



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

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Case No. 2011-217



**Scheepers  
(Appellant)**

**v.**

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

**JUDGMENT**

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Before:	Judge Mary Faherty Judge Kamaljit Singh Garewal Judge Jean Courtial
Judgment No.:	2012-UNAT-211
Date:	16 March 2012
Registrar:	Weicheng Lin

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Counsel for Appellant: Self-Represented

Counsel for Respondent: Rupa Mitra

**JUDGE MARY FAHERTY**, Presiding.

**Synopsis**

1. The United Nations Appeals Tribunal (Appeals Tribunal) is seized of an appeal by Mr. Wilhelmus Petrus Scheepers against Judgment No. UNDT/2011/074 rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 26 April 2011 in the case of *Scheepers v. Secretary-General of the United Nations*.

2. On 3 September 2009, Mr. Scheepers filed a request for management evaluation contesting the decision not to reimburse him for extra work-related expenses and seeking, inter alia, the revision of the existing compensation guidelines and the establishment of new administrative processes. He received a response to his request on 16 October 2009, rejecting his claim.

3. On 7 December 2009, personnel within the Office of Human Resources Management (OHRM) sent a memorandum to the Chief of the Management Evaluation Unit (MEU) re “Revision of the monthly lump-sum compensation of K-9 handlers (Canine Unit)” which confirmed that the amounts being paid to Mr. Scheepers were sufficient to compensate him for his work-related expenses, and that his monthly allowance of USD 1,000 would not be increased. It appears that Mr. Scheepers was given this letter on the date of its issue.

4. The provisions of the UNDT Statute require Mr. Scheepers to file his application challenging the Administration’s response to his request for management evaluation within 90 days of that response.

5. The Dispute Tribunal determined, having regard to the contents of the letter of 16 October 2009, that the applicable date from which time started to run was 16 October 2009. This Tribunal finds no reason to gainsay that finding.

6. Mr. Scheepers’ principal contention before the UNDT and this Tribunal is that exceptional circumstances existed which merited the exercise of the Dispute Tribunal’s discretion to waive the prescribed time limit and admit his application.

7. Mr. Scheepers submits that his reliance on the, effectively, erroneous advice provided by the Office of Staff Legal Assistance (OSLA), namely that while engaged in informal

discussions with management time was not running against him, constituted exceptional circumstances. However, while the Secretary-General contends that Mr. Scheepers adduced no evidence that he relied on the advice given by OSLA, we accept that he probably did so given the contents of OSLA's e-mail of 23 July 2010.

8. The Appeals Tribunal in the present case is not called upon to determine any issue as between Mr. Scheepers and OSLA. However, the Appeals Tribunal in *Larkin*<sup>1</sup> determined that the services provided by OSLA, and the way it implements its representation on behalf of a staff member, can have an impact on the staff member who avails himself or herself of that service.

9. The function of this Tribunal in the present circumstances is to consider whether the Dispute Tribunal erred in law or fact in rejecting the Appellant's contentions that his situation satisfied the "exceptional" circumstances requirement of Article 8(3) of the UNDT Statute. We do not find that it did so. The jurisprudence of this Tribunal to the effect that "ignorance of the law is no excuse"<sup>2</sup> was, in this Tribunal's considered view, correctly applied in the present case and, unfortunate as it is, the fact that Mr. Scheepers relied on erroneous advice from OSLA cannot bring the case within the ambit of an "exceptional case" as provided for by Article 8(3) of the UNDT Statute.

10. In all those circumstances we do not find any error on the part of the Dispute Tribunal in its rejection of Mr. Scheepers' application as timed-barred.

11. The appeal is thus dismissed.

#### **Facts and Procedure**

12. On 6 August 2007, Mr. Scheepers joined the Department of Safety and Security (DSS) as a Security Officer at the S-1 Level. Following the completion of a training program from 2 March 2009 to 12 June 2009, Mr. Scheepers joined the Canine Unit within DSS, New York.

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<sup>1</sup> *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-135.

<sup>2</sup> See *Diagne et al. v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-067.

13. On 24 July 2009, Mr. Scheepers sent a memorandum to the Security and Safety Service of DSS in which he stated that the 2004 approach for calculating the allowance for the additional expenses incurred by canine handlers was outdated.

14. On 3 September 2009, Mr. Scheepers requested management evaluation of the decision not to reimburse him for his extra work-related expenses. Mr. Scheepers also requested that the monthly allowance and the related guidelines be revised. On 16 October 2009, the MEU rejected Mr. Scheepers' claims for additional compensation. On 7 December 2009, the Officer-in-Charge of the Conditions and Service Section, Human Resources Policy Service (HRPS), OHRM sent a memorandum to the Chief, MEU whereby he confirmed that the monthly allowance of USD 1,000 provided to Mr. Scheepers was sufficient and would not be increased.

15. In an attempt to resolve this matter informally, Mr. Scheepers, with the assistance of OSLA, engaged in informal discussions with his supervisors and the Executive Office of DSS from the receipt of the 7 December 2009 letter until May 2010.

16. On 26 May 2010, Mr. Scheepers filed an application with the UNDT contesting the decision rendered by the MEU. The Secretary-General filed his reply on 28 June 2010. On 29 June 2010, Mr. Scheepers filed comments to the reply and on 9 July 2010 the Secretary-General filed a motion requesting that the UNDT dismiss Mr. Scheepers application as time-barred. On 20 July 2010, the UNDT directed Mr. Scheepers to "address the [Secretary-General's] arguments in the submission dated 9 July 2010, stating the reasons for the delay in filing his application and explaining any exceptional circumstances that precluded him from exercising his right to appeal within the prescribed time limits". On 26 July 2010, Mr. Scheepers filed the requested submission in response to which the Secretary-General filed his reply on 28 July 2010.

17. On 15 April 2011, the UNDT issued Order No. 113 (NY/2011) in which it directed the parties to file their final submissions on the sole issue of receivability. Mr. Scheepers' and the Secretary-General's submissions were submitted on 20 April 2011 and 21 April 2011, respectively.

18. On 26 April 2011, the UNDT issued Judgment No. UNDT/2011/074 in which it found that Mr. Scheepers application was not receivable.

### Submissions

#### Mr. Scheepers' Appeal

19. Mr. Scheepers submits that, while he is not contesting the existing jurisprudence regarding the applicable time limits to file an application before the UNDT, the delays he incurred are solely the result of the legal advice he received from OSLA.

20. Mr. Scheepers submits that his reliance on OSLA's faulty advice constitutes an exceptional circumstance which should result in the time-limits being waived.

21. Mr. Scheepers requests that, for explanatory purposes, the Appeals Tribunal provide him with the opportunity to have an oral hearing and that the case be remanded to the UNDT.

#### Secretary-General's Answer

22. The Secretary-General submits that the Appeals Tribunal has consistently enforced the application of time limits and that, in this case, Mr. Scheepers' application was filed more than four months after the expiration of the filing deadline. Furthermore, the Secretary-General submits that the UNDT correctly interpreted the jurisprudence in *Abu-Hawaila*,<sup>3</sup> when it stated that "in terms of the existing case law, the explanations offered by [Mr. Scheepers] cannot support a finding that this is an exceptional case warranting a waiver of the relevant time limit".

23. The Secretary-General submits that the UNDT has interpreted that exceptional circumstances are circumstances that are beyond a party's control. Furthermore, in *Amarilla*<sup>4</sup> the UNDT found that regardless of the advice provided by counsel that resulted in an untimely filing, it was the staff member's "responsibility to diligently pursue his case". Consequently, Mr. Scheepers cannot state that OSLA's actions constituted exceptional circumstances that would justify waiving the time-limits.

24. The Secretary-General also recalls that the Appeals Tribunal previously stated that the "exercise of discretion by the Trial Judge [on waivers of deadlines] may be overturned on

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<sup>3</sup> *Abu-Hawaila v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-118.

<sup>4</sup> *Amarilla v. Secretary-General of the United Nations*, Judgment No. UNDT/2010/184.

appeal only if the decision taken appears to be clearly unreasonable". However, in his appeal, Mr. Scheepers states that he does not contest the application of the existing case law in this matter.

25. Accordingly, the Secretary-General requests that the Appeals Tribunal affirm Judgment No. UNDT/2011/074 and dismiss Mr. Scheepers' appeal in its entirety.

### Considerations

26. This matter comes before the Appeals Tribunal by way of an appeal by Mr. Scheepers and was considered on foot of written submissions made by the parties and following an oral hearing requested by the Appellant.

27. On 3 September 2009, Mr. Scheepers filed a request for management evaluation contesting the decision not to reimburse him for extra work-related expenses and seeking, inter alia, the revision of the existing compensation guidelines and the establishment of new administrative processes. He received a response to his request on 16 October 2009 from the MEU which rejected his claims for additional compensation, although it made provision for certain reviews of a general nature to be carried out by the Administration by 1 December 2009.

28. On 7 December 2009, personnel within OHRM sent a memorandum to the Chief of the MEU which confirmed that the amounts being paid to Mr. Scheepers were sufficient to compensate him for his work-related expenses and that his monthly allowance of USD 1,000 would not be increased. It appears that Mr. Scheepers was given this letter on the date of its issue.

29. The MEU's prior letter of 16 October 2009 to Mr. Scheepers advised him, inter alia, as follows:

Any recourse in respect of this decision may be addressed to the United Nations Dispute Tribunal (UNDT) in accordance with provisional Staff Rule 11.4. In the event you decide to pursue an appeal you may wish to obtain assistance from a counsel through the Office of Legal Assistance ([osla@un.org](mailto:osla@un.org)) or, if you so wish, at your expense from outside counsel.

30. The provisions of the UNDT Statute require Mr. Scheepers to file his application challenging the Administration's response to his request for management evaluation within 90 days of the receipt of the MEU's letter.

