



Administrative Tribunal

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6 February 2008

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1349

Case No. 1453

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; Sir Bob  
Hepple;

Whereas, on 29 December 2004, a former staff member of the United Nations, filed an application  
that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas the Applicant again filed an application, received on 7 July 2005, that did not fulfil all  
the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 12 December 2005, the Applicant, after making the necessary corrections, filed an  
Application requesting the Tribunal:

- “1. ... to reconsider the ...decision [of the Joint Appeals Board (JAB)] that the Applicant is  
time-barred and that therefore his case cannot be considered by it[, and,]
2. ... having ruled on this issue of time in the Applicant’s favour to consider the facts of the  
Applicant’s case, reinstate the Applicant and compensate [him] for the loss of livelihood  
since his separation or recommend the reinstatement of the Applicant’s within grade-  
salary increments and in consideration of promotions which may have been due. The  
compensation being sought amounts to Kenya Shillings 5,062.92 ... with damages in the  
same amount.”

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 31 May 2006;

Whereas the Respondent filed his Answer on 30 May 2006;

Whereas the statement of facts, including the employment record, contained in the report of the JAB reads, in part, as follows:

***“Employment History***

...

[The Applicant] joined the services of the United Nations Office at Nairobi [(UNON)] as [a] Security Officer[, Safety and Security Section,] at the G-3 level ... on an initial fixed-term appointment for 6 months in May 1996. Subsequently, his fixed-term contracts were consecutively extended on [a] short-term basis ...

... The staff member was separated from the Organization on 8 August 1997, [upon the expiration] of his last contract.

***Facts of the case***

[The Applicant] ... is appealing against [the] administrative decision made in August 1997 not to renew his fixed-term appointment.

...

On 25 October 2001, [the Applicant] addressed a memorandum ... to the Chief, Division of Administrative Services, UNON, requesting [that] that office ... ‘re-visit and redress his problem’.

By letter dated 10 December 2001, the Chief, Division of Administrative Services, UNON, [replied that he] should enquire with the Secretariat of the [JAB regarding] the internal recourse procedures available to [him].

By letter dated 21 February 2002, [the Applicant] submitted a request for administrative review ...”

On 28 March 2002, the Applicant lodged an appeal with the JAB in Nairobi. The JAB adopted its report on 26 February 2004. Its considerations and recommendation read, in part, as follows:

***“Considerations***

The first question the Panel had to address was that of the receivability (*rationae temporis*) of this appeal.

It is clear from the documentation available to the Panel that the time limits stipulated in staff rule 111.2 (a) have not been adhered to by the Appellant.

The Panel ... examined whether the Appellant had submitted any facts that would warrant the assumption of exceptional circumstances and thus a waiver of the aforementioned time limits in accordance with staff rule 111.2 (f).

...

... [T]he JAB concluded that the staff member's explanations for [having] appealed more than four years after his separation from service are insufficient to warrant a waiver of the time limits.

...

***Recommendation***

*In the light of the foregoing considerations and conclusions, the Panel recommends to the Secretary-General that this appeal be rejected as time-barred."*

On 5 August 2004, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him that the Secretary-General agreed with the JAB's considerations and had decided to accept its unanimous recommendation and to take no further action on his appeal.

On 12 December 2005, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contention is:

In view of the exceptional circumstances of the case, the Tribunal should consider it on the merits.

Whereas the Respondent's principal contention is:

The Applicant's claim is clearly time-barred. No exceptional circumstances have been cited that would warrant a waiver of the time-limits.

The Tribunal, having deliberated from 25 October to 21 November 2007, now pronounces the following Judgement:

I. The issue in this case is whether the Applicant's appeal against the decision made in August 1997 not to renew his temporary, short-term employment is time-barred.

The Applicant, a Kenyan national, joined UNON on 3 May 1996, as a mission replacement G-3 level Security Officer, on a six-month, fixed-term appointment. His appointment was extended several times on a short-term basis. At the expiration of his last short-term contract in August 1997, his appointment was not renewed.

Between 1997 and 2001, it appears that the Applicant sought re-employment with the Organization. Having failed to secure a post, he addressed a memorandum on 25 October 2001 to the Chief, Division of Administrative Services, UNON, requesting that the office "redress his problem". On 19 December, the latter informed the Applicant that he should address inquiries on internal recourse procedures to the Secretariat of the Nairobi JAB. Thereafter, on 28 March 2002, the Applicant submitted a statement of appeal to the JAB. In its report of 26 February 2004, the JAB rejected the appeal on the ground that the Applicant had missed the time limits stipulated in staff rule 111.2 (a), and had not convinced the JAB panel that circumstances beyond his control prevented him from submitting a timely appeal. Consequently, the JAB held that a waiver of staff rule 111.2 (a), in accordance with staff rule 111.2

(f), was not warranted in his case and recommended that the appeal be rejected as time-barred. On 5 August, the Under-Secretary-General for Management informed the Applicant that the Secretary-General had accepted the JAB's findings and conclusion and had accordingly decided to take no further action on his appeal.

