



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1461

Case No. 1547

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Spyridon Flogaitis, President; Ms. Brigitte Stern; Mr. Goh Joon Seng;

Whereas at the request of a former staff member of the United Nations, the President of the Tribunal granted an extension of the time limit for filing an application with the Tribunal until 30 June 2006, and regularly thereafter until 31 July 2007;

Whereas, on 31 July 2007, the Applicant, filed an Application containing pleas which read, in part, as follows:

“7. With regard to its competence and to procedure, the Applicant respectfully requests the Administrative Tribunal to find that:

- (a) it is competent to hear and pass judgement upon the present application under Article 2 of its statute;
- (b) the present application is receivable under Article 7 of its Statute.

...”

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 4 February 2008, and once thereafter until 4 March;

Whereas the Respondent filed his Answer on 27 February 2008;

Whereas the Applicant filed Written Observations on 4 April 2008;

Whereas the Applicant filed additional comments on 27 August 2008;

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] joined [the Economic Commission for Africa (ECA)] on 1 July 1963 when he was granted a fixed-term appointment at the GS-3 level as Elevator Operator. On 4 May 1965, the [Applicant] was transferred to the Library Unit with a change of his functional title to Junior Library Clerk. Effective 1 January 1966 the [Applicant] was promoted to GS-4 level with a change of his functional title to Library Clerk. In December 1969 his appointment was converted to probationary. Effective 1 August 1970 the [Applicant] was granted a regular appointment. In June 1972, the [Applicant] was promoted to GS-5 level. He was subsequently granted a permanent appointment effective 1 March 1974. In July 1980, the [Applicant] was reassigned as a Clerk to the Inventory Unit, General Services Section of the Administration and Conference Services. In April 1981 the [Applicant] was promoted to the GS-6 level. In December 1986 he was reassigned from the Inventory Unit to the Transport and Travel Unit. In June 1989, as a result of the classification exercise of all GS posts in ECA the [Applicant’s] post was classified at GS-4. Effective 16 June 1997, the [Applicant] was transferred to the Conference Services Section with the functional title of Meetings Services Assistant. The [Applicant] retired from service on 29 February 2004.

***Summary of the facts***

... In June 1989 all GS posts in ECA were reviewed for reclassification in connection with the reduction of GS levels from 9 to 7. Subsequently, the [Applicant] was informed that his post was classified to GS-4.

... On 17 November 1989, the [Applicant] submitted an appeal before the ECA General Service Classification Appeals and Review Committee (GSCARC) against his initial post classification to GS-4 made in June 1989 based on the fact that the post which was classified was not the post he encumbered. It was based on the Inventory Control Clerk [position] which he left in 1986. The [Applicant] enclosed his job description from the Shipping Unit and requested accordingly that the classification decision of the post he encumbered be reviewed.

... On 29 October 1993, the Panel of the ECA GSCARC completed its review of the [Applicant]’s case. The GSCARC Panel’s report stated, *inter alia*, that:

‘The Panel was informed that under the implementation of the initial classification results, the functions, in terms of functional title and level, effected with respect to the [Applicant] are those of the job he was performing as ‘Inventory and Supply Assistant’. The Panel assumes that the job to which he was subsequently reassigned was covered by a job description.

The Panel concluded that the claims cited above do not constitute an appeal under the initial classification results but rather is a claim to the level of the job to which he was subsequently reassigned.

Consequently, the Panel decided to recommend that the case be referred to the Administration for appropriate administrative/personnel action.’

... On 11 November 1996, the Officer-in-Charge (OIC) of Human Resources Management Section (HRMS)/ECA, wrote an internal memorandum to the [Applicant] informing him that HRMS had decided to review his case with the possibility of the grant of a Special Post Allowance (SPA).

... On 10 January 1997 the [Applicant] wrote a memorandum to [the] OIC/HRMS/ECA requesting the review of his appeal. On 11 March 1997 the OIC/HRMS/ECA replied to the [Applicant] informing him, *inter alia*, that:

‘Concerning your claim for a change of post and functional title after you were reassigned from the Inventory Control Unit to the Transport and Travel Unit effective 1 December 1986, a P5 action, copy attached, was done reflecting a change in the office code only. This means that you were reassigned together with your post and title ‘Clerk’.’

... Effective 16 June 1997, the [Applicant] was temporarily reassigned from the Inventory and Supplies Section to the Conference Services Section. On 18 August 1997 the [Applicant] wrote a memorandum to [the] Chief, HRMSD, requesting a final solution to his case and clarification of his transfer.

... By an electronic mail message dated 23 October 2002, [a request was made] to revisit the issue, and that the last administrative decision taken with regard to this matter was dated 18 August 1997, at which time the [Applicant] was offered a [SPA].

... On 14 March 2003, the [Applicant] wrote a memorandum to the Ombudsman requesting her assistance to solve his case and on 9 June 2003 the President of ECA Staff Union wrote a letter to the Ombudsman requesting her to review this case with a view to resolving it expeditiously.

... On 7 October 2004 a personnel action was approved by [the] Officer-in-Charge HRSS/ECA, authorizing payment of the grant of a [SPA] to the [Applicant], as exceptionally approved by [the] Acting Director, Human Resources Management and Finance Division on 22 April 2004. (SPA effective 01/01/1987 through 30/12/1997).

...

... On 17 July 2003, the [Applicant] filed with the Secretary-General a request for administrative review of the failure of ECA Administration to properly classify the post he encumbered from 1 December 1986 until 16 June 1997. He attached the memoranda to the Ombudsman dated 14 March 2003 and 9 June 2003.

... Under cover of letter dated 11 August 2003, the Chief, Administrative Law Unit (ALU) wrote to the [Applicant], *inter alia*, that:

‘Staff Rule 111.2 provides in relevant part: ‘(a) A staff member wishing to appeal an administrative decision pursuant to staff regulation 111.1 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...’ Since your request for administrative review refers to a decision taken in 1997, and we are unable to identify a more recent decision, we regret to inform you that your request is not timely and no further review will be undertaken in this office.’”

... By letter dated 18 September 2003, [the] Counsel for the [Applicant], submitted the Statement of Appeal.

...”

The JAB issued its report on 20 January 2005. Its considerations, conclusion, and recommendation read, in part, as follows:

*“Considerations*

21. In accordance with paragraph G of the Rules of Procedure and Guidelines of the Joint Appeals Board at Headquarters, the Panel decided to consider the receivability as a preliminary issue.

22. The Panel noted that in accordance with paragraph F of the Rules of Procedure and Guidelines of the Joint Appeals Board at Headquarters, an appeal is receivable only if it complies with the time-limits set out in staff rule 111.2 (a) and (b), or if the Panel considering the appeal decides to exercise its discretion and waive the time-limits on grounds of ‘exceptional circumstances’ as stipulated in staff rule 111.2 (f), bearing in mind that the onus of proving exceptional circumstances lies with the Appellant.

23. The Panel observed that the Appellant submitted his request for administrative review on 17 July 2003, referring to a classification decision taken in June 1989 which was subsequently reviewed by ECA in August 1997. The Panel agreed that the request for administrative review filed by the Appellant with the Secretary-General was 5 years and eleven months late.

24. The Panel further considered whether there were exceptional circumstances, beyond the control of the Appellant that might have accounted for the late submissions and found none. In Judgement No. 372 *Kayigamba* (1986), the UNAT observed that: ‘...only circumstances beyond the control of the appellant, which prevented the staff member from submitting a request for review and filing an appeal in time, may be deemed to constitute ‘exceptional circumstances’ and warrant a waiver of the prescribed time-limits in accordance with the consistent jurisprudence of the Administrative Tribunal’. In the view of the Panel, nothing prevented the Appellant from submitting his request for review and filing his appeal in a timely manner.

*Conclusion and recommendation*

25. In light of the foregoing, the Panel unanimously agreed that the Appellant failed to comply with the time-limits set out in staff rule 111.2 (a) and (b) and has not adduced any evidence of ‘exceptional circumstances’ that would enable the Panel to exercise its discretion and waive the time-limits in accordance with staff rule 111.2 (f).

26. The Panel concluded, therefore, that the appeal is not receivable and unanimously recommends that the Secretary-General take no further action with regard to the present appeal.”

On 2 May 2005, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed him as follows:

“The Secretary-General accepts the JAB’s findings and conclusion and has accordingly decided to take no further action on this appeal.”

On 31 July 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. The reasoning of the JAB is flawed on the issue of receivability.
2. That exceptional circumstances existed to make the case receivable by the JAB.

Whereas the Respondent’s principal contention are:

1. The Applicant’s claim is time-barred.

2. No exceptional circumstances existed that could warrant a waiver of the time-limits.

The Tribunal, having deliberated from 10 July to 31 July 2009, now pronounces the following Judgement:

I. The Applicant joined the United Nations on 1 July 1963 as a staff member of the ECA. Having initially encumbered the post of Elevator Operator, he was assigned to several other posts and rose successively from grade GS-3 to grade GS-6 (as Inventory Control Clerk from April 1981). From 1 December 1986, the Applicant was assigned to the Transport and Travel Unit. On 16 June 1997, he was transferred to the Conference Services Section.

II. In June 1989, following a decision by the Administration to reduce the number of grades at the ECA from nine to seven, the Applicant's post was reclassified to level GS-4. On 17 November 1989, the Applicant filed an appeal against the decision to reclassify his post with the ECA General Service Classification Appeals and Review Committee (hereinafter the ECA Appeals Committee). The Applicant considered at the time that the post which had been reclassified (that of Mail Clerk) was not the post he actually encumbered but a post he had previously encumbered (at the time of the reclassification decision, he encumbered the post of Shipping Assistant).

III. The panel of the ECA Appeals Committee subsequently concluded, in its decision of 29 October 1993, that the appeal lodged by the Applicant did not concern the classification decision but related to the determination of the level of the post he had effectively encumbered on 1 June 1989. Given the circumstances, the panel recommended that the Applicant's case be referred to the Administration for appropriate administrative/personnel action.

IV. In a memorandum dated 11 November 1996, the Applicant was informed by the Officer-in-Charge of the ECA Human Resources Management Section that his case would be reviewed and that consideration would be given to the possibility of granting him a SPA. On 18 August 1997, the decision was taken to grant him a SPA.

V. Following that decision, the Applicant made submissions in 1999, 2002, and 2003, to the Human Resources Management Office and the Ombudsman, to have his situation clarified. On 17 July 2003, the Applicant filed a request for administrative review with the Secretary-General, citing the failure of the Administration to give the appropriate classification to the post encumbered by the Applicant during the period from 1 December 1986 to 16 June 1997. By letter of 11 August 2003, the Chief of the ALU informed the Applicant that his appeal was not receivable since he had exceeded the time limit laid down in staff rule 111.2 (a). On 18 December 2003, the Applicant appealed this decision to the JAB.

VI. In its report of 20 January 2005, the JAB considered that the disputed decision was the decision taken on 1 June 1989 to reclassify the Applicant's post, as revised by the decision of 18 August 1997 confirming the reclassification and granting the Applicant a SPA. Having made that clarification, the JAB found that the request for administrative review filed by the Applicant had been submitted five years and 11 months after the date of the revised decision. Inasmuch as staff rule 111.2 (a) stipulates a time limit of two months for the filing of administrative appeals, the JAB concluded that the Applicant's appeal was time-barred. The JAB went on to consider the possibility of the existence of exceptional circumstances under staff rule 111.2 (f), which might warrant a waiver of the time limit. The JAB nevertheless noted the absence of such circumstances and concluded that the Applicant's appeal was not receivable. The Secretary-General accepted the recommendations of the JAB.

VII. In the present Application, the Applicant requests the Tribunal to order:

- (a) That the case be remanded to the JAB for a *de novo* consideration;
- (b) That the case be considered on the merits by the JAB; and

should the Tribunal not order a *de novo* consideration and consideration on the merits:

- (c) That the Applicant be awarded appropriate monetary compensation.

VIII. The Applicant bases his application on the alleged existence of "exceptional circumstances" which warranted a waiver of the time limit specified in staff rule 111.2 (a). In the first place, the Applicant challenges the JAB's finding that he should have considered the letter dated on 18 August 1997 as an administrative decision against which he had a right to file an administrative appeal. He considers that the decision was framed in conditional terms and that, therefore, that it was the responsibility of the ECA Administration to communicate the decision to him in proper form so that he could immediately take cognizance of his situation. Secondly, the Applicant submits that his due process rights were further infringed by the fact that the letter of 2 May 2005 in which he was notified that the Secretary-General had decided to follow the recommendations of the JAB was not forwarded to him immediately. For these reasons, the Applicant concludes that "exceptional circumstances" existed beyond his control, which should have prompted the Administration to waive the two month time limit for the submission of appeals for administrative review specified in staff rule 111.2 (a).

IX. The Respondent, for his part, recalls and confirms the findings made by the JAB to the effect that the Applicant's appeal was filed far too late in relation to the time limit prescribed by the Staff Rules and that the Applicant provides no evidence whatsoever that he could be entitled to benefit from exceptional circumstances.

X. In the instant case, the Tribunal must determine whether the circumstances in which the Applicant filed the appeal for administrative review were such that the time limit prescribed by staff rule 111.2 (a) could have been waived. It is appropriate at this point to recall the relevant provisions of the Staff Rules. Rule 111.2 (a) provides:

“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.”

Rule 111.2 (f) states: “An 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”.

XI. Before considering the possible existence of “exceptional circumstances”, the Tribunal must note that it is not clear, from the Applicant’s Application, which administrative decision he is contesting. It is apparent from the file submitted by the Applicant that he did seek to obtain clarification of his situation from the Administration, following the decision of 18 August 1997. However, at the time the Applicant filed the request for administrative review with the Secretary-General, he was extremely evasive about the subject matter of his Application. In this regard, the Tribunal can only recommend that applicants frame their applications as precisely as possible and avoid submitting extremely vague and ambiguous claims to the Administration, which unnecessarily complicate the latter’s task.

XII. Be that as it may, the Tribunal considers that the Chief of the ALU and the JAB were right to consider the decision of 18 August 1997 as the decision at issue, since it is this administrative decision that deals with the situation of the Applicant. Thus, the Applicant’s request to the Administration to clarify and provide a final solution to his case must be considered as the decision at issue. (See, in this connection, Judgement No. 1349 (2007), para. II).

XIII. The Tribunal now turns to the circumstances in which the Applicant filed his request for administrative review, from the standpoint of the requirements of the Staff Rules. With regard to the time limits for the filing of appeals by staff members against the action of the Administration, the Tribunal has already frequently had occasion to recall how important it was to ensure compliance with these requirements. It explained in particular that:

“it is of the utmost importance that time limits should be respected because they have been established to protect the United Nations administration from tardy, unforeseeable requests that would otherwise hang like the sword of Damoclès over the efficient operation of international organizations. Any other approach would endanger the mission of the international organizations”. (Judgement No. 1046, *Diaz de Wessely* (2002), para. XVI).

In this case, the Tribunal can only confirm the observation made earlier by the Chief of the ALU and the JAB that the request for administrative review was filed by the Applicant 5 years and 11 months after the adoption of the decision at issue. The prescribed time limit of two months was therefore exceeded by a wide margin.

XIV. In this connection, the Tribunal also notes that the time periods in this case appear to be particularly lengthy, precisely because of the Applicant. It is true that the latter reacted immediately to the letter of 18 August 1997, requesting explanations from the Administration. Subsequently, however, he did not come forward again until May 1999, when he submitted a request for the settlement of his case to the Officer-in-Charge of Human Resources Management. It was not until August 2002 that he reminded the Administration of his request for clarification of his situation. The time span of the Applicant's actions suggests that he was not himself in a hurry to see his claims bear fruit.

XV. At this stage, the Tribunal must take into account the fact that these various intervals between the Applicant's initiatives may be due in part to the attitude of the Administration, which sometimes gave the impression that his situation could be resolved along different lines, but that any settlement would take place only when the Administration was prepared to take action. The Tribunal refers in this connection to certain written communications mentioned by the Applicant, in which he was informed of the fact that his requests were not being ignored and that the case was in progress, but that they would be dealt with when the competent persons had the time (e.g. letter of 13 August 2002, letter of 19 August 2002). However, even if the Tribunal might conclude, on this point, that the Administration did not always act with due diligence, it does not consider this as a situation amounting to exceptional circumstances justifying a waiver of the time limit prescribed in staff rule 111.2 (a).

XVI. The Tribunal has on numerous occasions emphasized that the expression "exceptional circumstances" contained in staff rule 111.2 (f) must be strictly construed (see, for example, Judgement No. 1301 (2006), para. II; Judgement No. 1349 (2007), para. II). They must be taken to consist of "events beyond the Applicant's control that prevent the Applicant from timely pursuing his or her appeal" (see, for example, Judgement No. 913, *Midaya* (1999), para. IV; Judgement No. 1054, *Obuyu* (2002), para. IV). The Tribunal has recognized the existence of such circumstances in very few cases. For example, when the Applicant's state of health is such that he is totally incapable of preparing his case, he may, on humanitarian grounds, be granted a waiver of the time limit (see, in this regard, Judgement No. 715, *Thiam* (1995), para. IX). In other cases, however, even where the Applicant was seriously ill, the Tribunal refused to acknowledge the existence of such exceptional circumstances (see, for example, Judgement No. 1250, *Thiam* (2003)). In other words, the exceptional circumstances that the Applicant may invoke, in addition to



being beyond his control, must place him in a practical situation such that he is completely incapable of respecting the time limits imposed on him.

XVII. In this case, it is therefore incumbent on the Applicant to prove that exceptional circumstances prevented him for almost six years from exercising his rights under the Staff Rules. However, the arguments raised by the Applicant to the effect that he was not able to submit his appeal within the required time limit because of an element of ambiguity and a degree of inertia on the part of the Administration are not convincing to the Tribunal.

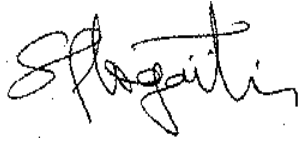
XVIII. Considering first the alleged ambiguity discerned in the decision of 18 August 1997, the Tribunal cannot go along with the Applicant's argument. He claims that the letter addressed to him was conditional because it specified in particular that: *"A glance at the staffing table shows that there is no Shipping Assistant at the G4 level. I would therefore like to recommend that the staff member be considered for SPA to the higher level on the condition that [the Chief, General Services Section] confirms that the staff member's claim that all the shipping assistants are performing the same functions and that these functions have been classified at a higher level than G4."* In the Tribunal's view, however, it seems clear from the very terms of this letter that it was impossible to classify the post encumbered by the Applicant differently, and this therefore provided support for the decision to reclassify his post. The condition referred to relates solely to the possibility of granting him a SPA and not to the confirmed decision not to revisit the reclassification of the Applicant's post.

XIX. Turning to the Applicant's argument that his due process rights were also prejudiced by the fact that the Secretary-General's decision to follow the recommendations of the JAB was not communicated to him, the Tribunal fails to see how that could have interfered with the Applicant's obligation to file an appeal two months from the date the decision appealed against was made. Indeed, the decision in question was not issued until May 2005. The Applicant must provide evidence of exceptional circumstances arising well before that date.

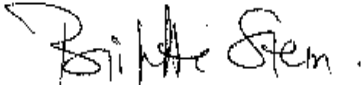
XX. Generally speaking, while the Applicant may have considered that the decision of 18 August 1997 gave rise to doubts about his situation, the Tribunal points out that, at a minimum, he had a due diligence obligation to acquaint himself properly with the procedure to be followed for the filing of an appeal (see, in this regard, Judgement No. 1291 (2006), para. IV). The lack of a response from the Administration to these requests, regardless of their subject matter, does not in any event constitute an exceptional circumstance justifying a waiver of the time limit for a request for administrative review (see, in this regard, Judgement No. 913, *Midaya* (1999), para. IV). Given the circumstances, the Tribunal cannot but find that there was an absence of exceptional circumstances within the meaning of staff rule 111.2 (f).

XXI. For the foregoing reasons, the Tribunal agrees with the JAB that the Applicant's case is not receivable, *ratione temporis*, and rejects the Application in its entirety.

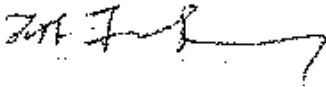
(Signatures)



Spyridon **Flogaitis**  
President



Brigitte **Stern**  
Member



Goh Joon Seng  
Member

Geneva, 31 July 2009



Tamara **Shockley**  
Executive Secretary