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13. On that same date, Mr. Karki also filed a Motion for anonymity requesting the UNDT “to keep the content and proceedings of this [a]pplication private and confidential (...) so that he [may] continue on his path to recovery from the described serious medical conditions and maintain his personal and professional reputation and standing even as he [sought] justice”. In support of

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29. Mr. Karki argues that he followed up with his counsel several times by WhatsApp and e-mail to ensure that he was working on his appeal and to remind him of the deadline of 15 September 2022.¹⁶¹⁶~~29~~.

and that, pursuant to Article 8(3) of the Dispute Tribunal Statute, the UNDT may decide to waive such statutory deadlines only in exceptional circumstances.¹⁷

37. Consequently, the Secretary-General submits that, contrary to Mr. Karki's contention, the UNDT did not conclude that his application was not receivable a waiver was not filed before the application, but rather because he did not file it within the statutory time limit.¹⁸

38. Moreover, in the present case, the Secretary-General contends that the UNDT correctly rejected Mr. Karki's request for a waiver of the deadline to file his application. Indeed, the Secretary-General observes that, contrary to Appeals Tribunal consistent jurisprudence, Mr. Karki failed to submit his request for a waiver before filing his application.¹⁹

39. The Secretary-General further contends that Mr. Karki's reliance on in

UNAT “has regularly found exceptional circumstances to be those circumstances beyond the applicant’s control”.²³

41. Referring to Mr. Karki’s response to his Motion for summary judgment, where he argued that the delay in filing his application was due to “the mental and physical distress he suffered as a result of the investigation into his misconduct together with the logistical/communication and time zone issues between [him] and his counsel”, the Secretary-General submits that Mr. Karki failed to provide “adequate evidence” as to how these circumstances were exceptional and led him to miss the deadline by three days.

42. Moreover, the Secretary-General contends that Mr. Karki also failed to explain why he did not ask for such a waiver at the “earliest opportunity”, but rather waited “months later” in his response to the Secretary-General’s Motion for summary judgment.

43. With regard to M40.9 (e)-10.4 ()0.9 ()-0.6 (t)11.1 ()6.7 (l)6.1 ()-11.2 (a)6.7 (n)6.8 (d)0.7 ()-11.3 (

specifically, the Secretary-General observes that negligence does not constitute an exceptional circumstance and that, therefore, “any alleged malpractice by a counsel is an issue between the client and counsel, which does not affect the proceedings”.²⁴

46. As to Mr. Karki’s submission about his mental and physical distress, the Secretary-General, relying on [redacted],²⁵ notes that Mr. Karki was not in “an absolute impossibility (...) to file within the statutory time limi[t]” because his counsel was still capable and responsible to submit his appeal.

47. Therefore, the Secretary-General submits that Mr. Karki has failed to establish any reversible error by the UNDT and, thus, to satisfy the requirements of Article 2(1) of the Appeals Tribunal Statute.

48. The fundamental issue presented for this Tribunal’s review is whether the UNDT erred in denying Appellant’s request to waive the deadline for his application to the UNDT.

49. An application to the UNDT is not receivable unless it is filed, “[i]n cases where a management evaluation of the contested decision is not required, within 90 calendar days of the applicant’s receipt of the administrative decision”.²⁶

50. Appellant concedes that his application to the UNDT was not filed within the required 90 calendar days but was instead filed 93 days after his receipt of the challenged administrative decision. His application was thus not receivable, absent waiver of the deadline by the UNDT.

