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## **Submissions**

### **The Secretary General's Appeal**

4. The Secretary-General requests that the Appeals Tribunal find that the application was not receivable *ratione materiae* and order that the Judgment should be annulled in its entirety.
  
5. The UNDT erred in concluding that Mr. Eggesfield submitted a timely request for management evaluation and his application was receivable. Mr. Eggesfield failed to request

**Mr. Eggesfield's Answer**

9. The UNDT did not err in concluding that Mr. Eggesfield submitted a timely request for management evaluation and that his application was receivable. As the UNDT correctly found, the time limits had been extended or waived by the Administration.

10. The UNDT did not err in concluding that Mr. Eggesfield engaged in informal resolution efforts with UNOCI through the Office of the Ombudsman. The Office of the Ombudsman is part of the Secretariat and, as such, it cannot rob a staff member of his or her opportunity for judicial review of an impugned decision by delaying to start informal resolution negotiations after being contacted by a staff member. Thus, Mr. Eggesfield reasonably assumed that the Ombudsman was engaged in settlement negotiations from the date he initially contacted the Office.

11. The UNDT did not err in concluding that the deadline for Mr. Eggesfield to file a request for management evaluation had been extended or waived. Waiver may be inferred from the circumstances of the case.

12. The UNDT did not err in concluding that the Administration waived its right to raise non-compliance with the deadline for Mr. Eggesfield to file a request for management evaluation. The Office of Ombudsman did not advise Mr. Eggesfield that settlement negotiations would not proceed until 25 August 2011 – after the initial deadline had passed for him to file a request for management evaluation.

13. To encourage the use of informal resolution procedures, the UNDT's Judgment should be affirmed.

**Considerations**

14. Mr. Eggesfield requests an oral hearing “if required to settle whether and in what manner [his] communications with the Ombudsman should be disclosed”. This Tribunal does not find that an oral hearing is necessary or would “assist in the expeditious and fair disposal of the case” within the meaning of Article 18(1) of the Appeals Tribunal Rules of Procedure; thus, Mr. Eggesfield's request is denied.

15. On appeal, the Secretary General contends that the UNDT erred in law when it concluded that Mr. Eggesfield's request for management evaluation was timely and his application was receivable *ratione materiae*. The Secretary-General is correct for the reasons discussed below.

16. Under Article 2(1) of the Dispute Tribunal Statute, the UNDT has jurisdiction to receive applications appealing administrative decisions only "when a staff member has previously submitted the impugned administrative decisions for management evaluation and the application is filed within the specified deadlines".<sup>2</sup>

17. Staff Rule 11.2 (c) provides:

A request for a management evaluation shall not be receivable by the



22. As we held in *Wu*, there is no legal authority for the UNDT to commence the running of the sixty-day limitation period from the end of the Ombudsman’s settlement negotiations, rather than from “the date on which the staff member received notification of the administrative decision to be contested”.<sup>5</sup> The language of Staff Rule 11.2(c) is clear.

23. It is not necessary for this Tribunal to address the UNDT’s analytical errors regarding waiver and estoppel. Suffice it to say, the Dispute Tribunal’s approach exceeded its jurisdiction and competence in that it ignored the statutory prohibition against suspending or waiving the deadline for management evaluation set forth in Article 8(3) of the UNDT Statute. This Tribunal has repeatedly and “consistently held that the UNDT has no jurisdiction to waive deadlines for management evaluation or administrative review”.<sup>6</sup>

24. Lastly, the Appeals Tribunal notes that nothing prevented Mr. Eggesfield from seeking assistance from the Ombudsman and timely filing his request for management evaluation. Mr. Eggesfield is an experienced staff member who is “deemed to be aware of the provisions of the Staff Rules”.<sup>7</sup>

25. The Appeals Tribunal determines that Mr. Eggesfield’s request for management evaluation was untimely and his application was not receivable *ratione materiae*.

### **Judgment**

26. Judgment No. UNDT/2013/006 is vacated and the appeal is granted.

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<sup>5</sup> *Ibid.*, para. 26.

<sup>6</sup> *Ajdini v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-108; *Trajanovksa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-074; *Mezoui v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-043; *Costa v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-036.

<sup>7</sup> *Diagne et al. v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-067, para. 22.



Original and Authoritative Version: English

Dated this 2<sup>nd</sup> day of April 2014 in New York, United States.

*(Signed)*

Judge Chapman, Presiding

*(Signed)*

Judge Weinberg de Roca

*(Signed)*

Judge Simón

Entered in the Register on this 13<sup>th</sup> day of May 2014 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar