
UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES



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6. The Dispute Tribunal recorded that it was agreed that the application had been filed out of time, and so concentrated on the application to extend the time, in effect by about 12 hours. It summarized the “exceptional circumstances” relied on by the Applicant as being that “technical challenges” and “internal [we assume within OSLA] oversight” were the cause of the delay in filing. The Tribunal said that the screen shot of the electronic record provided to OSLA, and supplied by it to the UNDT as evidence of the technological failure, did “not have a time stamp or any other element proving that there was an effective attempt to [timeously] file the Application” . It added that “[t]he screen shot does not even refer to the name of the Applicant to allow the Tribunal to conclude that the ‘error message’ was related to a failed attempt to [timeously] file the application” .

7. The UNDT concluded that the Applicant provided no proper and convincing explanation of either the “internal oversight” referred to by OSLA or otherwise about the sorts of problems OSLA had faced. In these circumstances, the UNDT concluded that the reasons provided did not support granting a time limit waiver. It distinguished several earlier judgments of the UNDT in which similar, but not identical issues, had been considered. The UNDT held that the Applicant and his counsel had failed to demonstrate the existence of the “exceptional circumstances” required to exercise its discretion to extend the time.

8. The UNDT then concluded, in dismissing the application to extend time and the Applicant’s substantive application, at paragraphs 20 – 21 of its Judgment that:

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9. First, the Appellant submits that the UNDT drew and then relied upon a wrong inference from five previous UNDT cases cited to it. He says that these cases were drawn to the Tribunal's

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12. The Appellant seeks as remedies, the vacation of the impugned Judgment of the UNDT,

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technological failure as occurred here, however assiduous the applicant's representative was to ensure its transmission and arrival in time and however well and comprehensively that was explained to the Tribunal. Further, and even more fundamentally, the Statute (and the UNDT's Rules of Procedure which must and do follow it), make no reference to such a restriction on the power expressly provided. Finally, the words of the Statute tend strongly to suggest that an application to extend time which has already expired, was indeed contemplated and allowed for. Article 8(3) uses the alternative words "suspend" and "waive" in relation to allowing an out-of-time application. Suspension contemplates an expiry that is to happen in the future while a waiver contemplates an expiry that has already occurred. We note also that Article 7(5) of the Dispute Tribunal's Rules of Procedure adopts, but also adds to these statutory words, by creating a third activity descriptor, an "extension" of time. It is unnecessary for us to consider this third class of order except to say that its existence tends also to contemplate a broad range, rather than a narrow one, of the circumstances in, and the time at, which such an application can be brought.

21. We should refer also to the UNDT's conclusion, quoted earlier in this Judgment, that: "[T]he Appeals Tribunal's jurisprudence has consistently held that 'whether a deadline is missed by several minutes, several hours or several days is irrelevant'." While the essential principles expressed there are undoubted, they cannot be, and are not, as absolute and irremediable as the passage relied upon by the UNDT might suggest. The following review of the jurisprudence confirms this assessment of the position.!

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27. *Powell* was a case of a staff member respondent to an appeal brought by the Secretary-General against a judgment of the UNDT. The breach was due to the miscalculation of the times by the staff member's

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