



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1489

Case No. 1560

Against: The Secretary-General  
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,  
Composed of Mr. Dayendra Sena Wijewardane, President; Sir Bob Hepple, First Vice-President;  
Mr. Goh Joon Seng, Second Vice-President;

Whereas, on 5 November 2007, a staff member of the United Nations filed an Application requesting the  
Tribunal, *inter alia*:

“II. PLEAS

10. ...[To] find:

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

...

12. ...[To] order:

- (a) that the recommendation of the JAB [Joint Appeals Board] Panel and the acceptance by the Secretary-General be set aside/struck off the records since they are irrelevant in the present case;

- (b) that the appeal dated 9 March 2001 is a complete statement of appeal and the Applicant is not responsible for the delay to duly administer the submission through the appeal process;  
...
- (d) [that] without prejudice to the above, given the lapse of time, most of the remedy in the appeal dated 9 June 2006 be considered as an amendment to that of 9 March 2001;  
...
- (f) that the witnesses referred to by the Applicant should be heard;  
...
- (i) that, should the UNAT [United Nations Administrative Tribunal] find in favour of the Applicant, that the UNAT proceed and hear the Applicant's appeal on merit given the position of the JAB Secretariat;
- (j) the payment of compensation for unnecessary expenses and time spent on the issue of 'abandonment' or 'receivability' ...;
- (k) the payment of compensation for the moral suffering and professional prejudice inflicted on the Applicant;
- (l) [a]ny other remedy the Tribunal deems just."

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 9 June 2008, and once thereafter until 9 July;

Whereas the Respondent filed his Answer on 2 June 2008;

Whereas the Applicant filed Written Observations on 18 July 2008;

Whereas, on 19 November 2009, the Tribunal ruled that no oral proceedings would be held in the case;

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 International Criminal Tribunal for Rwanda (ICTR) on 12 October 1998 as a Senior Trial Attorney on a one year fixed-term contract at the P-5 level.

*Summary of Facts*

... By a letter to the ICTR Registrar dated 24 November 2000, the Chief Prosecutor informed [her] that she had decided not to renew [the Applicant's] contract beyond 31 December 2000. According to [the Applicant's] submission, she was informed at a meeting with the Chief Prosecutor on 6 December 2000 that she would continue her services with ICTR only if she accepted re-assignment at a lower grade.

... On 7 and 14 December 2000, [the Applicant] submitted a request for review of the administrative decision to the Secretary-General.

... On 18 December 2000, [the Applicant] submitted a request for suspension of action to the JAB. [The Applicant] received the report of the JAB, which decided to make no recommendation, together with the Secretary-General's decision to accept the JAB's findings, on 29 December 2000.

... By a memorandum dated 18 January 2001, [the Applicant] was informed by the Personnel Section that, in view of the Secretary-General's decision, her appointment with ICTR would end effective 8 February 2001.

... On 22 March 2001, [the Applicant] submitted a handwritten appeal, dated 9 March 2001, to the JAB Secretariat. She gave [her] contact information in [Kampala, Uganda].

... On 5 April 2001, the JAB Secretary sent a facsimile to [the Applicant] at the contact number stated in her submission. The facsimile included a copy of the Form of Appeal for [the Applicant] to complete.

... On 13 June 2001, [the Applicant] sent a facsimile to the JAB Secretary requesting information on the status of her appeal. She included her mobile phone number in Arusha and an email address.

... By a facsimile dated 11 July 2001 from the JAB Secretary, [the Applicant] was informed that her appeal had been received, and that she needed to complete the Form of Appeal appearing in appendix A of the JAB Rules of Procedure and Guidelines, along with a copy of her letter to the Secretary-General requesting an administrative review. The facsimile was sent to the facsimile number included with her March 2001 submission.

... In September 2003, [the Applicant] was put in contact with Mr. [S], who was requested to check with the JAB on her behalf on the status of her case. By an email dated 10 September 2003, Mr. [S.] wrote back:

'At the JAB, all they have is a procedure of a stay of action. According to the way they interpret their rules, if you want to file an appeal, you have to send them another procedure, an appeal. They do not have that in your file [...]. And by now the delay to file such an appeal has long expired. Then, what you do is write to the Secretary-General and request him to act on the recommendation of the [rebuttal] panel and if he does that, within [*sic*] the time-limit set by the Rules and Regulations ... then you would have a negative answer you could appeal from, and you could send the document you could have sent three years ago.'

... In August 2005, having been in touch with the Ombudsman's office, a representative of the Ombudsman visited the JAB Secretariat Office. On 30 August 2005, [the Applicant] sent an email to the JAB Secretary inquiring about the status of her case and expressing her interest in pursuing the matter.

... On 2 September 2005, the JAB Secretary responded to her email, stating that, after several attempts to reach her, the Secretariat had concluded that she was not interested in continuing with the appeal and that her case was thereafter closed as abandoned. He went on to say: '[A]fter more than four years of silence on your part, I was surprised to receive your email ... In my view, you have failed to pursue your case diligently for such a long time. This is all the more inexcusable for you as a senior trial attorney. I regret that under the circumstances we are not in a position to take action on your latest communication ...'

... On 13 September 2005, [the Applicant] responded, informing him of the various attempts she had made to pursue her appeal, and stated her readiness on that basis to continue forward. Following a further email exchange, the JAB Secretary informed [the Applicant] on 14 November 2005 that he would forward the exchange to the JAB presiding officer for a ruling. On 12 January 2006, the JAB Secretary forwarded [the Applicant's] appeal to Respondent.

... On 24 February 2006, Respondent submitted a reply on the issue of the appeal's receivability only.

... On 9 June 2006, [the Applicant] submitted a complete statement of appeal. [The Applicant] submitted observations on 21 June 2006."

The JAB's considerations, conclusions, and recommendation read, in part, as follows (The JAB report on record does not reflect the date of its adoption):

***“Considerations***

23. As an initial note, the Chairman disclosed a potential conflict of interest in the case during the executive session, as he had served on Appellant's rebuttal panel in February 2001. However, he indicated that he did not know Appellant personally and considered himself capable of reviewing the case objectively. [...] The Panel Secretary noted that Appellant had not objected to any of the panel membership during the five-day period allowed for that purpose.

24. Turning to the issues of the case, the Panel notes that, in accordance with paragraph F of the Rules of Procedure and Guidelines of the JAB at Headquarters (JAB Rules), an appeal is receivable only if it complies with time limits set out in Staff Rule 111.2 (a) and (b), or if the Panel considering the appeal decides to waive the time limits. Staff Rule 111.2 (a) states:

‘(a) 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.

(i) If the Secretary-General replies to the staff member's letter, he or she may appeal against the answer within one month of the receipt of such reply;

(ii) If the Secretary-General does not reply to the letter within one month in respect of a staff member stationed in New York or within two months in respect of a staff member stationed elsewhere, the staff member may appeal against the original administrative decision within one month of the expiration of the time limit specified in this subparagraph for the Secretary-General's reply.’

25. Paragraph G.1 of the Rules of Procedure and Guidelines of the JAB on the waiver of time limits for late filing states:

‘The Panel constituted to consider the appeal shall decide, at its own discretion, whether to consider receivability as a preliminary issue or in conjunction with the whole appeal. In either situation the Panel may request statements, supporting evidence and comments relating specifically to this issue and shall decide, on the basis thereof, if ‘exceptional circumstances’ justify a waiver of the time limits under Staff Rule 111.2 (f), bearing in mind that the onus of proving exceptional circumstances lies with the Appellant.’

In this regard, the Panel notes that the Administrative Tribunal has consistently upheld the utmost importance of respecting the time limits. The Tribunal has also recognized that ‘exceptional circumstances’ warranting their waiver arise in the face of events ‘beyond the Applicant's control that prevent the Applicant from timely pursuing his ... appeal.’ (See Judgements No. 961, *Salma* (2000); No. 913, *Midaya* (1999); No. 713, *Piquilloud* (1995); and No. 372, *Kayigamba* (1986)).

26. Appellant's submission to the JAB was initially deemed incomplete due to the absence of the required form. Appellant points out that the JAB's rules of procedure provide for filing an incomplete Statement of Appeal which may later be supplemented by a duly completed Statement prescribed by those rules. With regard to the letter to the Secretary-General requesting administrative review, Appellant contends that the JAB was in possession of that since her initial filing of the appeal. In fact, it remains unclear at this late stage whether the request or review was included with the original submission in 2000 or whether it was supplemented later on. At any rate, Appellant contends that she cured the procedural faults of her initial submission through her submission in 2006 of a complete Statement. The issue before

the Panel, therefore, is whether there were exceptional circumstances warranting a waiver of the receivability rules in the present instance.

27. Appellant contends that she made numerous attempts to follow up with the status of her appeal, to no avail. She did not, she claims, receive the facsimiles from the JAB Secretariat in 2001 informing her of the additional requirements. She had been told through the intervention of various third parties that the JAB had no appeal on file for her. The gist of her argument in favour of a waiver, then, is that, on the one hand, she did exercise due diligence in pursuing her appeal, and/or, on the other, the JAB did not duly administer the submission through the appeal process.

28. The Panel finds Appellant's attempts to pursue her appeal episodic at best. Firstly, overall the record does not bear out Appellant's contention that she had been active in tracking down the status of her appeal. For ... more than two years between 13 June 2001, when Appellant sent a facsimile to the JAB Secretary requesting an update on the status, and September 2003 when she was in contact with Mr. [S.], Appellant made no apparent effort to follow-up with the case. In the course of just under two years following that email exchange in 2003 and 2005, when at some point she having contacted the Ombudsman's office there is no documentation showing she was pursuing the case at all. The documentation shows that the JAB Secretariat did, in fact, make several attempts to reach her in 2001 in order to notify her that her appeal was incomplete, and sought to confirm her contact information.

29. Secondly, Appellant allowed more than four years to elapse between the time of her June 2001 facsimile to the JAB and her 30 August 2005 email in which, inexplicably, she made no attempt to contact the JAB Secretariat directly, relying instead apparently on third parties (none of whom were her counsel) to look into the matter on her behalf. Irrespective of what documentation the JAB Secretariat had or did not have in its files, it was for Appellant or Appellant's designated counsel to take the course of action she eventually decided upon in August 2005: writing the JAB to notify them of her interest in pursuing the case, and attempting to clarify the procedural issues surrounding it. The Panel finds the long hiatus puzzling, given that she had a number of resources at her disposal to consult the secretariat directly on the issue: she apparently had access to a facsimile machine, and, given her email correspondence with Mr. [S.], certainly had access to an internet account.

30. Moreover, for reasons the Panel is unable to comprehend, having corresponded with and received some information from Mr. [S.], Appellant allowed two more years to elapse before finally contacting the JAB Secretary. This is particularly troubling, given that Mr. [S.] warned her that her appeal was in peril, stating 'IN THEORY you could ask the Panel to waive the time-limit and consider your case, if you gave a very compelling reason for not having acted within the time-limit; but this is always very risky, and, in my opinion, after two years, unless you were in the hospital in a coma, they would not grant it. Especially that you are an attorney; in this case, this would be held against you.' [*emphasis in the original*] Whatever effect this warning had on her, his correspondence shows that he informed her of the various options she had at that point, should she wish to pursue her appeal. The Panel indeed finds it all the more puzzling that a lawyer (who presumably was acquainted with the Staff Rules herself), informed that her appeal risked being dismissed, but offered legal advice as to how to possibly resurrect her claim for review on the merits, by that date allowed twenty-four months to lapse before zealously pursuing the matter with the competent office.

31. The foregoing leads the Panel to believe that Appellant knew or should have realized that the inordinate passing of time between sporadic attempts to handle the matter would progressively harm if not quash her chances of a review on the merits. From the standpoint of exceptional circumstances, the fact that she made the few attempts outlined above shows that she was *capable* of taking control of the situation. Her background as a lawyer and the information she received during one of those attempts would tend to show that she knew or was informed what steps were required to precisely take control. The Panel therefore cannot conclude that Appellant has showed any circumstances beyond her control that prevented her from timely pursuit of her appeal.

***Conclusions and recommendation***

32. In light of the foregoing, the Panel *unanimously concluded* that Appellant has not adduced evidence of exceptional circumstances warranting the waiver of the time-limitations in Staff Rule 111.2 (a). It therefore *unanimously finds* that the appeal is not receivable.”

On 12 July 2007, the Under-Secretary-General, Department of Management, transmitted a copy of the JAB report to the Applicant and informed her that he had accepted the JAB’s findings and, in accordance with its unanimous conclusion, decided to take no further action in this case.

On 5 November 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant’s principal contentions are:

1. Her statement of appeal dated 9 March 2001 was a complete statement of appeal since she had requested that the letter requesting review of the administrative decision not to renew her employment contract of 14 December 2000 be treated as her statement of appeal.
2. She is not responsible for the delay in administering the submission through the appeal process and the burden of proving those exceptional circumstances can therefore not be on her.
3. Since her Statement of Appeal was complete, the JAB’s finding that she had abandoned her appeal, based on JAB Rules III.O.3 and 4 is incorrect.
4. Since the Presiding Officer of the JAB failed to perform his functions and the JAB secretariat failed to exercise its functions under the Rules, the due process rights of the Applicant for a fair and speedy hearing have been violated.

Whereas the Respondent’s principal contentions are:

1. The appeal before the JAB was time-barred.
2. The Applicant has cited no extraordinary circumstances that would warrant a waiver of the time limits.
3. The Applicant’s due process rights have not been violated.

The Tribunal, having deliberated from 26 October to 25 November 2009, now pronounces the following Judgement:

I. Staff 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.

(i) If the Secretary-General replies to the staff member’s letter, he or she may appeal against the answer within one month of the receipt of such reply;

(ii) If the Secretary-General does not reply to the letter within one month in respect of a staff member stationed in New York or within two months in respect of a staff member stationed elsewhere, the staff member may appeal against the original administrative decision within one month of the expiration of the time limit specified in this subparagraph for the Secretary-General's reply."

II. The Applicant contends that her handwritten letter of 9 March 2001 was her completed Statement of Appeal. The letter reads as follows:

"I hereby submit this appeal for your consideration.

On 1<sup>st</sup> March, 2001 I had a serious attack of fever and [have] been bedridden since. I am therefore sending this letter through friends in Arusha since the supporting documents, as well as the rest of my property, are still there.

I request that the Panel/Board consider this appeal on the basis of the Request for review of an administrative decision I sent to the Honourable Secretary-General under rule 111.2(a) of the Staff Rules. I copied this letter to the Board in support of my request for Suspension of Action vide my Memo to you dated 18/12/2000. I request that this Memorandum be read with the following modifications:

(a) My repatriation is in process. All that remain is for me to sign out and collect my ticket and arrange for the shipment of my personal effects.

(b) My contract ended on 31/12/2000. I then took my earned leave which also ended on 8<sup>th</sup> February, 2001.

(c) Prior to the 8<sup>th</sup> February, 2001, Mrs. [N.], officer in charge of Gender Issues at ICTR, Arusha, contacted me by phone and informed me that the then Registrar, [...]; the Deputy Prosecutor, [...]; the Chief of Personnel, [...]; and herself had met and discussed the possibility of me taking a P4 post while the Rebuttal Panel and the Appeals were in progress. They wanted my views. I left Kampala on 9/2/2001 and reported in Mrs. [N.'s], office on 12/02/2001. She informed [the Deputy Prosecutor], in my presence, to inform him that I was around [sic.]. [The Deputy Prosecutor] said that the offer has been withdrawn. I am reliably informed that this offer is now being made to a P5 colleague due for repatriation on 13/05/2001 due to non-renewal of contract.

(d) The 2<sup>nd</sup> Rebuttal Panel is about to conclude its work and the Board should take their findings into account.

(e) I am still interested in working for the Tribunal. I strongly feel that the fact that there is no expectation of renewal of a fixed-term contract should be resorted to as a tool for unjust termination. The fact that my post still exists and that funds are available to support this post should be taken into consideration. To do otherwise would lead to serious injustice and violation of my rights of a hearing. The attached Memos from the Staff Association should be considered in this regard as well. [...]

(f) The difficulties people from most developing countries face in following Appeals should be taken into account when such cases arise. Kindly accept this handwritten document.

I thank the Board for the expeditious manner in which my appeal under Staff Rule 111.2(c) was handled.

I wish you positive deliberation."

III. According to Rule III.J.1 of the Rules of Procedure and Guidelines of the JAB, an appeal to the JAB must include all the elements contained in sub-paragraphs (a) to (i) and the Form of Appeal contained in Appendix A to the JAB Rules, with a copy of the Applicant's letter to the Secretary-General requesting administrative review. As the Statement of Appeal did not comply with the JAB Rules, the JAB secretariat, on 5 April 2001, sent a facsimile to the facsimile number in Kampala, Uganda, which had been provided by the Applicant. The facsimile read:

- “1. We are in receipt of your statement of appeal dated 9 March 2001.
2. Pursuant to rule III.J.1 of the [JAB Rules], the Appellant must complete the Form of Appeal as it appears in appendix A of the JAB Rules.
3. To this end, please find attached a copy of the above mentioned Form of Appeal. Please complete the form and return it to this Office as soon as possible.
4. Please enclose a copy of your letter to the Secretary-General requesting administrative review.
5. Under section III.I.1 of the [JAB Rules], you must send six copies of all written materials to this Office; however, in light of the fact that your statement of appeal is handwritten, we will make the necessary copies on an exceptional basis. Future submissions, if any, however, should be sent in six copies.”

IV. On 13 June 2001, the Applicant by facsimile inquired as follows:

“I write on the above and following my appeal under rule III.2(a)(ii). Kindly inform me of the status of my appeal to date.

I am in Arusha at the moment Mobile phone [...]. E-mail address is [...].

Thank you for the usual cooperation.”

V. On 11 July 2001, the JAB Secretariat sent a facsimile to the Applicant at her facsimile number in Kampala, Uganda, which was identical in terms to the facsimile sent on 5 April 2001.

VI. In September 2003, Mr. S. was tasked with making inquiries on the status of her appeal to the JAB. Mr. S. informed her by email dated 10 September 2003 that her appeal had been stayed and time for a further appeal had expired; that she should “write to the Secretary-General and request him to act on the recommendation of the [rebuttal] panel and if he does that, within [*sic*] the time-limit set by the Rules and Regulations ... then you would have a negative answer you could appeal from, and you could send the document you could have sent three years ago”.

VII. It was, however, not until 9 June 2006 that the Applicant filed a complete statement of appeal before the JAB.

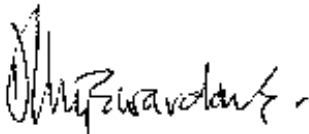


VIII. The Tribunal has consistently stressed the importance of complying with time limits set out in the Staff Regulations and Rules. (See, Judgement No. 596, *Douville* (1993)). In Judgement No. 579, *Tarjouman* (1992), the Tribunal held that “no justification can be found for an Applicant, who thinks he is being victimized, to wait for years and years before resorting to the proper procedural steps”.

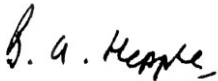
IX. The Tribunal therefore agrees with the JAB’s observations that the Applicant’s attempts to pursue her appeal before the JAB “were episodic”, even if allowance is to be given to the Applicant for the Respondent’s oversight in failing to respond to the Applicant’s facsimile of 13 June 2001 at her new email address. Whatever reasons the Applicant may have had prior to September 2003, the Tribunal holds that she failed to diligently pursue her rights for nearly three further years.

X. For the foregoing reasons, the Tribunal rejects the Application in its entirety.

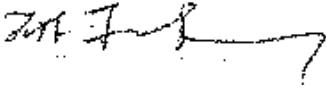
*(Signatures)*



Dayendra Sena **Wijewardane**  
President



Sir Bob **Hepple**  
First Vice-President



**Goh Joon Seng**  
Second Vice-President

New York, 25 November 2009



**Tamara Shockley**  
Executive Secretary