The issues

1. By application submitted to the Joint Appeals Board (JAB) in New York on 19 February 2009, the Applicants contest

Applicants and the High Commissioner for Refugees, at which UNHCR did not appear.

8. By letter dated 16 August 2007 and signed by the three Applicants, the Applicants requested the Secretary-General to review the decision to terminate their permanent appointment with effect 31 December 2005.

9. On 31 October 2007 and upon the Applicants' request, UNHCR was summoned to appear before the local Labour Court (Tribunal du Travail Hors

Parties' arguments on receivability

The Applicants

15. While the Applicants concede that they did not resp

19. The Counsel at the same time suggests that UNHCR, on its part, showed bad faith by not showing up in front of the local authorities. He stresses that after the failure of UNHCR to appear at the conciliation hearing, Applicants were

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".

24. The Respondent argues that the Applicants did not meet the mandatory time-limits prescribed in former Staff Rule 111.2 (a), since they first received notice that their appointments would terminate by l

may be even more appropriate for issues related to the receivability of an application. The crucial question in this case – the time-bar of the application – is such a matter of law.

34. Therefore, and in view of all the elements on file, the Tribunal focuses its consideration on the time-bar of the application of 19 February 2009.

35. In this respect, the Tribunal stresses that since the administrative decisions subject of the present application date back to September 2005 and have been appealed in February 2009, the relevant provisions to assess the time-bar are

no response was received from ALU. The Tribunal further takes note that the second request for review dated 10 November 2007 was only signed by Applicant 1, but not by Applicant 2 and 3. As such, only Applicant 1 received a response to his letter dated 10 November 2007 from ALU, while Applicant 2 and 3 received no response from ALU at all. The Tribunal recalls that all Applicants subsequently submitted their statement of appeal to the JAB in New York on 19 February 2009.

Applicant 1

39. The Tribunal notes that Applicant 1 received a response to his second request for review (i.e. the letter dated 10 November 2007), by letter from ALU dated 2 May 2008, indicating "If you wish to file an appeal with the New York Joint Appeals Board, in accordance with staff rule 111.2 (a), you must do so no later than two months from the date this letter is received". The Tribunal is aware that former Staff Rule 111.2 (a) (i) provides not for a two, but a one month deadline to submit a statement of appeal after receipt of a response from the Secretary- General. It also stresses that it does not know when ALU's response was received by Applicant 1; however, in the absence of countervailing evidence it could not but conclude that it must have been within reasonable time.

40. The Tribunal stresses that in any case and independently if the one- or the two-month deadline is applied - by submitting the statement of appeal only on 19 February 2009 to the JAB, the application with respect to Applicant 1 is – prima facie – time-barred.

41. The Tribunal cannot find any exceptional circumstances in the terms of former Staff Rule 111.2 (f) which may justify a waiver of the time-limit for the submission of the statement of appeal to the JAB.

42. In this respect, the Tribunal took note of the definition provided by UNAT, according to which "exceptional circumstances" for the purpose of former Staff Rule 111.2 (f) are circumstances which are "beyond the control of the Applicant". (cf. UNAT Judgement n° 372, Kayigamba (1986) and, generally, n° 913, Midaya (1999) and n°1054, Obuyu (2002)).

43. The Tribunal took also note of judgement UNDT/2009/036 Morsy of 16 October 2009, in which in reference to Article 8.3 of the UNDT Statute and Article 7.5 of the UNDT RoP it was stressed that the notion of “exceptional case” has a wider definition and cannot be equated with the old definition of “exceptional circumstances” as provided by UNAT. The Tribunal reiterates that since in the present case, the relevant provisions