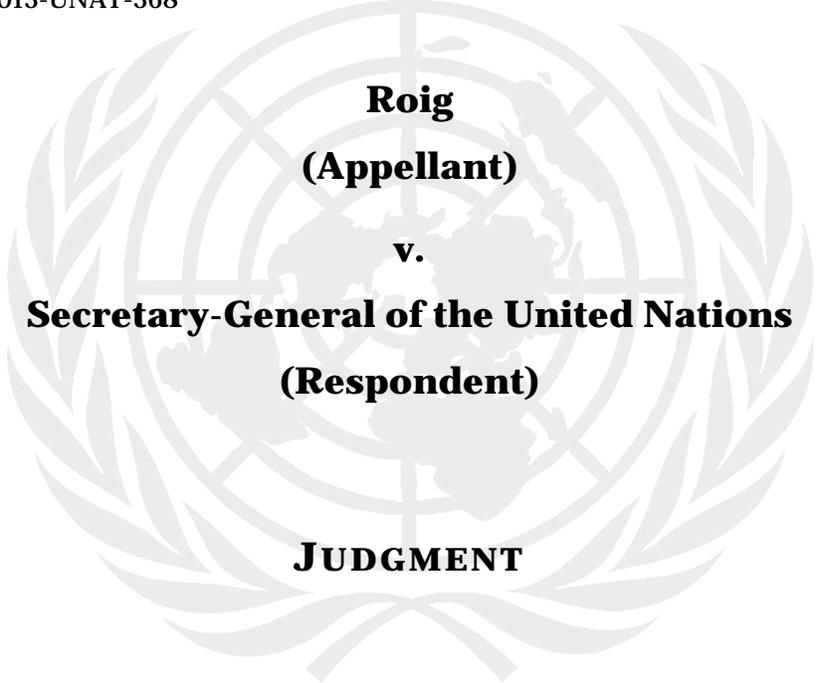




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2013-UNAT-368



**Roig
(Appellant)**
v.
**Secretary-General of the United Nations
(Respondent)**

JUDGMENT

Before: Judge Inés Weinberg de Roca, Presiding
Judge Sophia Adinyira
Judge Richard Lussick

Case No.: 2012-416

Date: 17 October 2013

Registrar: Weicheng Lin

Counsel for Appellant: Joseph Grinblat

Counsel for Respondent: Paul Oertly

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Ms. Marta Roig against Judgment No. UNDT/2012/146, rendered by the United Nations Dispute Tribunal (Dispute Tribunal or UNDT) in New York on 4 October 2012 in the case of *Roig v. Secretary-General of the United Nations*. Ms. Roig appealed this Judgment on 29 November 2012 and the Secretary-General answered on 28 January 2013.

Facts and Procedure

2. The facts established by the Dispute Tribunal in this case, which are not contested, read as follows:¹

... On 1 July 2009, [Ms. Roig] submitted an application for [a P-4 level post in the Migration Section, Population Division, Department of Economic and Social Affairs (DESA), advertised as vacancy announcement 09-421575-R-New York (Post)]. As part of the selection process, [she] was interviewed for the Post between 11 February 2010 and 10 March 2010.

... On 29 October 2010, [Ms. Roig] received a letter from the Executive Officer of DESA informing her that the Under-Secretary-General of DESA had completed the selection for the Post and that she had not been selected. This letter also informed [her] that, as a result of the Central Review Board's ("CRB") endorsement of her application as a recommended candidate for this position and her ensuing non-selection, she was being placed on a roster of candidates that may be considered for future vacancies at the same level and with similar functions.

... On 17 December 2010, [Ms. Roig] became aware of the identity of the candidate that had been selected for the Post.

... On 11 February 2011, [Ms. Roig] requested management evaluation of the selection of the successful candidate on the grounds that the selected candidate did not meet the ... eligibility requirements listed in the ... vacancy announcement and that the selection process had therefore not respected the applicable selection rules and procedures[,] resulting in a breach of her rights.

... On 23 March 2011, the Under-Secretary-General for Management ("USG") informed [Ms. Roig] that, following the Management Evaluation Unit's ("MEU") review of her request for management evaluation of the decision regarding her non selection for the Post, the Secretary-General had decided to uphold the contested decision. The USG's letter informed [Ms. Roig] that her candidature for the Post had been fully and fairly evaluated and noted that "the selected candidate possesse[d] the required ... experience".

¹ The following facts are taken from Judgment No. UNDT/2012/146, paras. 2-9.

... On 8 April 2011, [Ms. Roig] filed an application with the Dispute Tribunal contesting the selection of a candidate other than her which resulted in a breach of her rights.

... On 13 May 2011, the [Secretary-General] submitted his reply in which he contested, *inter alia*, the receivability of [Ms. Roig's] request for management evaluation. The [Secretary-General] submitted that it was filed 52 days after the 28 December 2010 deadline to request a review of the 29 October 2010 administrative decision informing [Ms. Roig] of her non-selection for the Post, thereby rendering her management evaluation time-barred.