51. Appellant argues that the UNDT erred in not waiving the deadline. Article 8(3) of the UNDT Statute provides that “[t]he Dispute Tribunal may decide (...) upon written rchun dchs te51.5 ()]TJ-0.019”

57. Appellant takes issue with what he views as the UNDT's conclusion that he was prohibited from seeking a waiver once the deadline for filing had passed. The UNDT correctly observed, and Appellant concedes, that he "did not request a waiver of the deadline before filing his late application or in the late application itself".³² This Tribunal has ruled on more than one occasion that when, as here, a "request for waiver [is] not filed before the statutory time limit for filing [an] application had lapsed, the UNDT ha[s] no jurisdiction or [is] not competent to consider whether there were exceptional circumstances to waive the deadline within the meaning of Article 8(3) of the UNDT Statute".³³ Likewise, this Tribunal has upheld the UNDT's ruling that a request for waiver of deadline filed after the application was untimely.³⁴ This approach is essential to the good administration of justice. "Strict adherence to filing deadlines assures one of the goals of our new system of administration of justice: the timely hearing of cases and rendering of judgments".³⁵ To broadly hold otherwise would open the door to abuse of the United Nations' internal justice system.

58. Appellant does correctly observe, and we acknowledge, that this Tribunal has in one instance also held that "the Statute (and the UNDT's Rules of Pyst(y a(e)-3.36.1 (d)8.6 ("t)1 (sy)5.8 (st)h-5.

59. Regardless of our ruling on the merits, Appellant has moved for an order preserving his anonymity. On 21 November 2022, the Appeals Tribunal made an interim order anonymizing Appellant's identity, on grounds relating to his health, until the issuance of this Judgment.³⁷

60. With regard to anonymity, the Appeals Tribunal Statute requires that "[t]he judgements of the Appeals Tribunal shall be published, while protecting personal data", and the UNAT Rules of Procedure specifies -1.4 ((sp)obt)2.2 (.2 (t433t a)-2.3I3 ()-0.7 ((i)-8.6 0.7 (to3N-o-3.3 (q)-1.3 (re)-2 (l)27s)1.

63. Mr. Karki's appeal is dismissed by majority with Judge Colgan dissenting, and Judgment No. UNDT/2022/104 is hereby affirmed.

Original and Authoritative Version: English

Dated this 27th day of October 2023 in New York, United States.

Judge Ziadé, Presiding

Judge Sheha

Judgment published and entered into the Register on this 19th day of December 2023 in New York, United States.

Juliet E. Johnson, Registrar

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new internal justice regime began, was expressed by Judge Ebrahim-Carstens in .⁴⁴ I commend its reading, but to summarise, the UNDT held that:⁴⁵

... (...) Exceptional simply means something out of the ordinary, quite unusual, special, or uncommon. To be exceptional, a circumstance or reason need not be unique or unprecedented or very rare, but it cannot be one which is regular, or routinely or normally encountered. What constitutes exceptional reasons in one case may not do so in another; each case must be decided on its own merits.

10. It is necessary, of course, to analyse subsequent judgments, especially those of the Appeals Tribunal. The first is ,⁴⁶ also an early case under the new regime. Applying the former Staff Rules and following the jurisprudence of the former Administrative Tribunal, the Appeals Tribunal interpreted and applied the phrase “exceptional circumstances” to be circumstances “beyond the staff member’s control”.⁴⁷

11. The and cases are significantly distinguishable: the latter looked back to a previous interpretation under a different regime, but the former looked currently and forward to the new regime now in its 15th year.

12. The UNDT considered the question again in .⁴⁸ The phrase for consideration, albeit under the current regime, was “only in exceptional circumstances”. Citing as “established jurisprudence”, the UNDT reiterated that the test was the establishment of circumstances beyond the staff member’s control.⁴⁹ On appeal, the UNAT affirmed its holding in

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door to merits-based justice by ignoring (as the UNDT did in this case) or applying too narrowly the statutory exemption criteria.

17. Exceptional circumstances are just that, relevant circumstances which are the exception rather than the rule. Although the control over filing an appeal is a relevant factor, success is not necessarily always restricted, as the Secretary-General submits in this case, to circumstances beyond the staff member's control. That phrase is not in the Statute which is the primary and binding source of our jurisprudence.

18. Nor do I agree that in cases where counsel neglect to file timeously, a staff member's only remedy should be against the counsel in a professional negligence context and in a national jurisdiction. The Appellant relied on his counsel to file his appeal within time but for reasons that are not apparent, his counsel did not do so until it was three

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