



Case No.: UNDT/NY/2010/071/
JAB/2006/066

Order No.: 326 (NY/2010)

Date: 10 December 2010

Introduction

1. On 26 August 2010, the Applicant filed her application before the UN Dispute Tribunal (“UNDT”). In his reply of 18 June 2010, the Respondent submitted that the application is time-barred and therefore not receivable. In Order No. 242 (NY/2010) of 14 September 2010, the Tribunal directed the Applicant to file and serve a submission in response to this contention, which she did on 28 September 2010.

Facts bearing on the issue of receivability

2. On 9 August 2006, the Applicant filed her statement of appeal to the Joint Appeals Board (“JAB”).

3.

6. By letter dated 21 May 2009, the Applicant sought an extension of time for the filing of her application with the former UN Administrative Tribunal. By letter dated 22 May 2009, its former Executive Secretary granted her an extension of time until 30 June 2009, i.e., the last day of existence of the Administrative Tribunal before the UNDT took over its functions.

7.

Respondent's submissions [put first as the moving party]

10. The Respondent makes the following points on the issue of receivability:
 - a. Article 8.3 of the UNDT Statute allows the Tribunal to suspend or waive the deadlines for a limited period of time and only in exceptional circumstances;
 - b. under *Morsy* UNDT/2009/036, the Applicant must establish an exceptional case by setting out exceptional reasons why s/he should be granted an extension of time;
 - c. all relevant factors, as stated in *Samardzic et al.* UNDT/2009/019 must be considered, particularly the considerations stated in paras. 29 and 30 of that judgment; and
 - d. the necessity of timeous pursuit of appeals was observed in, and promotes certainty and expeditious disposal of disputes.

Applicant's submissions

11. The Applicant makes the following points on the issue of receivability:
 - a. This case was filed with the UNDT on 26 August 2009 after the Applicant experienced many difficulties communicating with and locating the correct UNDT office for lodging her appeal;
 - b. the Applicant was attempting to timeously pursue her appeal, even though she was on extended sick leave when the filing deadlines became due;
 - c. a transition from the old international justice system to the new one was occurring;

- d. at the end of June 2009, the Applicant had in her possession seven completed / bounded files and was ready to submit her case to anyone or office willing and authorised to accept it;
- e. the Applicant advised the UNDT Registry that she was on sick leave and it would not be possible to have the entire file with all attachments scanned and submitted electronically; further, at the time no requirement for electronic filing existed under the filing rules; and
- f. after filing a hard copy of her appeal, the UNDT itself did not respond to the Applicant for a full 10 months and the UNDT Registry itself has apologised for the delay in processing the Applicant's appeal.

Considerations

12. The UN Appeals Tribunal has in several cases emphasised the importance of adhering to time limits. For instance, *Ibrahim* 2010-UNAT-069, it stressed “the importance of time limits”. However, *Mezoui* 2010-UNAT-043, while underlining the importance of time limits, it declared the application receivable, even though it was untimely. The reasoning was the following:

20. Mezoui was caught in the transition between the old and new internal justice systems. In April of 2009 she requested an extension of the time-limit to file an application with the former Administrative Tribunal to 31 July. She contends that she received no answer, though one was surely sent. That letter granted an extension until 30 June, after which date the former Administrative Tribunal ceased to accept new cases. She sent another letter on 16 June. At that point it is questionable if anyone could have granted an extension—the new UNT had not officially started, and the former Administrative Tribunal was winding down. And there was some understandable confusion because cases which would have been commenced before the former Administrative Tribunal were to be

2. The Tribunal will revert with further orders for managing the remainder of the case.

(Signed)

Judge Marilyn J. Kaman

Dated this 10