



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

Case No. 2012-297

**Cremades
(Appellant)**

v.

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

JUDGMENT

Before: Judge Sophia Adinyira, Presiding
Judge Luis María Simón
Judge Rosalyn Chapman

Judgment No.: 2012-UNAT-271

Date: 1 November 2012

Registrar: Weicheng Lin

Counsel for Appellant: Alfred de Zayas

Counsel for Respondent: Wambui Mwangi

JUDGE SOPHIA ADINYIRA, Presiding.

1. The United Nations Appeals Tribunal (Appeals Tr

7. By memorandum dated 7 April 2009, the Human Resources Officer, HRMS/UNOG, advised Ms. Cremades that “an extension of contract beyond the date of retirement approved by the Secretary-General at age 62 is not feasible”.

8. On 1 May 2009, Ms. Cremades submitted a request to the Chief of HRMS/UNOG to extend her contract until 31 August 2009 in order to cover the annual leave corresponding to the first two trimesters of 2009 or, alternatively, to pay her compensation for work performed up to 31 July 2009 and for her proportional annual leave entitlement relating to that period.

9. In a memorandum dated 3 June 2009, the Chief of HRMS/UNOG referred to HRMS’ reply of 7 April 2009 and rejected her request. He pointed out that breaks between terms were treated as special leave with pay and not as annual leave. He also pointed out that all entitlements for staff members stopped as of the date of retirement. He ended his memorandum by stating: “I hope the above information clarifies the matter”.

10. In a memorandum dated 7 July 2009 to the Chief of Administration, c/n /P ~~ea,s~~ were

THE UNITED NATIONS APPEALS TRIBUNAL

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Submissions

Ms. Cremades' Appeal

15. Ms. Cremades submits that the UNDT erred in law when it found that the appeal was time-barred. In her view, 3 June 2009 can not be considered as the crucial date for time limit purposes, and the memorandum of 20 July 2009 from the Chief of HRMS/UNOG suspended the running of the time limit. In light of the information given to her and the action taken by the Chief of HRMS/UNOG, a reasonable person would have understood that the period of time for submission of an appeal had not started to run, because negotiations aimed at informal settlement were in progress.

16. Ms. Cremades also submits that it was the Administration's obligation to give her complete and timely information so as ensure her rights. Instead, the Administration gave her equivocal and misleading information and at no time informed her of the need to file an appeal.

17. Ms. Cremades further submits that the UNDT erred in law in failing to give proper weight to the 20 July 2009 memorandum from the Chief of HRMS/UNOG seeking advice on how to proceed. In her view, the 1 July 2010 letter from the Chief of HRMS/UNOG should be seen as constituting "exhaustion of remedies", therefore giving her the right to address her case to the Management Evaluation Unit and the UNDT.

18. Ms. Cremades also appeals the UNDT Judgment on its merits. Her contentions thereon are not, however, relevant to this review on receivability.

Secretary-General's Answer

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Considerations

21. It is established that, by memorandum dated 3 June 2009, of which Ms. Cremades was informed no later than 25 June 2009, the Chief of HRMS/UNOG replied to her, rejecting the two options that she had proposed in a letter dated 1 May 2009. In the said letter, Ms. Cremades was seeking an extension to her contract until 31 August 2009 in order to receive upon her retirement a *pro rata* payment for accrued annual leave.

22. Staff Rule 111.2(a), which was in force on 3 June 2009, provides:

A staff member wishing to appeal an administrative decision pursuant to staff regulation 11.1 shall, as a first step, address a letter to the Secretary-General requesting that the administrative decision be reviewed; such letter must be sent within two months from the date the staff member received notification of the decision in writing...

Accordingly, the decision of 3 June 2009 should have been contested by Ms. Cremades within the two month period prescribed.

23. Instead of submitting a request for management evaluation within this period, however, Ms. Cremades submitted several requests on the same issues to the UNOG Administration. It was not until after receipt of the 1 July 2010 letter, affirming the decision to reject her request, that she filed a request for management evaluation, on 25 August 2010.

24. The appeal before us is without merit. The request by Ms. Cremades for management evaluation was rather late. We note that her request for pro-rated payment for accrued

Ombudsman, under conditions specified by the Secretary-General. The Appeals Tribunal recalls its *Abu-Hawaila* Judgment:¹

This Tribunal also holds that the exceptional suspension of time limits provided for

32. From the foregoing we affirm the UNDT decision that Ms. Cremades' request for management evaluation was not receivable as it was time-barred.

Judgment

33. The appeal is dismissed and the UNDT Judgment is affirmed.

Original and Authoritative Version: English

Dated this 1st day of November 2012 in New York, United States.

(Signed)

Judge Adinyira, Presiding

(Signed)

Judge Simón

(Signed)

Judge Chapman

Entered in the Register on this 18th day of January 2013 in New York, United States.

(Signed)

Weicheng Lin, Registrar

³ *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.