II. Staff rule 111.2 (a) provides that

“A staff member wishing to appeal an administrative decision ... 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 “[a]n appeal shall not be receivable unless the time-limits specified in paragraph (a) above have been met or have been waived, in exceptional circumstances, by the panel constituted for the appeal”.

The Applicant did not make a request for “redress” (which can be interpreted as a request for review) until 4 years and 2 months after notification in writing of the decision not to renew his contract, well outside the prescribed time limit. Accordingly, the only issue before the Tribunal is whether he has shown “exceptional circumstances” in accordance with staff rule 111.2 (f), which would justify a waiver of the time limits in his case.

The Tribunal has frequently stated “the importance it attaches to complying with procedural rules, as they are of utmost importance for ensuring the well functioning of the Organization”. (See Judgement No. 1106, *Iqbal* (2003) and, generally, Judgement No. 1046, *Diaz de Wessely* (2002).) Furthermore, it has indicated that “the ‘exceptional circumstances’ referred to in staff rule 111.2 (f) must be strictly construed” (Judgement No. 1301 (2006)), defining such “exceptional circumstances” as those circumstances which are “beyond the control of the Appellant”. (See Judgement No. 372, *Kayigamba* (1986) and, generally, Judgements No. 913, *Midaya* (1999) and Judgement No. 1054, *Obuyu* (2002).) The burden is, then, on the Applicant to prove the existence of exceptional circumstances which prevented him from exercising his statutory rights for some four years.

III. The first “exceptional circumstance” on which the Applicant relied before the JAB was that he was never provided with a copy of the Staff Regulations and Rules for the entire period he worked with UNON. This contention was rejected by the JAB on the grounds that, upon his initial appointment, his signature certified that he had been made acquainted with the Regulations and Rules and had received a copy of them and, even if he had not received the Rules, he was negligent in not acquainting himself with them. The Tribunal agrees with this conclusion and notes, furthermore, that in his Application, it is stated that “between 1997 and 2001, [the Applicant] sought re-employment at UNON and the [International Criminal Tribunal for Rwanda] upon the advice of his counsel at the time”. In other words, he was in

receipt of legal advice and it would have been possible for him to submit his request within the time limits or, at the very least, soon thereafter.

IV. The second “exceptional circumstance” relied upon before the JAB was the Applicant’s allegation that he was prevented from entering the UNON compound or approaching Human Resources Management Services in order to obtain advice on the legal recourses available to him. The JAB rejected this as “unconvincing”, since the Applicant himself admitted that he had been in contact with different members of UNON and the United Nations Environment Programme (UNEP), including the Senior Legal Adviser of UNEP, whom the Applicant had described as being helpful. Any of these individuals could have provided the Applicant with information. No evidence has been presented to contradict this finding by the JAB, which must be upheld.

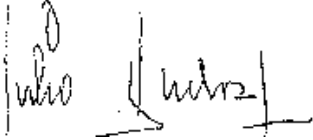
V. A third “exceptional circumstance” on which the Applicant now relies is the fact that at the time of his separation from service he had been diagnosed as a diabetic and was adjusting to the medication which, as a result, induced drowsiness. In addition, during the period in which he should have submitted his appeal, he was apparently unwell most of the time and seeking alternative employment within the Organization, per the advice of his former counsel. The Tribunal has carefully examined the medical report dated 1 November 2004 submitted by the Applicant in this connection. There is nothing therein supporting the Applicant’s position that his illness incapacitated him from submitting a request for review for the entire period of four years and two months. Indeed, the Tribunal is constrained to note, if he was well enough to be seeking re-employment during that period, as he states, he must have also had the capacity to make a request for review. The Tribunal infers that his failure to do so was attributable to negligence and “negligence cannot be considered a matter ‘beyond the Applicant’s control’”. (See Judgement No. 1054, *ibid.*)

VI. In view of the foregoing, the Tribunal concurs with the JAB that the Applicant’s case is not receivable, *ratione temporis*, and rejects his Application in its entirety.

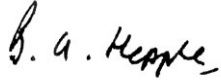
*(Signatures)*

A handwritten signature in black ink, appearing to read 'J.R. Scott', written in a cursive style.

Jacqueline R. **Scott**  
Vice-President

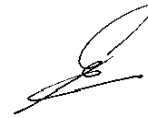


**Julio Barboza**  
Member



**Bob Hepple**  
Member

New York, 21 November 2007



**Maritza Struyvenberg**  
Executive Secretary