



Judgment No. 2016-UNAT-693



Counsel for Ms. Rüger:

Self-represented

Counsel for Secretary-General:

Ernesto Bondikov

JUDGE SABINE KNIERIM , PRESIDING .

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Summary Judgment No. UNDT/2016/015, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Geneva on 3 March 2016, in the case of *Rüger v. Secretary-General of the United Nations*. Ms. Christina Rüger filed the appeal on 28 April 2016, and the Secretary-General filed an answer on 28 June 2016.

Facts and Procedure

2. The following facts are uncontested:¹

... Since 2013, the Applicant has served in various Legal Officer positions within the Organization.

... On 24 November 2015, the Applicant received a letter dated 16 November 2015 from the Assistant Secretary-General for Human Resources Management informing her of the imposition of a disciplinary measure of separation from service, with compensation in lieu of notice and with termination indemnity, in accordance with staff rule 10.2(a)(viii).

... Approximately two hours after midnight on 23 February 2016, Counsel for the Applicant (located in Europe) wrote to the [Dispute] Tribunal's eFiling portal technical support team (located in New York) seeking assistance, since she encountered problems to login to said portal. The support team replied a few hours later, early in the morning of 23 February 2016. Shortly thereafter, Counsel for the Applicant confirmed by email that she was then able to login.

... On 23 February 2016 in the afternoon, Counsel for the Applicant emailed the Geneva Registry of the [Dispute] Tribunal, explaining that she had been trying to access the eFiling portal since the previous night and, also, that she had had great difficulties to obtain her client's approval of the final version of the application, as her client was in Vietnam travelling. She requested that the "application an

... At the Tribunal's request, on 29 February 2016, Counsel for the Applicant provided her internet browser's recent history log.

3. On 3 March 2016, the UNDT issued the impugned Judgment, in which it rejected the motion for extension of time to file Ms. Ruger's application and summarily dismissed her application as irreceivable *ratione temporis*. The UNDT stated that "[w]hile it is regrettable that this application be time-barred by only one day, the [UNDT] cannot but follow the constant and unambiguous case law of the Appeals Tribunal that time limits ... are to be strictly enforced".² In reaching its decision, it found no exceptional circumstances justifying a waiver of the statutory time limits. In this regard, the UNDT stated:³

... Distance, time difference and even the understandable stress caused by [Ms. Ruger's] husband's health might have rendered [it] more difficult for [her] to timely review and approve the final version of the application, but they cannot be said to have made it impossible to file the application on time. In sum, none of these circumstances

against the imposition of the disciplinary sanction against her. This case is distinguishable from both *Powell*⁴ and *McCluskey*.⁵ Unlike in *Powell*, Ms. Rüger did not rely on counsel's calculation for filing the deadline; and, unlike in *McCluskey*, Ms. Rüger "does not seek to blame her Counsel for the delay, but rather has provided precise evidence of how the delay occurred and that it was beyond [her] control".

6. The UNDT also erred on a question of fact that resulted in a manifestly unreasonable decision when it found that Ms. Rüger had not trusted her counsel to take all the necessary steps to file her application on time. Ms. Rüger's counsel was aware of the filing deadline and Ms. Rüger fully relied on her counsel to observe the deadline. About two hours after counsel confirmed receipt of Ms. Rüger's signature page, Ms. Rüger went to bed (at about 10 pm, Vietnam time) understanding that "she had done all from her side that was required for the application to be submitted on that very day of 22 February 2016".

The Secretary-General's Answer

7. Ms. Rüger does not contest the UNDT's finding that her application was filed out of time. Instead, she challenges the UNDT's denial of her motion for extension of time and the resulting summary dismissal of her application as time-barred. Her arguments lack merit. The UNDT made no errors of law or fact in finding, based on the record before it, that Ms. Rüger failed to show exceptional circumstances.

8. The e-mails which Ms. Rüger relies on in advancing her arguments should be struck from the record. They are submitted for the first time on appeal and Ms. Rüger has not shown any exceptional circumstances warranting their admission by the Appeals Tribunal. Ms. Rüger may not now argue that the UNDT erred in law or fact when it denied her motion based on evidence which could have been, but never was, made available to the UNDT for consideration.

Her argument that the delay was *de minimis* is without merit and her reliance on *Awad*⁷

unambiguous case law of this Tribunal.⁹ On appeal, Ms. Rüger argues that the “events of 22 and 23 February 2016 ... unravel[...]ed in a way that were beyond [her] control and could not be influenced by her in any way”. She also argues that the nature of the delay was *de minimis*, on the grounds that the deadline “was missed by just 14 hours and the circumstances of the filing were clearly exceptional and beyond [her] control”.

Additional evidence

14. Ms. Rüger submits e-mail correspondence not presented before the UNDT in support of her contention that the UNDT erre by not find

whether or not Mr. Rüger had given her final approval; there is nothing to support a finding of exceptional circumstances beyond Ms. Rüger's control. As this Tribunal has consistently held, negligence cannot justify a waiver of statutory time limits.¹¹

De minimis delay

18. Ms. Rüger's submission that the nature of the delay was *de minimis* is without merit. A day late ("just 14 hours", as she asserts) is by no means *de minimis*. More importantly, however, we take this opportunity to clarify that the degree of lateness has no relevance for the finding of exceptional circumstances. Whether a deadline is missed by several minutes, several hours or several days is irrelevant. A waiver of time can be justified under Article 8(3) of the UNDT Statute only if the applicant shows that exceptional circumstances beyond his or her control prevented him or her from acting within the statutory time limits¹² – which, as reasonably found by the UNDT based on the record before it, was not the case.

19. Having reviewed the UNDT Judgment and the parties' submissions, we can discern no reversible error in the UNDT's rejection of Ms. Rüger's motion for extension of time and its summary dismissal of her application as non-receivable *ratione temporis*.

Judgment

20. The appeal is dismissed and Judgment No. UNDT/2016/015 is hereby affirmed.

¹¹ *McCluskey v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-384, para. 20; *Scheepers v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-211, para. 44. See also *Powell v. Secretary-General of the United Nations*, Order No. 96 (2012), para. 9.

¹² *Bofill v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-478, para. 19, citing *El-Khatib v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2010-UNAT-029, para. 14.

Original and Authoritative Version: English

Dated this 28th day of October 2016 in New York, United States.

(Signed)

Judge Knierim, Presiding

(Signed)

Judge Lussick

(Signed)

Judge Raikos

Entered in the Register on this 20th day of December 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar