

# **UNDT/2012/086, Abassa**

## **UNAT Held or UNDT Pronouncements**

The Tribunal agreed with Thiam and Schook which held that the administration must send a written notification of the administrative decision to the staff member in order to determine when the sixty-day time limit starts to run. This Tribunal found that the Applicant was not formally notified of the impugned decision and the only official notification to the Applicant, that he was not selected for the post came in the form of the management evaluation report of 15 December 2010. The Tribunal therefore held that since the Applicant had requested a management evaluation on 27 October 2010, yet the impugned decision itself was communicated to the Applicant via the management evaluation report of 15 December 2010, the request for management evaluation was receivable. As to the timeliness of filing the Application, the Tribunal found that the Application, which was filed on 2 March 2012, was not timely filed and therefore not receivable. Although staff rule 11.4(c) provides that mediation suspends the deadline to file an application, and a staff member has ninety days from the time mediation is deemed to have failed to file an application, there were conflicting facts as to when the mediation became futile. The Applicant, in an email to the Tribunal on 2 December 2011, stated that the mediation ended on 2 December 2011. The Respondent contended in its Reply of 28 March 2012 that there was no mediation, only discussions to start the mediation process, which eventually ended on 22 July 2011. The Applicant was given until 24 April 2012 to challenge the Reply and the Applicant failed to do so. The Tribunal therefore accepted the Respondent's Reply on Receivability at face value as there had been no objection from the Applicant and found that the discussions ended on 22 July 2011, thereby rendering the 2 March 2012 Application as having been filed out of time. In regards to ex parte communications with the Tribunal, the Tribunal found that prejudice to a Respondent may occur only if and when the relevant pleadings and documents are not communicated to the Respondent or where the Respondent is denied the right to be heard either orally or on paper. This Tribunal did not consider that there is a legal duty on it to seek the views of the Respondent when it is in presence of a motion for a waiver of time limits, especially to file an

application. However, notwithstanding the discussion on ex parte communications, the Tribunal stated that any Applicant that brings a case before the Tribunal has a responsibility to provide evidence that tips the case in his or her favor, as the burden of proof lies with the Applicant.

## Decision Contested or Judgment/Order Appealed

The Applicant is challenging challenging the decision not to select him for the position of Chief, Agricultural Production Systems Section (APSS), FSSDD/UNECA, and alleging that he was not notified of the contested decision.

## Legal Principle(s)

N/A

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Abassa

## Entity

UNECA

## Case Number(s)

UNDT/NBI/2011/012

## Tribunal

UNDT

## Registry

Nairobi

## Date of Judgement

6 Jun 2012

## Duty Judge

Judge Boolell

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Ombudsman / informal resolution

## Applicable Law

Administrative Instructions

- ST/AI/2006/3/Rev.1

Former Staff Rules

- Rule 111.2(a)

Staff Rules

- Rule 11.1(c)
- Rule 11.2(c)

- Rule 11.4(c)

UNDT RoP

- Article 7.5

UNDT Statute

- Article 8.3

## Related Judgments and Orders

2010-UNAT-013

UNDT/2010/131