

# UNDT/2010/202, Mensah

## UNAT Held or UNDT Pronouncements

The Tribunal dealt with the notion of “exceptional circumstances” in the light of the jurisprudence of the former UN Administrative Tribunal, the UNDT and the UN Appeals Tribunal. It reaffirmed that “exceptional circumstances” are those circumstances that are outside the control of the applicant. The Tribunal considered whether it could find any exceptional circumstances, as alleged by the Applicant that could justify a waiver of the receivability requirements, pursuant to staff rule 111.2 (f) of ST/SGB/1999/5 of 3 June 1999. Initially the Applicant submitted before the JAB that the fact that she was stationed in a duty station far away from Headquarters made it difficult for her to have easy access to information, communication and process. This amounted to exceptional circumstances. Subsequently, the Applicant alleged before this court that she suffered from a long illness from August to October 1999 as well as from January to June 2000 and this was a major cause that prevented her to file her appeal with the JAB within the legal deadline. She prayed the Tribunal to consider these two elements as the basis for waiver of the time-limits requirements. Having carefully considered the documentary evidence and taking into account the case law on the issue of waiver of time limits the Tribunal agreed with the JAB that the sole fact of being located in a duty station away from Headquarters could not be considered as an exceptional circumstance warranting a waiver of time limits. Further it found that the Applicant’s alleged illness was new evidence that could not be admitted, as it was known to the Applicant in 1999 and 2000 and could have been presented to the JAB. Notwithstanding the above, the Tribunal sought to find whether this new evidence was credible and found that the Applicant’s alleged illness was not supported by any documentary evidence such as a medical certificate. It also found that the Applicant had sent letters during the alleged period of illness. For the foregoing reasons, the Tribunal concluded that it could not find any persuasive evidence to establish exceptional circumstances. The Tribunal found that the application was time-barred. The Tribunal noted with regret that the JAB took over six years to decide the issue of *ratione temporis*.

## Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to end her contract. Her appeal was found to be not receivable *ratione temporis* by the former JAB. In 2008, the Applicant filed an appeal with the former UN Administrative Tribunal and the case was transferred to the UNDT on 1 January 2010 for consideration.

## Legal Principle(s)

N/A

## Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Mensah

Entity

UNFPA

Case Number(s)

UNDT/NBI/2010/15/UNAT/1614

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

19 Nov 2010

Duty Judge

Judge Boolell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Termination (of appointment)

Applicable Law

Secretary-General's bulletins

- ST/SGB/1999/5

Staff Rules

- Rule 111.2(a)
- Rule 111.2(f)

Related Judgments and Orders

UNDT/2009/057

2010-UNAT-067