



Before: Judge Michael Adams

Registry: New York

Registrar: Hafida Lahiouel

D'HOOGHE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT ON RECEIVABILITY

Counsel for Applicant:
Bart Willemsen, OSLA

Counsel for Respondent:

Tribunal. This unfortunate obscurity also wastes judicial resources required to interpret what should have been clear to the least educated and least experienced staff member of the Organization.

4. The need for clarity is reinforced by the potentially devastating consequences of a failure to comply with the time limits by virtue of the terms of Staff Rule 111.2(f), which provides —

“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.”

Given the requirement of “exceptional circumstances” – which has been narrowly interpreted by the Administrative Tribunal – many staff members have found that they have lost their right to appeal, even though their appeals might well have had substantial merit. Where such a cons

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obtain the Investigative Report and its annexures that lie at the centre of the case and, at all events, only “may” lead to implicit abandonment. Again, Staff Rule 111.2(f) is not triggered.

17. The document prescribed by the JAB for the purpose of commencing an appeal is called a *Request to File an Appeal with the Joint Appeals Board Against an Administrative Decision* and requires an attachment of documents that would comprise a full statement of appeal. It appears that if such a Request were filed without the attachments, it would be accepted by the Board as an incomplete statement of appeal within ROP III.E. That is what happened in this case.

18. It is an open question whether under the present regime, which replaces that constituted both by the existence of the JAB and its rules there must now be an explanation for the failure to comply with the time limits imposed by those rules. It is contended by Mr. Margetts for the Secretary-General that there must be an explanation, and I think that Mr. Willemsen is at all events in a position to provide one, and therefore does not take issue with the argument. Of course, what constitutes a reasonable explanation will vary from case to case and will not be an entirely objective question. Accordingly, if counsel were of the opinion that certain documents were required in order to prepare a full statement of appeal, and made reasonable efforts to secure such documents, it may well have been reasonable for submission of the full statement of appeal to await receipt of those documents. If counsel has acted reasonably in this respect, it will only be in exceptional circumstances that such an explanation would not be accepted. Even if such an explanation were not accepted and the appeal treated as abandoned, it could be restored, provided that a full statement of appeal was forthcoming. As I understand it, in this case there was a submission that can be regarded in substance as a full statement of appeal. In the circumstances, it seems that an explanation should be given but I propose to proceed on the basis that such an explanation will be forthcoming in due course.

