



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1469

Case No. 1530

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Ms. Jacqueline R. Scott, First Vice-President, presiding; Mr. Dayendra Sena  
Wijewardane, Second Vice-President; Mr. Goh Joon Seng;

Whereas on 15 April 2007, a former staff member of United Nations, filed an Application in  
which she requested the Tribunal, inter alia:

“II. PLEAS

7. ... [To] find:

...

(b) that the present Applicant 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 22 October 2007, and once thereafter until 21  
November;

Whereas the Respondent filed his Answer on 15 November 2007;

Whereas the Applicant filed Written Observations on 10 January 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 Organization on 27 August 1973 on a one-month short-term appointment as Clerk, G-2, with the Yearbook Unit, Press and Publications Division, the then Office of Public Information. Her initial appointment was subsequently extended, then converted to a fixed-term appointment, and later to a probationary appointment. On 1 August 1975 the [Applicant] was granted a permanent appointment.

... Effective 12 December 1974, the [Applicant] was transferred to the Center for Natural Resources, Department of Economic and Social Affairs.

... From 28 September 1980 to 9 January 1983, the [Applicant] was on assignment to the [United Nations Peacekeeping Force in Cyprus] (UNFICYP).

... On 1 December 1984, the [Applicant] was promoted to the Professional category and awarded P-2 level. Same month she was reassigned to the Department of Political Affairs, Trusteeship and Decolonization. Effective 1 October 1987, the [Applicant] was promoted to the P-3 level.

... On 1 February 1990, the [Applicant] was detailed on a temporary assignment to the Secretariat of the [Advisory Committee on Administrative and Budgetary Questions (ACABQ)], Office of Programme Planning, Budget and Finance, Department of Management. Later the same year the temporary assignment was converted into an inter-departmental transfer under the Vacancy Management and Staff Redeployment Programme.

... Effective 1 February 1991, the [Applicant] was promoted to the P-4 level and effective 1 February 1994 – to the P-5 level. In addition, the [Applicant] was granted retroactively for the period 7 April 1993 to 31 January 1994 a special post allowance to the P-5 level in recognition of the fact that she had performed functions at that level for a considerable period of time and to the full satisfaction of her supervisors prior to her promotion. From 1 July 1994, the [Applicant]’s functional title was changed to Deputy Executive Secretary of the ACABQ Secretariat.

... On 1 September 1999, the [Applicant] was laterally reassigned to the newly created Oversight Services Unit in the Office of the Under-Secretary-General for Management and appointed as Chief of that Unit.

... Effective 31 August 2005, the [Applicant] was separated from the Organization on agreed termination.

***Summary of the facts relevant to the receivability of the present appeal***

... From the documents on file it appears that after the [Applicant] joined the ACABQ Secretariat in February 1990 and even when she was transferred as Chief, Oversight Support Unit, Department of Management in 1999, she was forced, because of the exigencies of service, to systematically defer her home leave entitlement for up to two years at a time or even longer. Until 2002 the Administration appeared to always demonstrate certain understanding of the [Applicant]’s situation and was consistently granting her the necessary authorizations to defer and carry forward her unused home leave entitlements to the succeeding years. In June 2002, the Administration, however, refused to defer any further the [Applicant]’s 1998 home leave entitlement and informed her that it had lapsed.

... On 27 August 2002, the [Applicant] filed with the Secretary-General a request for administrative review of the Administration's decision on her 1998 home leave entitlement. While waiting for the decision on her request, the [Applicant] in the meantime must have applied for and was granted the authorization to exercise her 2002 home leave entitlement, which she successfully did in November-December 2003. Also, shortly before her departure on the 2002 home leave, the Administration agreed to restore her 1998 home leave entitlement. The [Applicant] exercised it in December 2004.

... On 16 March 2005, the [Applicant] requested an agreed termination of her service with the Organization. Reportedly on 5 May 2005 her request had been approved with the effective date of 31 August 2005.

... On 24 May 2005, the [Applicant] was informed by the Payroll Section of the Accounts Division, OPPBA, (hereafter 'the Payroll Section') that the 2001 and 2002 tax returns of the [Applicant]'s husband showed some outstanding amount in the receivable balance which was due to the UN over-advancing the taxes in 2001, i.e. the advances paid by the UN to the US Internal Revenue Service (IRS) and the State Authorities in 2001 on behalf of the [Applicant]'s husband were higher than the actual amounts claimed by the [Applicant]'s husband eventually for those years. The [Applicant]'s husband reportedly benefited from the Foreign Income Exclusion provisions, which reduced his tax liability. The [Applicant] was requested to contact her husband so that the latter provided to the UN a tax account transcript for the years 2001-2002.

... On 1 June 2005, the [Applicant] forwarded the Payroll Section's request to her husband who on 13 June 2005 replied that he was attending to his aged and sick mother and would look into the matter once he was back in New York. On 14 June 2005, the [Applicant] forwarded the reply of her husband to the Payroll Section without any comments.

... On 28 June 2005, the [Applicant]'s Executive Office advised the Office of Human Resources Management (OHRM) that the [Applicant] was to be separated from the Organization on agreed termination effective 31 August 2005.

... On 13 July 2005, the Payroll Section sent a reminder to the [Applicant] about the outstanding issue of her husband's tax returns for 2001 and 2002, emphasizing that the Payroll Section was expected to report very soon on all tax receivables which had not been collected so far. The Payroll Section re-iterated its belief that the [Applicant]'s husband should have received a large reimbursement from the IRS and NY State and that at least part of that reimbursed amount, if not all, should have been paid back to the UN. A transcript from the IRS would have confirmed the fact and the amount. The [Applicant] was suggested to also check 'the bank statements for the period 2002-2003 and look for any large refund from the IRS'.

... [On the] [s]ame day the [Applicant] replied to the Payroll Section's reminder by contending that although she spoke to her husband over the phone on several occasions the previous day, she was not able to discuss with him the matter of tax returns. Rather she called her husband in connection with his mother's hospitalization. The [Applicant] assured the Payroll Section that she was not able to check the bank statements because she and her husband had separate bank accounts and 'as a G-4 visa person [she] ha[d] never had to deal with IRS and such things'. The [Applicant] stated further that her husband was expected to return to New York by 19 July 2005 but due to the sudden turn of events on 12 July 2005, i.e. the hospitalization of the husband's mother, it was no longer the case. The [Applicant] informed the Payroll Section that she did not know any more when her husband would return to New York and that she could not be of more help because she was 'trying to cope with [her] own health and stuff'.

... On 15 July 2005, the Payroll Section acknowledged the [Applicant]'s information about the hospitalization of her husband's mother and asked the [Applicant] to let them know 'as soon as [her] spouse [was] able to request a transcript from the IRS or to go through his bank statements upon his return to NY'.

... On 19 July 2005, the [Applicant] had her exit interview where it was inter alia noted that her departure date would be provided later and that she might apply for a change of visa status. The part to be completed by non-US staff members had not been completed for some reason.

... [From] 9 to 23 August 2005 - the [Applicant] had an exchange of e-mail communications with the UN Ombudswoman on the status of the [Applicant]'s final entitlements and payments. During this interval, i.e. on 12 August 2005, she also received a reminder from the Payroll Section about the outstanding tax returns issue, where it was re-iterated that it needed to be resolved as soon as possible.

... On 20 September 2005, the Payroll Section formally sought guidance of the Office of Human Resources Management (OHRM) on whether the [Applicant] was 'liable for the outstanding tax receivable against her husband, and whether ...it would be appropriate to release her separation payments without recovering the tax overpayment'. Inter alia the Payroll Section informed the OHRM that the [Applicant]'s husband, who separated on 31 October 2002 and who was a US citizen, had 'an outstanding receivable with the United Nations corresponding to a \$19,747 overpayment of tax advances [and that] it was very likely [that he had] received this amount as a refund from the US tax authorities but did not remit it to the United Nations as warranted by the rules and regulations governing the payment of US income tax on UN earnings'.

... On 26 September 2005, the Payroll Section informed the OHRM further that 'both documents [tax returns from 2001 and 2002] were signed by both spouses, including the 2001 return that carried an overpayment for an amount over [\$]19,000 ... and requested a reimbursement from the US Tax authorities'.

... On 28 September 2005, the OHRM sought advice on the issue from the Office of Legal Affairs (OLA). Inter alia the OHRM informed the OLA that while the 2001 and 2002 tax returns were signed jointly by the [Applicant] and her husband, 'the requests for settlement of income taxes (F.65) for the years in question, where staff members [were] required to provide a number of certifications and undertakings, were signed by the husband only'. The OHRM requested the OLA to advise on 'the propriety of recovery against the amounts otherwise payable to the [Applicant] on separation [and] whether it would be possible to withhold the amount of the apparent overpayment from the [Applicant]'s final payments until she or her husband provide[d] the information necessary to verify the existence and amount of the overpayment, or until the UN obtain[ed] that information from the tax authorities'.

... On 21 October 2005, the OLA replied to the OHRM and to the Payroll Section that insofar as the [Applicant] filed and signed joint tax returns with her husband for the years in question, she would be 'an equal beneficiary of the tax refund from the US tax authorities resulting from the UN's overpayment of the tax advances'. Consequently, such a tax refund, if received by the [Applicant], would 'create an indebtedness on [her] part ... to the UN [and the UN would] ... be entitled to deduct the indebtedness from her salary, wages and other emoluments pursuant to staff rule 103.18 (b) (ii)'. Accordingly, the OLA determined that it was 'appropriate for Payroll to withhold the final separation payments from [the Applicant], up to the amount of the outstanding receivable, until she provide[d] the information required by [the Payroll] office or until the UN obtain[ed] the relevant information from the tax authorities'. At the same time, the OLA declined to pronounce itself on the question of the [Applicant]'s liability for the outstanding receivable against her husband but took note of the facts that (i) the Respondent earlier already withheld the final pay cheque of the [Applicant]'s husband in the amount of \$2,173 and (ii) there were no other due payments available to be withheld against this outstanding receivable at the time of the husband's separation from the Organization in October 2002. The OLA recommended that the Payroll Section inform the [Applicant] of its intention to withhold the separation payments and pursue the matter with her and the tax authorities on an urgent basis.

... [From] 12 to 23 October 2005 - [there was] an exchange of informal e-mail communications between the [Applicant] and the Director, Accounts Division, on the subject of

the [Applicant]'s final payments, their withholding, and then partial release. Inter alia the [Applicant] complained about 'willful harassment' and its possible harmful impact on her reputation all over the UN. She also categorically objected to the Administration's intention/decision to hold her legally responsible for her husband's tax issues and re-iterated that the matter should be resolved directly with her husband once he was back in New York from Pakistan.

... [On] 21 December 2005 – the [Applicant] complained formally to the Director, Accounts Division, about the delay in the payment of her final dues. Inter alia she claimed that she received no formal explanation for the delay but heard informally that the delay might have been caused by 'some old tax issues relating to [her] husband, ... who retired from the UN in early 2002'. The [Applicant] re-iterated her contentions that while her husband was a US citizen and US taxpayer, she was a G-4 visa holder and that it was 'unfair and unjust' to hold her responsible for his US tax issues. She also re-iterated that the matter should be discussed directly with her husband upon his return to the USA.

... On 3 February 2006, the [Applicant] reviewed her official status file and on 28 February 2006 requested the Secretary-General that 'the matter [i.e. the Administration's refusal to release all the payments and failure to provide any official notification or explanation to that effect] [be] investigated'. It appears that the [Applicant]'s request was received in the Office of the Secretary-General on 8 March 2006 and on 10 March 2006 forwarded for action to the Administration.

... On 25 April 2006, the [Applicant] submitted an incomplete statement of appeal to the New York JAB 'in order to keep within the deadline established by the staff rule'.

... On 14 May 2006, the [Applicant] requested authorization to file a complete statement of appeal by mid June 2006, since she was away from New York and did not have access to her records/files. She was granted an extension to 16 June 2006.

... On 9 June 2006, the [Applicant] was reportedly informed by the Controller that her final entitlement payments could not be made until the outstanding issue related to the 2001 and 2002 tax returns and a substantial overpayment of tax advances had been resolved and that she was required to obtain and submit to the Organization the appropriate tax transcripts to that effect.

..."

On 12 June 2006, the Applicant filed her appeal with the JAB. The JAB, submitted its report to the Secretary-General on 28 November 2006. Its considerations, conclusions, and recommendations read, in part, as follows:

***“Considerations***

49. The Panel reviewed the receivability of the present appeal. The Panel agreed that the crux of the matter was the Appellant's letter of 28 February 2006 to the Secretary-General and whether it constituted a proper request for administrative review under Chapter XI of the Staff Rules. All other issues, including, for example, the Appellant's specific recourse against the alleged administrative decision on her 2004 home leave entitlement, were secondary, although somewhat useful in the determination of the nature of the Appellant's letter of 28 February 2006 to the Secretary-General.

50. With regard to the letter, the Panel noted the diametrically opposite contentions of the parties, namely, that the Appellant contended that the said letter 'cannot be regarded as anything other than a request for review under the relevant Staff Rules', while the Respondent claimed that

in her letter the Appellant asked not for a review of a specific administrative decision but for an investigation.

51. The Panel reviewed the contents of the Appellant's letter of 28 February 2006 and found that in the letter the Appellant complained to the Secretary-General about 'the appalling treatment' to which she was allegedly subjected by the Administration who initially 'arbitrar[ily]' withheld all her separation payments and then after 'numerous and frantic efforts by [the Appellant], [and] after more than a month and a half, [released] part of the payments ... to [her]'. The Appellant also claimed in the said letter that the Organization 'failed to provide [her] with any ... official notification or explanation for [its] actions [and that] all [her] efforts, including requests in writing, to seek clarification and secure [her] entitlements ha[d] been ignored'.

52. The Panel noted that in the letter in question the Appellant indeed asked for an 'investigation' of 'the matter' rather than for a review of any specific administrative decisions. The Panel agreed that the Appellant's choice of words in the letter was not accidental, taking into account her extensive experience with and knowledge of the UN administrative matters, procedures and terminology as well as her personal experience, in 2002, with the UN appeal and administrative review procedure with regard to her 1998 home leave entitlement.

53. Furthermore, the Panel found that the Appellant's description of the 'matter' was too general and vague in order to serve as a meaningful request for review of the related administrative decisions, if any. It is also of importance that the Appellant did not copy her letter of 28 February 2006 to the Secretary-General to the head of her respective department/office, as it should have been the case with a request for administrative review in accordance with the amendment to the Chapter XI of the Staff Rules, which became effective on 1 January 2006.

54. Furthermore, having reviewed the available exchange of the Appellant's e-mail communications with the Chief of Payroll and later with the Director of Accounts, the Panel was satisfied that the Administration was in constant contact with the Appellant about the problem from as early as May 2005, i.e. even before her actual separation from service. Moreover, the Appellant, at least initially, demonstrated considerable understanding, cooperation and willingness to assist the Administration in resolving the problem. This fact also proves to the Panel that the Appellant was well informed about the 'matter' and the Administration's reasoning to withhold part of her final payments. Accordingly, her contentions to the contrary are very much misleading and simply not true.

55. In the Panel's opinion, insofar as the Appellant knew about the issue or the 'decision' and its rationale already in May 2005, her letter of 28 February 2006 to the Secretary-General, if to recognize it as a request for administrative review under Chapter XI, was filed well after the established time limits for such an action. The Appellant did not provide and the Panel did not find any exceptional circumstances, which would have prevented the Appellant from initiating her recourse earlier, for example, in October 2005 when she finally received part of her final payments and was again told why the rest of her final payments would continue to be withheld. It goes without saying that in the absence of such exceptional circumstances, the Panel could not waive the established time limits for requesting a review of an administrative decision. With regard to the Appellant's continued efforts to obtain a more formal statement from the Administration on the matter, the Panel could not accept them as such exceptional circumstances. In this connection, the Panel recalled the UNAT judgment No. 1211 *Muigai* (2004) where the Tribunal pronounced that 'once it is clear that a decision is made, the time for initiating the appeal process begins to run and, thus, further correspondence on the issue [as well as negotiations between the parties] would normally not stop it from running'. Also, 'bringing up an issue on which a decision had previously been communicated to the staff member and which was not the subject of a request for administrative review does not normally start the process anew' (para. III).

56. Based on the above mentioned findings and observations, the Panel agreed that the Appellant's letter of 28 February 2006 to the Secretary-General requesting an investigation of the

matter was not and could not be recognized as the proper request for review of an administrative decision under Chapter XI of the Staff Rules. Consequently, the Appellant's appeal is not receivable because it lacked a 'constitutive element' (the UNAT judgment No. 1122 *Lopes-Braga* (2003)). According to the UNAT judgment No. 905 *El-Far* (1998), administrative review is 'a very important internal procedure [which] gives the Administration an opportunity to redress a grievance before it is taken any further...[and] it [was] of the utmost importance that the Administration be given this opportunity ... before [the] decision is litigated'. In this connection, the Panel also noted that it had no power to waive this constitutive element of the appeal process (UNAT judgment No. 878 *Orfali* (1998))

57. Accordingly, the Panel decided that there was no need for it to review the merits of the appeal and/or any of the Appellant's particular contentions related to her specific entitlements and final payments.

### ***Conclusions***

58. The Panel concluded that the appeal at hand was not receivable because the Appellant failed to seek an administrative review of the subject-matter prior to taking it to the JAB.

### ***Recommendations***

59. The Panel made no recommendation in favour of the appeal."

On 23 April 2007, the Under-Secretary-General for Management transmitted a copy of the report to the Applicant and informed her as follows:

"The Secretary-General has examined your case in the light of the JAB's report and all the circumstances of the case. He accepts the JAB's findings and conclusion and has accordingly decided to take no further action on this appeal ..."

On 15 April 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. Her case was receivable, *ratione materiae* and *ratione temporis*, by the JAB.
2. The JAB did not follow its own Rules of Procedure and Guidelines as it failed to properly supervise the appeals process and to take timely procedural decisions as to her appeal prior to the JAB panel considering her case. The technical aspects of the appeal had not been effectively dealt with before the case was presented to the JAB panel.
3. The JAB erred in law and incorrectly interpreted its own Rules of Procedure in misapplying Rule III. F and G as regards to the receivability of the appeal before it. The JAB was also too subjective in its consideration of whether exceptional circumstances warranted a waiver of the time-limits in this case.

Whereas the Respondent's principal contention is:

The Applicant's appeal is not receivable because she failed to request an administrative review of the impugned decision.

The Tribunal, having deliberated from 15 July to 31 July 2009, now pronounces the following Judgement:

I. The Applicant brings before the Tribunal various issues for consideration, including a challenge to the Organization's decision not to pay her for home leave deferred from 2004, as well as accrued annual leave, when she separated from service pursuant to an agreed termination. The Applicant also challenges the Administration's decision to withhold monies from her final entitlements to cover the cost of monies owed to the Organization by the Applicant's husband, a former staff member.

II. The Applicant was employed by the Organization from 27 August 1973 until 31 August 2005. Her husband, a United States taxpayer, was also employed by the Organization and separated from service in 2002.

III. During the course of her service, the Applicant was entitled to home leave in accordance with the Staff Regulations and Rules in effect. Apparently, based on the record, sometime after 1990, when she was transferred to the ACABQ Secretariat, she was "forced, because of the exigencies of service, to systematically defer her home leave entitlement for up to two years at a time or even longer". This pattern of carryover continued until 2002, when the Administration informed the Applicant that her 1998 home leave would not be carried over. In response, the Applicant sought administrative review of that decision on 27 August 2002. Shortly before she took her 2002 home leave, the Administration reversed its position and restored her 1998 home leave.

IV. On 24 May 2005, the Applicant was notified by the Payroll Section that her husband, who was required to pay U.S. taxes on monies earned while in the service of the Organization, owed the Organization money for taxes. Specifically, the Payroll Section informed the Applicant that the Organization had advanced taxes to her husband for 2001 and 2002, and that those advances were higher than the amounts eventually paid to the taxing authorities by her husband. The tax return filed by the Applicant's husband for the period in question was a joint return, signed by both the Applicant and her husband. The Organization requested the Applicant to contact her husband, who reportedly was out of the country attending to a sick parent, which she allegedly did, on 1 June 2005. On 13 June 2005, the Applicant's husband responded that he was temporarily unavailable but would address the matter upon his return to the United States. The Applicant forwarded her husband's reply to the Organization.

V. On 31 August 2005, the Applicant separated from service following an agreed termination.

VI. From 20 September 2005 until 21 October 2005, the Organization sought to determine whether the Applicant could be held liable for the debt of her husband, and on 21 October, it answered that question in



the affirmative. Relying on the fact that the tax return was jointly filed and that the Applicant would have been “an equal beneficiary of the tax refund from the US authorities resulting from the UN’s overpayment of the tax advances”, the Organization decided that “such a refund, if received by the Applicant, would ‘create an indebtedness on [her] part... to the UN [and the UN would]... be entitled to deduct the indebtedness from her salary, wages and other emoluments pursuant to staff rule 3.18(b)(ii).’” OLA advised the Payroll Section that the amount of the unreimbursed tax advanced could be properly withheld from the Applicant’s final separation payments. The Payroll Section was further advised to notify the Applicant of its intention to so withhold and also to pursue the matter further with the Applicant and the relevant tax authorities.

VII. Thereafter ensued a series of letters and other communications between the Applicant and the Organization, in which the issue of the Applicant’s liability was discussed. There were some “back and forth” communications between the Applicant and the Organization, evidencing an intention on the part of both parties to find some way to resolve this matter. At some point, the Director, Accounts Division, agreed to release at least a portion of the amounts owed to the Applicant. On 23 October 2005, the Applicant emailed the Director, Accounts Division, asking whether the Organization had decided whether she should be responsible for her husband’s debt.

VIII. These communications continued through December 2005. On 21 December 2005, the Applicant again wrote to the Director, Accounts Division, protesting the Organization’s continued partial withholding of her final separation entitlements, and sought the Director’s advice on what further steps were needed to be taken to recover the remainder of her final entitlements. She did not receive any response from the Director, and on 28 February 2006, she wrote a letter to the Secretary-General seeking his intervention. Specifically, she requested that the Secretary-General “have the matter investigated” so that “all [her] dues and earned entitlements” would be paid to her “without further delay”. Having received no response from the Secretary-General, she filed an appeal with the JAB on 15 June 2006. The JAB issued its recommendations on 28 November 2006, finding that the Applicant’s appeal was not receivable, both *rationae materiae* and *rationae temporis*, on the basis that the Applicant’s letter of 28 February 2006, did not constitute a request for administrative review, and even if it did, was not filed in a timely fashion. The JAB noted that the Applicant did not use the words “administrative review” and that her letter to the Secretary-General was too vague and general to constitute a request for administrative review. Moreover, the JAB noted that the Applicant did not copy the head of her department/office on her letter of 28 February 2006, to the Secretary-General, in accordance with Chapter XI of the Staff Rules, as modified, effective 1 January 2006. Finally, the JAB found, that the Applicant had been apprised, at least as of May 2005, of the Organization’s decision to withhold her final separation payments in the amount of the debt owed to the Organization by her husband. It therefore concluded that, her letter of 28 February 2006, to the Secretary-General requesting review of the impugned decision was outside the two month time-limit allowed by the Staff Regulations and Rules .

IX. The Respondent asserts that the Application is non-receivable *rationae materiae* and *rationae temporis* by the Tribunal, for the reasons stated by the JAB. In the event that the Tribunal finds the Application to be receivable, the Respondent requests that he be allowed to answer the case on the merits.

X. The Tribunal turns to the threshold issue before it – that is, whether the Applicant’s case is receivable. The Tribunal determines that it is. First, on the issue of receivability *rationae materiae*, the Tribunal finds that the Applicant’s letter to the Secretary-General, dated 28 February 2006, did constitute a request for administrative review. While that letter did not use the words “administrative review”, the Applicant speaks in terms of “appalling treatment” and asks to have the “matter investigated”. It is clear that she is protesting the decision of the Organization’s “refusal to release all [her] payments” and asking that “all [her] dues and earned entitlements” be paid to her without further delay. This is so even though she does not specifically reference the reason for the non-payment. The Tribunal is perplexed that a staff member of her experience and level would not use the words “administrative review”, recognizing that in a previous request for such review she did so explicitly. However, the Tribunal is also mindful that when a staff member represents herself in a legal matter, a certain amount of leeway may be accorded, in order to protect rights that might be denied simply because that staff member while conveying the substance of her request fails to characterize it clearly.

XI. The Respondent also argues that the Applicant’s request for review was not receivable because she did not submit a copy of that request to her department head, as she was obligated to do under Chapter XI of the Staff Rules, as modified, effective 1 January 2006. In response, the Applicant asserts that this modification came into existence after she had already separated from service and was not published on the Organization’s website at the time she filed her request for administrative review. As a retiree, she argues, it would have been impossible for her to discover this modification, as she had no access to the changes to the Staff Regulations and Rules, other than on the internet. The Respondent does not deny her assertions. While the Tribunal notes the importance of complying with the Staff Regulations and Rules, it was incumbent upon the Organization to make the rules available to its staff members, including those who are retired. The website would have been the logical place for a retiree to search, and because on the evidence, the information was not available on the Organization’s website at the time of the Applicant’s action, she cannot be penalized for her failure to comply with this rule. Therefore, the Tribunal finds that in these circumstances, the Applicant’s letter of 28 February 2006, did indeed constitute a request for administrative review. Her Application is therefore, receivable, *ratione materiae*.

XII. Next, the Tribunal addresses the Respondent’s contention that the Applicant’s claim is time-barred, as she did not seek administrative review within the two month period from the Secretary-General’s decision to withhold her final entitlements. The Respondent asserts that as she knew at least as of May

2005, that her entitlements were being held back, that date is the starting point to calculate the time-limit for filing her request for administrative review. The Tribunal, however, cannot agree. As the record makes clear, the Applicant and the Organization engaged in extensive communications on the issue of her entitlements, throughout 2005. It is clear that during this period of communication both parties were working towards a solution, and it was unclear whether the Organization would pay the final entitlements to the Applicant. In fact, it was not until 21 October 2005, that OLA opined on the Applicant's liability for her husband's debt. Moreover, during the correspondence period and apparently as a result of the correspondence, the Organization did pay the Applicant at least a portion of the amount of her entitlements. When the Applicant wrote to the Director, Accounts Division, on 21 December 2005, she sought to obtain the remainder of her entitlements. After a reasonable waiting period, it was apparent that no response to the letter was forthcoming, the Applicant submitted her request for administrative review to the Secretary-General. Thus, the Tribunal finds that the Applicant's request for administrative review was indeed receivable by the JAB, *rationae temporis*.

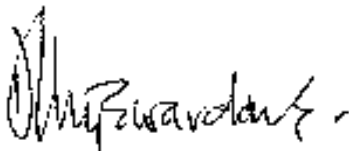
XIII. In view of the foregoing, the Tribunal:

1. Declares that the Applicant's appeal before the JAB was receivable and that the Board was mistaken in its finding that the appeal was not receivable *ratione temporis* or *ratione materiae*;
2. In order to guarantee due process, orders the Respondent to submit his arguments on the merits of the case no later than 8 September 2009; and,
3. Declares that the Applicant may submit a reply, if any, to the Respondent's Answer on the merits no later than 15 October 2009.

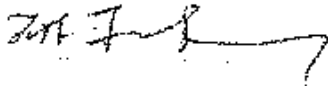
(Signatures)



Jacqueline R. **Scott**  
First Vice-President



Dayendra Sena **Wijewardane**  
Second Vice-President



**Goh Joon Seng**  
Member

Geneva, 31 July 2009



**Tamara Shockley**  
Executive Secretary