



# Administrative Tribunal

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## ADMINISTRATIVE TRIBUNAL

Judgement No. 1291

Case No. 1373

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Ms. Jacqueline R. Scott, Vice-President, presiding; Mr. Julio Barboza;  
Mr. Goh Joon Seng;

Whereas, on 27 August 2004, a former staff member of the Economic Commission for Latin America and the Caribbean (hereinafter referred to as ECLAC) filed an Application requesting the Tribunal, inter alia:

- “9. ... [T]o order:
- (a) that the Applicant be promoted to the [P-2, step 12] level; with retroactive effect at least as from the date on which the Applicant [requested administrative review] (8 August 2003) ...
  - (b) that retroactive adjustment be made to her pension benefits, effective retroactively ... [to] 8 August 2003; and
  - (c) that the Applicant not be required to refund any difference in salary, allowances, and other benefits and entitlements that she received on the basis of her special post allowance (SPA), if any.”

Whereas, on 11 November 2004, the Applicant submitted a communication;

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 28 February 2005;

Whereas the Respondent filed his Answer on 28 February 2005;

Whereas the Applicant filed Written Observations on 29 March 2005;

Whereas on 31 May and 29 June 2005, the Applicant submitted additional communications;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

***“Employment History***

... The [Applicant] is currently an Evaluation Officer with ... ECLAC, Santiago, [Chile,] at the grade of GS-7, step 12. She was granted [an SPA to the P-2, step 12 level] from 1 January 2001 to 31 March 2004.

***Summary of the facts***

...

... In a memorandum dated 15 October 1985, the Chief, Buildings Management and General Services Section (BMGS), requested the Chief of Administration to start procedures to obtain ... an authorization to submit to the Appointment and Promotion Committee [(APC)] the [Applicant's] candidacy for promotion to the P-2 post of Chief, General Services Unit. The Chief of Administration did not [take the requested action] and thus decided not to present the [Applicant's] case to the promotion bodies.

... During the period 1987-1988, ECLAC requested the [Applicant] to carry out professional-level duties which she carried out and continues to carry out to this day.

... On 8 August 2003, the [Applicant] wrote a memorandum to the Secretary-General requesting an administrative review of the contested decision ...

... On 12 September 2003, the Chief of the Administrative Law Unit replied to the [Applicant] to the effect that the time-limits set out in staff rule 111.2 with regard to the appeals procedure had not been complied with as the administrative decision not to promote the [Applicant] was taken in 1985. Therefore, the request for administrative review was not timely.

... On 10 October 2003, the [Applicant lodged an appeal with the New York JAB.]”

The JAB adopted its report on 10 May 2004. Its considerations, conclusions and recommendation read, in part, as follows:

***“Considerations***

13. The Panel noted first that the implied administrative decision not to promote the Appellant was taken in 1985. It was only on 8 August 2003 that the Appellant wrote to the Secretary-General requesting an administrative review of the decision before she submitted a Statement of Appeal on 10 October 2003. The Panel concluded that the Appellant had failed to comply with the time-limits set out in staff rule 111.2 (a) and (b) and that her appeal was not receivable.

14. The Panel considered next the issue of whether there were 'exceptional circumstances' that would enable it to waive the time-limits pursuant to staff rule 111.2 (f). The Panel did not find evidence of any exceptional circumstances beyond the control of the Appellant that would have prevented her from pursuing avenues available to her from 1985 to 2003 to seek redress and claim her right to be considered for promotion.

...

***Conclusions and recommendation***

16. In light of the foregoing, the Panel agreed *unanimously* that the Appellant's request for administrative review and her Statement of Appeal were time-barred. The Panel recommended *unanimously* that the Secretary-General take no further action with regard to the present appeal."

On 27 August 2004, the Applicant, having not received any decision from the Secretary-General regarding her appeal to the JAB, filed the above-referenced Application with the Tribunal.

On 18 November 2004, the Under-Secretary-General for Management informed the Applicant that the Secretary-General accepted the findings and conclusions of the JAB and had accordingly decided to take no further action on her appeal.

Whereas the Applicant's principal contentions are:

1. The Applicant has established the existence of exceptional circumstances, which justify suspending the time limits: until 2003, the unsafe situation at ECLAC - in terms of intimidation and retaliation - prevented her from filing a formal complaint.

2. In the year 1985, according to the rules and procedures of that time, the Applicant should have been promoted to the P-2 level. In that year, the Applicant was in fact performing work at the professional level and had proven capability to handle professional duties.

3. The decision of the Chief of Administration not to submit the Applicant's candidacy to the APC violated her rights.

Whereas the Respondent's principal contentions are:

1. The appeal is time-barred.

2. There are no exceptional circumstances justifying waiver of the time-limit in the present case.

3. The Secretary-General's decision accepting the JAB's recommendation to consider the appeal time-barred was objective and reasonable, and did not constitute an abuse of discretion.

The Tribunal, having deliberated from 26 June to 28 July 2006, now pronounces the following Judgement:

I. This is the case of a staff member who was entrusted with functions superior to her official category for years - being compensated for some length of time, four years in fact, by an SPA - but never promoted to the rank commensurate to the type of work she was doing.

II. The Respondent alleges, and the JAB concurs, that the Application is time-barred, as it appeals, only in 2003, a decision not to submit the Applicant's candidature for promotion which was taken in 1985. Assuming that this is the administrative decision appealed by the Applicant - and the Tribunal cannot find evidence of any other administrative decision taken before or after that date motivating the present action - it is obvious that the deadline to appeal has passed a long time ago.

III. At the same time, the Tribunal cannot find any trace of exceptional circumstances which might justify granting a waiver of the time limits. The rule regarding time limits is very clear. Staff rule 111.2 (a) provides that

“[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”.

Staff rule 111.2 (f) provides that “an appeal shall not be receivable unless the time limits ... have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal”.

IV. The Applicant alleges that she did not know how to go about appealing the administrative decision in question, and claims that an atmosphere of fear of reprisal prevailed in her Unit that prevented her from making any attempt to take the necessary action. In that respect, the Tribunal is satisfied that she lacked the minimal diligence to obtain the information she needed on how to proceed to an appeal and also that - even if the working environment was indeed as difficult, offensive and intimidating as the Applicant depicts in her writings - it was still possible for her to present her case to the higher authorities. The Applicant herself

mentions that other staff members did present complaints and, according to the Applicant's own account, the worst that apparently happened to them was that their efforts were not successful.

V. The Tribunal has sympathy for the plight of the Applicant. She seems to have been the victim, on the one hand, of the hard realities of life and, on the other, of her own timidity. But whatever the reasons for her lack of action, she has not given the Tribunal any other option than that of concurring with the JAB on the irreceivability of her claim. The Tribunal recalls in this regard its Judgement No. 1106, *Iqbal* (2003), where it held that

“[t]he circumstances described by the Applicant are, at best, subjective reasons upon which he had made the choice of not requesting administrative review within the prescribed time limits. They do not conform with the concept of ‘exceptional circumstances’ as has been interpreted by the Tribunal throughout its jurisprudence, as recently stated in Judgement No. 1046, *Diaz de Wessely* (2002):

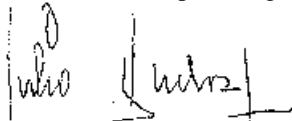
“The delay in submitting the request is the result of a choice freely made by the Applicant, on the basis of her own assessment of the situation and her chances of making a successful appeal, and can in no way be attributed to exceptional circumstances beyond her control. The Applicant is solely responsible for the delay in submitting her appeal.”

VI. Accordingly, the Application is rejected in its entirety.

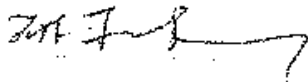
(Signatures)



**Jacqueline R. Scott**  
Vice-President, presiding



**Julio Barboza**  
Member



**Goh Joon Seng**  
Member

Geneva, 28 July 2006



**Maritza Struyvenberg**

Executive Secretary