31. Mr. Scheepers' application to the UNDT challenging the MEU's decision not to grant his claims was filed on 26 May 2010, some considerable number of months beyond the requisite filing date having regard to the contents of the MEU's letter of 16 October 2009.

32. The Appeals Tribunal notes that very fairly the UNDT gave consideration to the possibility that the time limit for the filing of the application might be 7 March 2010 given the fact that Mr. Scheepers was also the recipient of a 7 December 2009 letter from OHRM to the MEU regarding this matter. The UNDT however considered that even if 7 December 2009 was the applicable date from which time should have started to run, Mr. Scheepers' application to the Dispute Tribunal was still filed outside of the 90-day period required by its Statute.

33. In any event, the Dispute Tribunal determined, having regard to the contents of the letter of 16 October 2009, that the applicable date from which time started to run was 16 October 2009. This Tribunal finds no reason to gainsay that finding.

34. Mr. Scheepers did not contest the fact that his application to the Dispute Tribunal was out of time.

35. It is not contested that between 7 December 2009 and May 2010, Mr. Scheepers, through OSLA, engaged in informal discussions with his superiors and with the Executive Office of DSS in an attempt to resolve the matters in dispute.

36. However, Mr. Scheepers cannot rely on the fact of such informal discussions having taken place to invoke the provisions of Article 8(1)(d) of the UNDT Statute and the provisions of Staff Rule 11.1 which provide, in certain circumstances, for the suspension of time limits. In its ruling in *Abu-Hawaila*<sup>5</sup> this Tribunal has stated that

the exceptional suspension of time limits provided for under Article 8(1) of the UNDT Statute and provisional Staff Rule 11.1 applies only to informal dispute resolution conducted through the Office of the Ombudsman. The suspension of time limits cannot

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<sup>5</sup> *Abu-Hawaila v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-118.

be extended by analogy to other informal dispute resolution procedures, precisely because of its exceptional character. Exceptions to time limits and deadlines must be interpreted strictly and are not subject to extension by analogy.

37. Mr. Scheepers' principal contention before the UNDT and this Tribunal is that exceptional circumstances exist which merit the exercise of the Dispute Tribunal's discretion to waive the prescribed time limit and admit his application.

38. Article 8(3) of the UNDT Statute provides that "[t]he Dispute Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Dispute Tribunal shall not suspend or waive the deadlines for management evaluation."

39. Mr. Scheepers submits that his reliance on the, effectively, erroneous advice provided by OSLA, namely that while engaged in informal discussions with management time was not running against him, constituted exceptional circumstances.

40. Before this Tribunal, the Secretary-General contends that Mr. Scheepers adduced no evidence that he relied on the advice given by OSLA but we accept that he probably did so given the contents of OSLA's email of 23 July 2010.

41. The Appeals Tribunal in the present case is not called upon to determine any issue as between Mr. Scheepers and OSLA. However, this Tribunal has determined in *Larkin*<sup>6</sup> that the services provided by OSLA, and the way it implements its representation on behalf of a staff member, can have an impact on the staff member who avails himself or herself of that service.

42. In the course of its consideration of Mr. Scheepers' contention that exceptional circumstances existed justifying a waiver of the time limits, the Dispute Tribunal stated that "[i]t is an applicant's responsibility to pursue her or his case and, where she or he fails to do so, to convince the [Dispute] Tribunal of the existence of exceptional circumstances justifying a waiver of the applicable time limits".

43. Mr. Scheepers did not overcome this hurdle before the Dispute Tribunal which found, upon a review of the applicable case law, that "the explanations offered by [Mr. Scheepers]

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<sup>6</sup> *Larkin v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-135.

cannot support that this is an exceptional case warranting a waiver of the relevant time limit”.

44. The function of this Tribunal is to consider whether the Dispute Tribunal erred in law or fact in rejecting the Appellant’s contentions that his situation satisfied the “exceptional” circumstances requirement of Article 8(3) of the UNDT Statute. We do not find that it did so. The jurisprudence of this Tribunal to the effect that “ignorance of the law is no excuse” was, in this Tribunal’s considered view, correctly applied in the present case and, unfortunate as it is, the fact that Mr. Scheepers relied on erroneous advice from OSLA cannot bring the case within the ambit of an “exceptional case” as provided for by Article 8(3) of the UNDT Statute.

45. In all those circumstances we do not find any error on the part of the Dispute Tribunal in its rejection of Mr. Scheepers’ application as timed-barred. The appeal is thus dismissed.

46. In view of the foregoing, we do not find it necessary to rule on the argument, advanced by the Secretary-General in the course of the oral hearing, that Mr. Scheepers’ failure to make a written request to the Dispute Tribunal for a suspension or waiver of the deadlines prior to the filing of his application did not in any event allow for the exercise of the Dispute Tribunal’s discretion.

#### **Judgment**

47. The appeal is dismissed. The UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 16<sup>th</sup> day of March 2012 in New York, United States.

*(Signed)*

Judge Faherty, Presiding

*(Signed)*

Judge Garewal

*(Signed)*

Judge Courtial

Entered in the Register on this 7<sup>th</sup> day of May 2012 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar