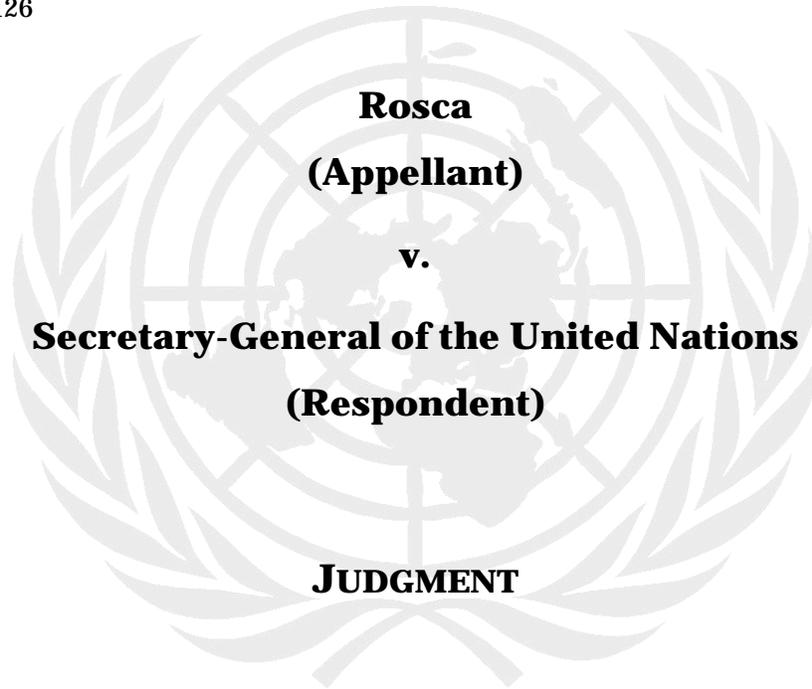




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Case No. 2010-126



Before: Judge Kamaljit Singh Garewal, Presiding
Judge Sophia Adinyira
Judge Mark P. Painter

Judgment No.: 2011-UNAT-133

Date: 8 July 2011

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Melanie Shannon

JUDGE KAMALJIT SINGH GAREWAL, Presiding.

Synopsis

1. Radu Rosca (Rosca) filed an appeal before the Joint Appeals Board (JAB) after the prescribed time limit. The United Nations Dispute Tribunal (UNDT or Dispute Tribunal) did not have jurisdiction to waive time limits, as held by the United Nations Appeals Tribunal (Appeals Tribunal) in *Costa*.¹ Therefore, Rosca's case before the UNDT was not receivable. His appeal before the Appeals Tribunal against the dismissal of his case on the merits by the UNDT is dismissed because his application before the UNDT was not receivable.

Facts and Procedure

2. Rosca held a one-year fixed-term appointment at the FS-5 level with the United Nations Assistance to the Khmer Rouge Trials (UNAKRT), from 1 September 2007, as an Audio/Visual Technician with the Extraordinary Chambers in the Courts of Cambodia (ECCC).

3. In early 2008, following a review by the ECCC, the post of Supervisor, Audio/Visual Unit, was expanded to include additional operational and management responsibilities. The revised job description for the post was approved in July 2008 and the post occupied by Rosca was abolished. Rosca did not apply for the new post, but was reassigned to the Information and Communication Technology (ICT) Section on 27 August 2008 and his appointment was extended to 30 November 2008, pending the finalization of the recruitment process.

4. In November 2008, Rosca submitted a request for administrative review of the decisions to reassign him and extend his appointment. The essence of his complaint was that the decisions were an abuse of authority. Rosca's appointment was subsequently extended twice, until 12 December 2008, after which he was separated. On 24 December 2008, Rosca received the outcome of the administrative review, which was not in his favour.

¹ *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

5. Rosca filed an incomplete statement of appeal with the JAB on 12 February 2009. On 27 February 2009, Rosca's counsel requested a suspension of the time limit to submit a full statement of appeal by 12 March 2009. He filed a full statement of appeal with the JAB on 12 March 2009, which was later transferred to the Dispute Tribunal.

6. On 5 November 2009, the UNDT determined in Judgment No. UNDT/2009/052 that Rosca's appeal before the JAB was receivable.

7. On 13 April 2010, the Dispute Tribunal issued Judgment No. UNDT/2010/062, which dismissed Rosca's application. The Dispute Tribunal found that the original vacancy announcement for Rosca's post, and the subsequent announcement, contained distinct and not insignificant differences. This was a management question in an area in which the Dispute Tribunal had no particular expertise. The Dispute Tribunal found that there were no personal ill-feelings towards Rosca or ulterior motives behind the change in the post description. Furthermore, having regard to the changes in the job requirements, it was reasonable that Rosca's contract should not be renewed, and Rosca's complaint, that his reassignment to the ICT Section was inappropriate and motivated by ill-feelings towards him, was rejected.

8. After being granted a 30-day extension of time to appeal, Rosca filed an incomplete appeal against the UNDT Judgment on 6 August 2010, which was later corrected in an amended appeal on 25 September 2010. The Secretary-General filed an answer to the amended appeal on 15 November 2010.

9. Prior to reviewing the grounds of Rosca's appeal, this Tribunal decided to consider *sua sponte* the merits of the receivability of Rosca's original appeal in front of the JAB and the subsequent order that was issued by the Dispute Tribunal in Judgment No. UNDT/2009/052. Indeed, in *Costa*,² a similar question regarding the receivability of a time-barred appeal was raised and the UNDT held that it had no jurisdiction to waive time limits for requests for management evaluation or administrative review. The *Costa* Judgment was affirmed by this Tribunal on 1 July 2010.³ We hold that Rosca's appeal to the JAB was not within the time limits and that the UNDT did not have jurisdiction to

² *Costa v. Secretary-General of the United Nations*, Judgment No. UNDT/2009/051.

³ *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

waive them. Without going into the grounds of the appeal on the merits, we dismiss the appeal by holding that in accordance with our Judgment in *Costa*,⁴ Rosca's application before the UNDT was not receivable *ratione temporis*.

Judgment

10. This appeal is dismissed. Judgment Nos. UNDT/2009/052 and UNDT/209/062 are vacated.

Original and Authoritative Version: English

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

(Signed)

Judge Garewal, Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Painter

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

(Signed)

Weicheng Lin, Registrar

⁴ *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.