



UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES

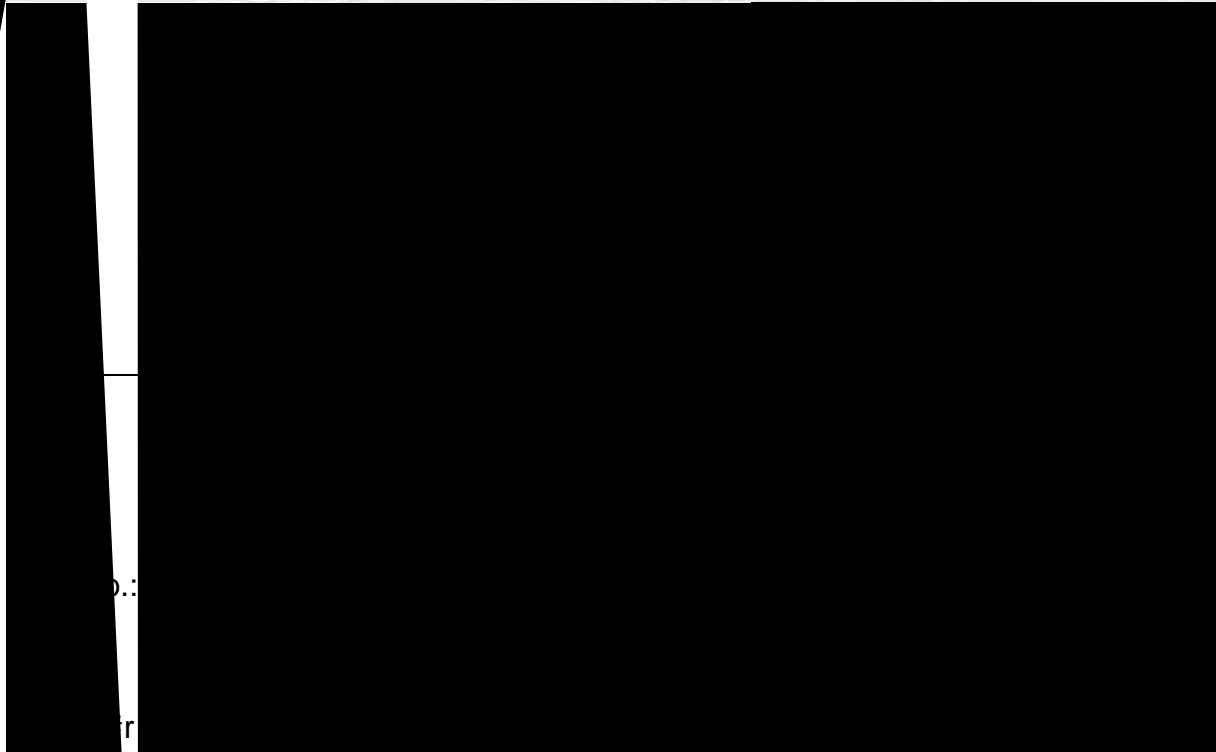
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No. 2019-UNAT-941

Dieng
(Appellant)

v.

Secretary-General of the United Nations



Counsel for Mr. Dieng:

Elina Dagnac

Counsel for the Secretary-General:

Christine Van den Berg

UNITED STATES OF AMERICA (OS) PRESIDING

1. The United Nations Appeals Tribunal (UNAT) was established by the United Nations Security Council in its resolution S/RES/1483 (2003) and began its operations on 1 July 2003. The Tribunal's mandate is to hear and determine appeals from the decisions of the United Nations Dispute Tribunal (UNDT) or Dispute Tribunal (DT) in Nairobi on 40 January 2019 in the case of Dieng v. Secretary-General of the United Nations. Mr. ... Dieng filed the appeal on 26 February 2019 and the appeal was filed in the Tribunal on 2 April 2019.

*act% an\$ Pr! ce\$+re

2.

the #luation -#s (omitted\$ if earlier\$ unless the deadline +s been extended 1! the &(ret#r!)ener#l to #ilit#te efforts for inform#l resolution under the #us8i(es of the %ffi(e of the %m1udsm#n.

F. %n 15 %(to1er 2016\$ Mr. Dieng re(ei ed the MEU's res8onse to his reBuest for m#n#gement e #luation - +i(+ #d ised +im t+#t the (ontested de(ision +#d been u8+eld.

5. .! e-mail d#ted 16 %(to1er 2016\$ the MEU (onfirmed t+#t its de(ision of 15 %(to1er 2016 -#s issued 8rior to the e38ir#tion of the UNDT's 90-(#lend#r d#! de#dline 9i.e. 24 %(to1er 2016: #nd t+#t #((ording!+ his re(ei8t of the m#n#gement e #luation resulted in setting # ne- de#dline for su1mitting +is #88li(ction\$ in #((ord#n(e -it+ the A88e#ls Tri1un#l's +olding in Neault.² The MEU #d ised t+#t 6t+e (lo(0 st#rts ti(ing from !esterd#! -+en !ou re(ei ed the Dm#n#gement e #luationE letter. An 8r#(ti(#! terms\$!ou +# e 90 (#lend#r d#!s from 15 %(to1er 2016\$ to file !our #88li(ction - it+ the UNDT.H

6. .! letter d#ted 5 No em1er 2016\$ Mr. Dieng -#s informed t+#t +is fi3ed-term #88ointment -ould not 1e rene-ed 1e!ond 41 De(em1er 2016.