... On 17 May 2011, [Ms. Roig] submitted comments on the [Secretary-General's] reply[,] stating that her management evaluation request was timely as she had only found out who the selected candidate was on 17 December 2010. [Ms. Roig] further stated that she "was not contesting her non-selection ... [but] that her right for due process was violated by the selection of a candidate who ... did not even meet the minimum qualification required".

3. The Dispute Tribunal concluded that Ms. Roig's application was not receivable. It identified the administrative decision under appeal as the decision of 29 October 2010, holding,

aside from the question as to whether or not an applicant has standing to contest an administrative decision that concerns someone else and which may therefore not affect their contractual rights or may not, per *Andronov*,^[2] carry direct legal consequences or not be of individual application to the Applicant, the Tribunal can only conclude that the Applicant was informed of the administrative decision to select someone other than her on 29 October 2010, at which point the 60-day time limit to potentially request management evaluation of that other administrative decision would have started to run.³

As Ms. Roig did not request management evaluation until 11 February 2011, the Dispute Tribunal found that, insofar as it related to the 29 October 2010 decision, her request was filed late.

4. Furthermore, the Dispute Tribunal found that there had been no administrative decision after 29 October 2010 in the instant case. Rather, the event Ms. Roig sought to rely upon was her becoming aware of the identity of the selected candidate, which event did not re-start her 60-day deadline to request management evaluation.

² Former United Nations Administrative Tribunal Judgment No. 1157, *Andronov* (2003).

³ Judgment No. UNDT/2012/146, para. 31.

5. Accordingly, as the Dispute Tribunal found that Ms. Roig's request for management evaluation was filed late, without an extension from the Secretary-General pursuant to Staff Rule 11.2(c), it concluded "seeing that the initial request for management evaluation was time-barred it has no legal effect and the application before the Tribunal is therefore not receivable", pursuant to Article 8 of the Statute of the Dispute Tribunal.

Submissions

Ms. Roig's Appeal

6. Ms. Roig submits that her application was receivable and that the UNDT erred both in fact and law.

7. She explains that she was not contesting her non-selection but, rather, the fact that the successful candidate did not meet the minimum requirements for the Post. As such, Ms. Roig avers that the decisive date is the date on which she was informed of the identity of the selected candidate, i.e. 17 December 2010, and that her request for management evaluation was, thus, timely. She relies on the fact that the MEU did not find her request time-barred.

8. Ms. Roig contends that the Dispute Tribunal erred in finding that only written administrative decisions may be appealed.

9. Ms. Roig requests the Appeals Tribunal to find that, as her request for management evaluation was not time-barred, her application to the Dispute Tribunal was receivable. She also asks the Appeals Tribunal to consider the merits of her case.

The Secretary-General's Answer

10. The Secretary-General submits that the UNDT correctly concluded that the relevant date of the contested decision - and the sole administrative decision - was the date on which Ms. Roig was informed of her non-selection, i.e., 29 October 2010.

11. As such, he contends that the Dispute Tribunal correctly concluded that Ms. Roig's request for management evaluation was time-barred.

12. The Secretary-General further submits that Ms. Roig has established no reversible error on the part of the Dispute Tribunal.

13. The Secretary-General requests the Appeals Tribunal to dismiss the appeal in its entirety.

Considerations

14. It is not disputed that the Appellant did not submit a timely request for management evaluation of the 29 October 2010 decision not to select her for the post.

15. The Appeals Tribunal has repeatedly held that it “has been strictly enforcing, and will continue to strictly enforce, the various time limits”.⁴

16. Article 8(3) of the UNDT Statute states, in very plain language, that the Dispute Tribunal shall not suspend or waive the deadlines for management evaluation.

17. It is now well settled by the jurisprudence of the Appeals Tribunal that, pursuant to Article 8(3), the UNDT has no discretion to waive the deadline for management evaluation or administrative review.⁵

18. The Appellant’s contention is that the 60 calendar day deadline prescribed in Staff Rule 11.2(c) did not commence to run when she was informed of the administrative decision not to appoint her, but on 17 December 2010, when she became aware of the identity of the selected candidate. This was almost two months after she had been notified of the administrative decision that another candidate had been appointed to the post for which she had applied.

19. Although Ms. Roig states that she is not contesting the administrative decision not to appoint her but the decision to appoint another candidate, we note that the latter is the consequence of the former. As such, there is not a second administrative decision which resets the applicable time limits.⁶

Judgment

20. The appeal is dismissed.

⁴ *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043, para. 21.

⁵ See, for example, *Rahman v. Secretary-General*, Judgment No. 2012-UNAT-260; *Ajdini et al. v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108; *Trajanovska v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-074; *Samardzic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-072; *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

⁶ See, generally, Judgment No. 2013-UNAT-378, *Ivanov v. Secretary-General of the United Nations*, also issued at this Fall 2013 session.

Original and Authoritative Version: English

Dated this 17th day of October 2013 in New York, United States.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Adinyira

(Signed)

Judge Lussick

Entered in the Register on this 19th day of December 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar