditions, isolation, climate, and housing. The hardship allowance is paid for assignments at B, C, D and E duty stations; there is no hardship allowance at A duty stations.” International Civil Service Commission, A Guide to the Mobility and Hardship Scheme and Related Arrangements, p. 2, *available at* <https://icsc.un.org/Resources/HRPD/Booklets/MOBILITYENG.pdf>.

Medical Section that he had made travel arrangements for himself, his wife as escort, and his four minor children who had to suspend their schooling, to fly to Peshawar, Pakistan, on 24 May 2019. According to Mr. Khan, the medical facilities in Peshawar were better and his brother had already made a medical appointment for him in Peshawar.

10. The Chief of the Medical Section responded to Mr. Khan on 24 May 2019. She stated that:

Khartoum is consider[ed] a p[l]ace with medical facilities, however due to latest political situation we evaluate cases in detail. The nearest place of evacuation for Sudan is Cairo or Amman. However, understanding your request of having family member support we endorsed home country ... and I clarified Islamabad ... as I have been there and know facilities are worst that Khartoum in Quetta [sic].

Let me further explain you that based on actual admin instruction on medevac. Travel to home country only the travel is paid.

[internal quotation to paragraphs 21-24 of UNHCR/AI/2017/4 “Administrative Instruction on Medical Evacuation and Other Medical Travel” omitted]

Regarding accompany, the admins instruction paragraph 16 states the 3 situation[s] under which escort can be granted: mental cases, child and bedridden staff members.

[internal quotation to paragraphs 16-17 of UNHCR/AI/2017/4 “Administrative Instruction on Medical Evacuation and Other Medical Travel” omitted]

11. Mr. Khan travelled to Peshawar accompanied by his wife and children on 24 May 2019.

12. On 27 May 2019, Mr. Khan e-mailed the Chief of the Medical Section to update her on the treatments that he had received in Peshawar and the progress in his condition. Referring then to his entitlement, Mr. Khan stated that “I still, and sincerely, believe my situation and condition should have been considered for MedEvc with Accompanying person. Whether or not DSA should have been paid at event of MedEvc to country of home leave or place of choice is a different discussion.” Mr. Khan concluded by stressing that his aggravated condition warranted a Medevac and an accompanying person.

13. According to the plan, Mr. Khan’s family were to return to Khartoum on 2 June 2019. However, security conditions in Sudan had taken a turn for the worse just before the expected return date of Mr. Khan’s family. On 30 May 2019, UNHCR recommended voluntary removal of international staff dependents from Khartoum. Mr. Khan was advised by UNHCR that his

family should not return. Thereafter, from 3 June 2019, security evacuation was approved. Khartoum was declared a non-family duty station for two months between 1 July 2019 and 1 September 2019.

14. In an e-mail dated 9 June 2019 to the Chief of the Medical Section among others, Mr. Khan gave another update on the progress he had made. He also advised of his proposed trip to Moscow, Russia the following week to “consult Neuro and Cardio physicians and undergo advance investigations”. Medical investigations continued while he and his family remained outside Sudan.

15. Mr. Khan was medically authorised to return to work on a part-time basis with continued treatment, as from 1 July 2019. That was subsequently changed to teleworking at 50 per cent time from Pakistan for two months from 1 August 2019 to 30 September 2019.

16. In an e-mail dated 16 July 2019 to the Chief of the Medical Section, Mr. Khan again raised the issues of his travel to Peshawar and the DSA. He said that he understood his travel was Medevac, and not OMT, and he was entitled to a full DSA since he was on Medevac to Peshawar, which was a place of choice.

17. On 22 July 2019, Mr. Khan inquired about the eligibility of his family for the security evacuation allowances (SEA) and requested that his status be changed to security evacuation effective 3 June 2019.⁴

18. On 5 August 2019, the Personnel Administration Section (PAS) of UNHCR Headquarters informed Mr. Khan that his authorised OMT could not be converted to security evacuation, as it had been approved on 20 May 2019 and had been completed before the security evacuation of the non-essential staff members and dependent family members had been declared on 3 June 2019. We call this the third contested decision. Moreover, Mr. Khan was informed that his request for SEA for his family was denied, as their SEA eligibility was linked to, and derived from, his eligibility (the fourth contested decision).

⁴ The purpose of an SEA is to assist in offsetting direct added expenses of staff members and their eligible dependents who are evacuated from their official duty stations. Once evacuation from a duty station is officially declared by the Under-Secretary-General for Safety and Security, the internationally recruited staff and their eligible family members are evacuated to an authorized destination. An authorized evacuation from a duty station triggers the payment of the security evacuation allowance. *See A Guide to the Mobility and Hardship Scheme and Related Arrangements, op. cit.*, p. 12.

19. Following his clearance by the Medical Section, Mr. Khan returned to Khartoum on 8 September 2019, and his family returned on 28 September 2019.

20. On 24 September 2019, UNHCR Sudan appealed to PAS and the Department of Human Resources (DHR) at UNHCR's Headquarters to reconsider favourably the eligibility of Mr. Khan and his family for SEA between 3 June and 31 August 2019, because they had to leave Sudan due to Mr. Khan's acute illness and had thereafter been restricted from returning due to the security emergency, despite their clear intention to do so on 2 June 2019.

21. In an e-mail dated 29 September 2019, the Chief of PAS rejected the SEA request, because the "submitted documents do not form the grounds for the approval of the security evacuation allowances during respective period".

22. That e-mail was forwarded to Mr. Khan the next day. Mr. Khan followed up with an e-mail to PAS requesting a decision on his request for status change from OMT to security evacuation. However, on 2 October 2019, the Chief of PAS confirmed what had been "previously outlined by [her] colleagues", that retroactive change to the nature of his departure from OMT to security evacuation could not be considered. She clarified that the PAS interpretation of the relevant rules had been confirmed by UNHCR's Policy Section. In addition, she recalled the month-long annual leave plan that Mr. Khan had originally made for him and his family from 30 May 2019 through to 29 June 2019, and noted that his departure had been advanced to 24 May 2019 due to his health condition, but the return date for the entire family remained the same, 29 June 2019.

23. On 2 October 2019, Mr. Khan asked the Chief of PAS to reconsider her decision in respect of his requests for change of his travel status and the SEA for him and his family. He also requested a hearing on those issues.

24. In an e-mail dated 7 October 2019 to the Deputy Director, DHR, Mr. Khan stated that he did not find the answer from the Chief of PAS of 2 October 2019 to be satisfactory. In his view, the initial decision by the Chief of the Medical Section was "incorrect ab initio" and all subsequent decisions taken on that basis were "void". He again requested a hearing so that he could explain his case.

25. In a response e-mail dated 11 October 2019, the Deputy Director of DHR outlined several further actions to be taken in respect of his case. These included a review by a designated officer of issues related to his medical travel; the formulation of a legal opinion by the Legal Affairs Section (LAS); a further review at the Human Resources Services Section (HRSS) level; and a telephone conversation with Mr. Khan. All this was aimed at “providing full consideration to the case”.

26. In response to Mr. Khan’s reminder e-mail dated 4 November 2019, the Deputy Director of DHR asked Mr. Khan for his patience, as the review of his case “has not yet been completed” and the Deputy Director hoped “to revert at the earliest”. In response to another reminder message from him on 14 January 2020, the Deputy Director wrote to Mr. Khan that he would “revert on the substance of the issue within the next few days, as [he had] now received the required advice”.

27. On 28 January 2020, the Deputy Director of DHR confirmed to Mr. Khan that the analysis and decision by the PAS were correct, and that he and his family were not entitled to SEA. Regarding accompaniment, the Deputy Director of DHR informed Mr. Khan of the reversal of the prior non-approval of an escort for Mr. Khan’s medical travel and the new decision to reimburse him for the travel cost of one accompanying family member.

28. On 11 March 2020, Mr. Khan filed a request for management evaluation of the decisions in respect of medical travel and his claims for SEA. He stated that the decisions to authorise OMT for him and his travel without accompaniment had been taken on 20 May 2019 and he received clarification on 24 May 2019. However, he received what he characterised as a “review decision” on 28 January 2020, which overturned the denial of his travel without accompaniment. Mr. Khan advised that the decision to deny SEA for his family was communicated to him on 5 August 2019 and after he requested reconsideration, he received confirmation of the denial on 2 October 2019. As for his request to change his travel status from OMT to security evacuation, the decision to deny this request was taken on 23 July 2019.

29. In a letter dated 12 June 2020, the UNHCR Deputy High Commissioner informed Mr. Khan of the outcome of the management evaluation. She stated that his request for management evaluation filed on 11 March 2020 was not receivable in its entirety, because the original decisions relating to the classification of his medical travel as OMT rather than Medevac, the denial of a family escort during the OMT, and his ineligibility and that of his

family for SEA and his request to change his status to security evacuation, had been taken on 20 May and 5 August 2019, respectively. In her view, all the subsequent communications (e-mails of 29 September and 2 October 2019, and 28 January 2020) were reiterations and explanations of the original decisions. Consequently, his request for management evaluation filed on 11 March 2020 was submitted after the expiry of the 60-day time limit and was therefore time-barred. In addition, the Deputy High Commissioner addressed Mr. Khan's request for management evaluation of the original decision to refuse to authorise a family escort during the OMT but considered that it was not receivable because a new decision had been taken to reimburse the travel cost for one accompanying family member. She went on to state that "[i]n this regard, it is irrelevant whether the then Deputy Director's message of 28 January 2020 is interpreted as rescinding the initial decision on the modalities of OMT, or as a discretionary gesture on the part of the Organization with a view to close the matter". The Deputy High Commissioner then reviewed the merits of Mr. Khan's request on an "exceptional basis and as a matter of administrative discretion", without waiving UNHCR's right to invoke the issue of receivability at a later stage. She concluded that the contested decisions were lawful and the request for management evaluation was without merit.

Mr. Khan's application and the UNDT Judgment

30. On 7 September 2020, Mr. Khan applied to the Dispute Tribunal to contest: (i) non-authorization by the Medical Section of his medical evacuation when he was acutely ill (the first contested decision); (ii) non-authorization by the Medical Section of an escort to accompany him during his medical travel (the second contested decision); (iii) the denial of SEA for his family (the third contested decision); and (iv) the refusal to convert his administrative status to security evacuation following his medical travel (the fourth contested decision).

31. In his UNDT application, Mr. Khan acknowledged that his request for management evaluation was not submitted within the prescribed 60 days set forth in Staff Rule 11.2(c). However, he argued that there were compelling circumstances, including his incapacitation due to illness that could be considered for granting an exception to the time limitations. He asked the Dispute Tribunal to "put justice ahead of legal procedures".

32. In the impugned Judgment, the Dispute Tribunal dismissed Mr. Khan's application as not receivable *ratione temporis* (for lateness), because Mr. Khan had failed to file a timeous request for management evaluation.⁵ It found that Mr. Khan had received notification of all four contested decisions before 5 August 2019, but had requested management evaluation only on 11 March 2020, more than six months beyond the 60-day deadline. The Dispute Tribunal noted a number of requests for clarification that Mr. Khan had made after August 2019, but held that they did not change the effective notification date of the decisions. As for the 28 January 2020 e-mail in which the Deputy Director of DHR reversed the second contested decision and approved the accompaniment of one family member for Mr. Khan's OMT, the Dispute Tribunal held that Mr. Khan's challenge to the second contested decision was moot since the new decision favourably accommodated Mr. Khan's concern. Otherwise, "[a]ll other aspects of the challenged decisions were merely reiterated in the 28 January 2020 email".⁶

32. The UNDT concluded by observing *obiter dicta* that the Staff Rules, the Statute, and the Rules of Procedure of the Dispute Tribunal, all set out strict time limits without exception. However, the Dispute Tribunal noted that Staff Rule 11.2(c) permits the extension of the 60-day deadline for submitting a management evaluation request pending informal resolution efforts, and other staff rules allow for accommodation of extended time in cases of illness. The Dispute Tribunal further observed that "the good faith responsibility rests with the Respondent in exercising any applicable discretion within the relevant rules so that the decisions taken are in the best interest of the Organization and the staff member".⁷ In the present case, the Dispute Tribunal believed that Mr. Khan had a potentially viable case on the merits, that his case failed on a technicality, but he "deserved much better".⁸

Procedure before the Appeals Tribunal

33. On 7 December 2021, Mr. Khan appealed the impugned Judgment to the Appeals Tribunal, and the Secretary-General submitted an answer on 11 February 2022.

⁵ It is submitted that the UNDT erred in dismissing Mr. Khan's application as not receivable *ratione temporis*. Rather, Mr. Khan's UNDT application was not receivable *ratione materiae*, for lack of subject matter jurisdiction, because he did not submit a timeous request for management evaluation, though his UNDT application was timeous, i.e., within 90 days of receipt of the outcome of the management evaluation as required under Article 8(1)(d) of the UNDT Statute.

⁶ Impugned Judgment, para. 33.

⁷ *Ibid.*, para. 39.

⁸ *Ibid.*, para. 41.

Submissions

Mr. Khan's Appeal

34. Mr. Khan requests that the Appeals Tribunal set aside the UNDT Judgment, grant his appeal by remanding the matter for a “fresh” and “revised” management evaluation and giving him a fair opportunity for a full hearing of his case by the Dispute Tribunal.

35. Mr. Khan submits that the UNDT applied the law and the Appeals Tribunal's jurisprudence harshly without appreciating the exceptional circumstances and compelling facts of his case. The extreme contradictions and changes of stance in the Respondent's communications with him and UNHCR Sudan put a question mark on whether the successive communications were indeed “mere reiterations” of the initial wrong decisions.

36. Mr. Khan also submits that, on the sole issue of receivability, the Dispute Tribunal failed to consider the elements causing the delay of his submission of his request for management evaluation: the prolonged periods of time taken by UNHCR management to respond to his messages, the frequent assurances by UNHCR Sudan that they were following up with UNHCR Headquarters on his case, the varied decisions made by UNHCR management, his severe illness, his medical treatment needs, his travel and his family issues.

37. Mr. Khan maintains that, by concluding that the new decision to authorize accompaniment by one family member on his OMT rendered his challenge to the second contested decision moot, the Dispute Tribunal erred on a question of fact as it failed to truly appreciate the significant impact of the initial erroneous decision on him and his family both psychologically and financially, which was much more than the ticket expenses for one accompanying family member.

38. Mr. Khan contends that the Dispute Tribunal erred in fact, law and procedure and failed to exercise jurisdiction vested in it when it should have struck down the impugned outcome of the management evaluation and remanded the matter for a fresh management evaluation, given that the Tribunal found that it was within the discretion of the Respondent to have extended the 60-day time limit for management evaluation.

39. Mr. Khan also maintains that the UNDT disregarded the evidence disclosed by the Respondent on 24 September 2021 and did not allow him to examine it in violation of his right to be heard (*audi alteram partem*). In his view, the evidence disclosed demonstrated his paralytic condition and incapacitation on the day of the first and second contested decisions and for months thereafter, and further shows that the second contested decision not to classify his medical travel as “Medevac” requiring an escort was “flawed, erro[neous], baseless hence unlawful and void *ab initio*”. Recognition of his condition during this period, he submits, would have entitled him to apply for management evaluation in the extended period of one year instead of 60 days after the impugned decision.

The Secretary-General’s Answer

40. The Secretary-General requests that the Appeals Tribunal dismiss Mr. Khan’s appeal in its entirety.

41. The Secretary-General submits that the UNDT correctly determined that Mr. Khan’s application was not receivable, because he did not submit a timely request for management evaluation. Mr. Khan received notification of the first and second contested decisions on 20 May 2019 and was notified of the third and fourth contested decisions on 5 August 2019. He requested management evaluation on 11 March 2020, months beyond the 60-day deadline. The Dispute Tribunal correctly held that Mr. Khan’s requests for clarifications and reconsiderations did not change the fact that he had received notification of the contested decisions before 5 August 2019, and that the repeated rejections of Mr. Khan’s requests for clarification and reconsideration were mere reiterations of the contested decisions already taken.

42. The Secretary-General also submits that the UNDT correctly determined that the second contested decision was rendered moot by the 28 January 2020 decision to reimburse the travel cost for one accompanying family member during Mr. Khan’s OMT, because that *inter partes* resolution was made in his favor and accommodated his request.

43. The Secretary-General maintains that the Dispute Tribunal did not fail to exercise the jurisdiction vested in it. Management evaluation is not a recourse that the UNDT may order, but it is a prerequisite for receivability. The Management Evaluation Unit (MEU) is not a judicial first instance tribunal to which the Dispute Tribunal can remand the case for reconsideration. Contrary to Mr. Khan’s assertion, it was not possible for the UNDT to have

“struck down” the outcome of the management evaluation and remanded the case for a “fresh” management evaluation. In addition, the UNDT correctly noted that it did not have jurisdiction to waive the statutory 60-day deadline for management evaluation and thus intervene in, or replace, the MEU’s discretion. Only the Office of the Secretary-General, of which the MEU is a component part, has the authority to extend or waive the time limit for management evaluation.

Considerations

45. Mr. Khan requested an in-person hearing of his appeal. We declined that application and now give our reasons for doing so.

46. The legal basis for departing from the default rule that appeals are addressed on written submissions is contained in Article 18 of the UNAT’s Rules of Procedure. This provides that an oral or in-person hearing can be directed if this will assist in the Tribunal’s expeditious and fair disposal of the case.

47. Mr. Khan advanced four grounds for an oral hearing. First, he said that this was necessary to enable him to present facts and evidence (including graphic medical evidence) which cannot be attached to his written submissions because to do so would exceed their permissible length. This submission misunderstands the nature of an appeal: it is a review of the judgment of the UNDT based on the evidence presented to that body. Previously admitted evidence may form part of the annexures to the appeal and there are no limits on the pages submitted. So, if evidence was before the UNDT, it can be before the Appeals Tribunal. If it was not before the UNDT, then a special application must be made to admit it on appeal, but no such application has been made in this case. This first ground does not assist Mr. Khan.

48. His second ground is a variation of the first, which is that the page limits on appeal prevent all the facts from being adduced. We reiterate that an appeal is not an opportunity to simply restate arguments previously rejected by the UNDT by seeking to bolster them with additional documents. There is no limitation on the number or length of documents that were before the UNDT. This second ground likewise fails.

49. Third, Mr. Khan says that a personal appearance before the Tribunal is necessary to enable him to explain the comparison between policies that he says led the UNDT into error.

We are not persuaded that this cannot be done succinctly in writing. We are also not persuaded that an oral hearing will assist in the expeditious and fair disposal of the case on this ground.

50. Finally, Mr. Khan said that an oral hearing would allow for an amicable resolution of the case, at least if the Secretary-General is minded to do so. While we do not wish to preclude opportunities for the parties to settle a case, even at this relatively late stage, we do not understand how, and are not persuaded that, an oral hearing will assist with such overtures.

51. For the foregoing reasons, we declined Mr. Khan's application for an oral hearing of his appeal.

52. Turning to the substantive appeal, we can detect no error in the UNDT's Judgment. The requirement to seek management evaluation of administrative decisions such as those challenged by Mr. Khan, carries with it certain time limits. Staff Rule 11.2(c) provides that "a request for management evaluation shall not be receivable . . . unless it is sent within 60 calendar days from the date on which the staff member received notification of the administration decision to be contested." Mr. Khan's failure to seek management evaluation until more than 60 days had elapsed since he was notified of the contested decisions means that he could not apply to the UNDT to challenge those decisions. It is well-settled that the Dispute Tribunal may only review decisions that have been the subject of a timely request for management evaluation,⁹ which was not the case here.

53. Further, as the UNDT noted correctly, although it has discretionary powers to vary time limits for taking steps in relation to litigation and even potential litigation, Article 8.3 of the UNDT Statute expressly provides that it lacks "jurisdiction to waive deadlines for management evaluation."

54. Mr. Khan's arguments in support of his appeal rely on what he contends is the injustice of his plight having been unable by reasons of his medical condition to seek management evaluation within the time limit rigidly imposed. However, to accede to Mr. Khan's submissions would be to exercise a power or powers that the Appeals Tribunal does not have, as indeed the UNDT did not have.

55. In these unfortunate circumstances, Mr. Khan's appeal must be and is, dismissed.

⁹ Article 8(1)(c) of the UNDT Statute.

56. Like the UNDT, we sympathise with Mr. Khan's situation and offer the following observation. A remedy does not lie in this litigation, but rather by non-judicial resolution or amendments to the relevant staff rules or statutes.

Judgment

58. Mr. Khan's appeal is dismissed and Judgment No. UNDT/2021/117 is affirmed.

Original and Authoritative Version: English

Decision dated this 28th day of October 2022 in New York, United States.

(Signed)

Judge Colgan, Presiding

(Signed)

Judge Murphy

(Signed)

Judge Halfeld

Judgment published and entered into the Register on this 9th day of December 2022 in New York, United States.

(Signed)

Juliet Johnson, Registrar