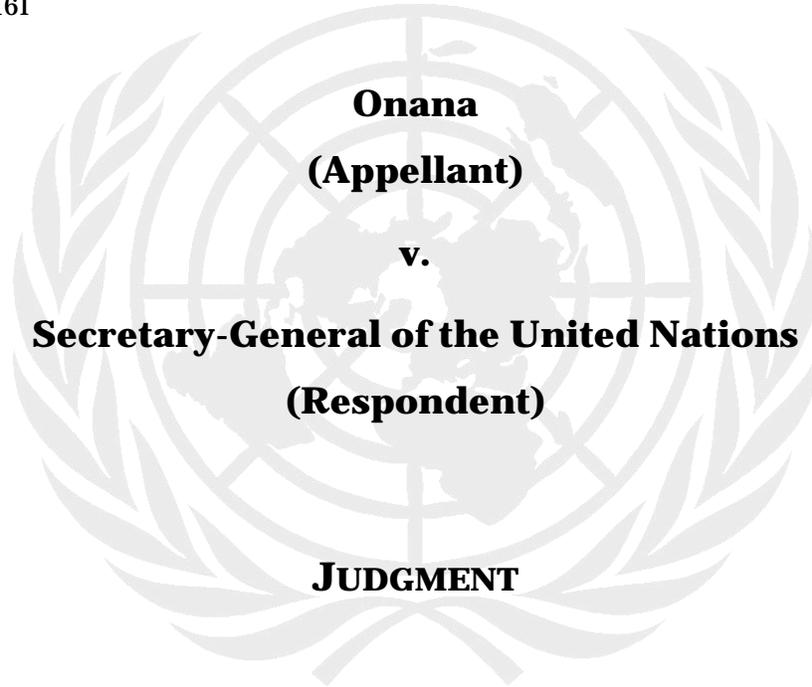




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-161



**Onana
(Appellant)**

v.

**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Luis María Simón, Presiding
Judge Inés Weinberg de Roca
Judge Jean Courtial

Judgment No.: 2011-UNAT-157

Date: 8 July 2011

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Stephanie Cartier

JUDGE LUIS MARÍA SIMÓN, Presiding.

Synopsis

1. The Appeals Tribunal of the United Nations (Appeals Tribunal) considers that the appeal is not receivable because it was not filed within 45 calendar days of the receipt of the Judgment of the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) as required by Article 7(1)(c) of the Statute of the Appeals Tribunal.

2. The lack of formal notification argued by Pius Onana (Onana), does not persuade this Tribunal, since it would be senseless to rely just on a formality to ignore Onana's actual knowledge of the UNDT Judgment, as early as 2 August 2010.

Facts and Procedure

3. In 1994, the International Criminal Tribunal for Rwanda (ICTR) was established by the United Nations Security Council as an ad hoc tribunal to try suspects of war crimes, crimes against humanity and genocide, which occurred in Rwanda in 1994. But in August 2003, the Security Council urged the ICTR to formalize a detailed completion strategy "in order to allow the ICTR to achieve its objective of completing investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010..." Hence, the Administration of the ICTR needed to implement a completion strategy, including downsizing of its staff.

4. Onana joined the ICTR in April 1999 as a French Court Reporter with the Court Management Section. Onana's performance appraisals were generally satisfactory, except in 2001-2002 and in 2006-2007. However, in May 2007, Onana received a rating of "does not meet performance expectations", due to his inability to adjust to the real-time transcript system. He was subsequently reassigned to the Judicial Records and Archives Unit (JRAU) where he performed different functions while continuing to encumber the post of French Court Reporter.

5. In July 2007, the Registrar of the ICTR set up a Staff Retention Task Force (Task Force) composed of management representatives and representatives of the Staff Association to facilitate the downsizing of staffing levels.

6. On 3 October 2007, the Task Force in its final report set forth the criteria to be used by programme managers when deciding on the retention of staff, and the points to be assigned to each criterion. Using these criteria, the French Court Reporters Unit adopted its own specific criteria to determine which staff members were essential for the successful and timely completion of the work of the ICTR. In April 2008, the Court Management Section Committee on Staff Retention (Staff Retention Committee) evaluated Onana as a French Court Reporter on the basis of these specific criteria. Onana ranked last within that Unit, with a rating of 22, whereas the staff member who ranked second to last had a rating of 47. Accordingly, the Staff Retention Committee recommended the abolition of Onana's post as French Court Reporter, together with 338 other posts, and the non-renewal of his contract beyond 31 December 2008.

7. In June 2008, the United Nations General Assembly approved supplementary funds for the ICTR to meet an unexpected increase in the workload brought about by new arrests. Onana's appointment was subsequently extended until 30 September 2009, together with the appointment of the other 338 staff members whose posts had been similarly slated for abolition.

8. In June 2009, the Registrar of the ICTR requested that the programme managers identify which of the 339 posts were deemed critical and required further extension beyond 30 September 2009. As a result, 297 of the 339 posts, which had initially been slated for abolition, were considered to be "critical". But Onana's functions in JRAU were not deemed to be "critical to (and directly supporting) the completion of ongoing trials". According to the Respondent, Onana could not be considered as "critical" for the French Court Reporters Unit as he was not performing the functions of a French Court Reporter. On 26 June 2009, Onana was notified of the non-renewal of his contract beyond 30 September 2009.

9. On 28 August 2009, Onana filed a request for management evaluation of the non-renewal decision. On 12 October 2009, the Under-Secretary-General for Management informed Onana that the contested decision had been taken properly.

10. On 22 September 2009, Onana filed an application to suspend the implementation of the decision not to renew his appointment before the Dispute Tribunal. This request was granted on 13 October 2009 "until the [Appellant's]

substantive application [was] heard and determined”. The Secretary-General appealed to this Tribunal the UNDT Order to suspend. On 30 March 2010, the Appeals Tribunal held that the UNDT had exceeded its jurisdiction or competence by ordering the suspension of the decision beyond the pendency of the management evaluation. Accordingly, in April 2010, the Administration informed Onana that the Appeals Tribunal had annulled the suspension order by the UNDT. As a result, Onana’s further extension of appointment was “nullified” and he was separated from service effective on 30 April 2010.

11. With respect to Onana’s application challenging the non-renewal of his appointment, the UNDT in its Judgment No. UNDT/2010/136 dated 30 July 2010 concluded that the decision not to renew Onana’s appointment had been made in conformity with the ICTR’s staff retention guidelines and with Onana’s due process rights, taking into account the context of the ICTR’s completion strategy. The UNDT further determined that the non-renewal decision was not based on improper motives or other extraneous factors.

12. On 30 July 2010, the Registry of the UNDT in Nairobi transmitted the UNDT Judgment to the Secretary-General, and Onana’s counsel on record, the Office of Staff Legal Assistance (OSLA).

13. In an e-mail dated 2 August 2010, Onana asked his Counsel, Katya Melluish (Melluish) of OSLA, for an update on his application before the UNDT. About an hour later, Onana e-mailed Melluish to inform her that he had found the UNDT Judgment posted on the UNDT website. In that e-mail, Onana asked Melluish for advice on how to proceed.

14. On 3 August 2010, Melluish informed Onana of the issuance of the UNDT Judgment which was not in his favor and encouraged Onana to accept the Judgment. Onana disagreed. On 5 August 2010, he e-mailed Melluish expressing his wish to appeal the Judgment and asking her for assistance. On 5 August 2010, Melluish stated to Onana that although he had every right to appeal, neither she nor OSLA would be in a position to assist him in appealing.

15. On 9 November 2010, Onana appealed the UNDT Judgment. On 23 December 2010, the Secretary-General filed an answer.

16. On 23 May 2011, the Registry wrote to Onana with copy to the Secretary-General seeking clarification as to when his former Counsel sent him the e-mail included in Annex No. 5 of his appeal.¹ Not having heard from either party, the Registry forwarded the e-mail of 23 May to Melliush for clarification, with copy to Onana and the Secretary-General. On 25 May 2011, both Onana and Melliush provided their e-mail exchanges between 2 August and 5 August 2010.

Submissions

Onana's Appeal

17. Onana submits that his appeal is receivable even if it was filed after the mandatory 45-day time limit because he did not receive the Judgment from the UNDT Registry. Onana claims that his former Counsel had failed to share information with him about the UNDT Judgment or the recourse procedure. He maintains that he did not request any extension of the 45-day time limit as he had never received any notification of the UNDT Judgment.

18. On the merits, Onana reiterates his argument that the non-renewal decision was not in conformity with the ICTR's staff retention guidelines or with his due process rights. He claims that the decision was based on improper motives. Onana further submits that the Administration should have given him one month's notice before separating him from service. Finally, Onana states that the UNDT committed several procedural errors, thereby vitiating the Judgment. Onana requests the rescission of the non-renewal decision, as well as the payment of compensation in the amount of two years' net base salary.

¹ Annex No. 5 contains three e-mails, with one dated 05/08/2010, and the other two undated. It is not clear whether "05/08/2010" refers to 5 August 2010 or 8 May 2010.

Secretary-General's Answer

19. The Secretary-General submits that Onana's appeal is time-barred and therefore not receivable as it was filed after the expiry of the relevant response period for filing an appeal.

20. On the merits, the Secretary-General submits that the following conclusions of the UNDT were correct: 1) that Onana's post as French Court Reporter was abolished in conformity with the ICTR's completion strategy and staff retention process and with Onana's due process rights; 2) that the decision not to renew Onana's appointment was proper and that he had no expectancy of renewal of his appointment beyond 30 September 2009; and 3) that the abolition of Onana's post and the non-renewal of his appointment were not based on improper motives or other extraneous factors. The Secretary-General maintains that Onana was not entitled to one month's notice prior to his separation from the ICTR. Nor has Onana established any procedural errors. The Secretary-General requests the Appeals Tribunal to affirm the UNDT Judgment, and to dismiss the appeal in its entirety.

Considerations

21. This Tribunal considers that the appeal is not receivable because it was not filed within 45 calendar days of the receipt of the Judgment of the UNDT as required by Article 7(1)(c) of the Statute of the Appeals Tribunal.

22. While the impugned UNDT Judgment was e-mailed to Onana's former Counsel on 30 July 2010, there is no doubt that Onana knew the content of the Judgment, posted on the UNDT website on 2 August 2010. He was again informed about the issuance of the Judgment the following day, by the former Counsel, who on 5 August 2010 formally let Onana know that OSLA would not be assisting him in any appeal that he was planning to file.

23. Therefore, even when Onana's case is viewed in the most favorable light, he was perfectly aware, since 5 August 2010, of the need to file his appeal without OSLA's assistance before the end of 19 September 2010.

24. But Onana failed to file the appeal in a timely manner and there are no exceptional circumstances for us to waive the time limits in this case.

25. Onana's contention that he did not receive the said UNDT Judgment or any notification from the UNDT Registry does not persuade this Tribunal, since it would be senseless to rely just on a formality to ignore Onana's actual knowledge of the UNDT Judgment, as early as 2 August 2010. This Tribunal is of the view that Onana's right to due process of law was not violated.

26. Onana was in a position to prepare and file the appeal before the expiry date or to timely request an extension of the time limit, but he did not take any of the measures at his disposal.

27. In light of the foregoing, we consider the appeal time-barred and find no need to examine the merits of the present case.

Judgment

28. This Tribunal declares the appeal not receivable and dismisses it in its entirety.

Original and Authoritative Version: English

Dated this 8th day of July 2011 in Geneva, Switzerland.

(Signed)

Judge Simón, Presiding

(Signed)

Judge Weinberg de Roca

(Signed)

Judge Courtial

Entered in the Register on this 29th day of August 2011 in New York, United States.

(Signed)

Weicheng Lin, Registrar