9. T+#t s#me d#!\$ Mr. Dieng filed +is #88li(ction 1efore the UNDT (+#llenging the de(ision to re#ssign +im from the C*U to the %J&/\$UNAMAD.

10. %n 40 J#nu#r! 2019\$ the UNDT issued Judgment on /e(ei #ilit! No. UNDT;2019;014 dismissing Mr. Dieng's #88li(ction #s not re(ei #1le. The UNDT noted t+#t Mr. Dieng +#d filed +is reBuest for m#n#gement e #luation on 1 June 2016 #nd #((ording!+ the MEU's res8onse to +is reBuest -#s due 1! 1F Jul! 2016. &in(e on t+#t d#te\$ Mr. Dieng +#d not !et re(ei ed # res8onse to +is reBuest\$ the 90-d#! time limit for filing #n #88li(ction 1efore the UNDT st#rted to run. , is #88li(ction to the UNDT -#s t+erefore due 1! 14 %(to1er 2016! !et\$ Mr. Dieng did not file +is #88li(ction until 5 No em1er 2016. The UNDT found t+#t the f#(t t+#t Mr. Dieng re(ei ed # res8onse to +is reBuest on 15 %(to1er 2016 did not reset the (lo(0 for filing #n #88li(ction - it+ the UNDT #s it -#s re(ei ed #fter the e38ir#tion of the 90-d#! time limit to #88e#l to the UNDT. The UNDT t+erefore (on(luded t+#t Mr. Dieng's #88li(ction -#s time-1#rred.

² Neault v. Secretary-General of the United Nations\$ Judgment No. 2014-UNAT-44<.

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Judgment No. 2019-UNAT-941

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The Secretary-General's Answer

15.

20.

24. Article 591 of the UNDT Rules of Procedure provides that where a management election is required, the election shall be submitted to the UNDT within 90 days of the receipt of the election results or 90 days of the release of the deadline for the communication of a response to a management election request. Article 40 provides for disputes arising therefrom, and 41 provides for disputes arising therefrom.

25. Rule 11.2 provides in relevant part:

Staff Rule 11.2

Management election

9C:

9C: A request for a management election shall not be received if the

staff member received notification of the administrative decision to be contested. This deadline may be extended if the member is rendering efforts for information

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44. With regard to Mr. Dieng's contention that 6 June 2016 should be the date of his request for management e #lu#tion from - i(+ #l su1seBuent de#dlines should be counted - e find it - it+out merit for t-o reasons. First, as noted, Mr. Dieng's communication to the MEU of 6 June 2016 did not constitute a request for management e #lu#tion but a mere submission of his management e #lu#tion request of 1 June 2016 in that it provided additional information to the MEU. Second, Mr. Dieng - #nted to submit a - #ne- H request for management e #lu#tion on 6 June 2016, as should be - #i ed his first submission to the MEU on 1 June 2016. Moreover, he should do so in time! manner - i(+ is not the case here since 6 June 2016 - #s - ell 1e!ond the time limit for filing a request for management e #lu#tion that is 14 June 2016, given that Mr. Dieng - #s notified of the contested administrative decision on 4 April 2016. An - #!\$ resubmitting a request for management e #lu#tion (which does not reset the date management e #lu#tion is sought or the date from - i(+ the time limits for filing a submission for - #di(i#l re - ensues. Therefore, the deadline for filing a submission - ould be no later than 14 June 2016.⁹

45. Further, Mr. Dieng argues that the MEU (confirmed the in - riting that the relevant date for (filing) ensuing deadlines - #s 24 July 2016 and hence his submission - #s filed in time! manner is based on that date, as he - #s entitled to rely on it for purposes of exercising his rights to the internal - #stems.

46. The focus of this claim is borne out by the content of the - o letters that the MEU sent to Mr. Dieng on 6 June 2016 and 16 October 2016, respectively. As reflected on 6 June 2016, Mr. Dieng received a - #no- ledgment letter from the MEU - i(+ informed him inter alia that:¹⁰

Jour (correspondence dated 1, 2, 4 and 5 June 2016 and addressed to the Management E #lu#tion Unit, MEU: request for management e #lu#tion (concerning the decision to resign you from the Child Protection Unit to the office of the Joint Representative - #s received at this office on 14 and 6 June 2016, respectively. C

9C:

*Please also note that pursuant to article 11.29d, the management e #lu#tion in your case is to be completed - it+in 4 (calendar) days of receipt of your completed request or no later than

the #lution t+e MEU -ill (ont#(t !ou to so #d ise. An #n! e ent\$ 8le#se 1e #d ised t+#t\$ 8ursu#nt to &t#ff /ule 11.49#:\$ t+e 90-d#! de#dline for filing #n #88li(#tion to t+e United N#tions Dis8ute Tri1un#l\$ s+ould !ou -is+ to do so\$ -ill st#rt to run from , - &+ly , . /O\$or t+e d#te on -+i(+ t+e m#n#gement e #lution -#s (om8leted\$ if e#rlier\$ unless t+e de#dline +#s 1een e3tended 1! t+e &e(ret#r!-) ener#l to f#(ilit#te efforts for inform#l resolution under t+e #us8i(es of t+e %ffi(e of t+e %m1udsm#n.

45. 7+ile on 16 %(to1er 2016\$ t+e MEU #d ised Mr. Dieng #s follo-s:

*le#se 1e #d ised t+#t #s indi(#ted in our #(Ono-ldgement letter of 6 June 2016\$!our

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