

# **UNDT/2013/071, Awad**

## **UNAT Held or UNDT Pronouncements**

The Respondent submitted that the application was filed out of time as the Applicant had submitted it after 5 p.m. (closing hour of the New York Registry) on the last filing day. The UNDT found that the Statute and the Rules of Procedure provide that applications are to be filed within 90 calendar days from the date of notification of the outcome of management evaluation, and, therefore, the applicant had until the expiration of the last calendar day of the filing period to file his application, regardless of the working hours of the Registry. Having done so, his application was receivable. The UNDT stated that further directions would be issued as to the future conduct of the matter.

## **Decision Contested or Judgment/Order Appealed**

The Applicant contested the decision not to select him for an S-4 level post in the Department of Safety and Security in New York.

## **Legal Principle(s)**

Meaning of calendar day, working day: A calendar day is generally defined as a consecutive twenty-four hour day running from midnight to midnight. In both common law as well as civil law jurisdictions, the term “calendar day” for filing purposes is generally understood as a full twenty-four hour period from midnight to midnight (see, e.g., *Lanni v. Grimes*, 173 Misc. 614, 18 N.Y.S.2d 322, 327 (1940); *Guillory v. Department of Transportation and Development, Division of Maintenance and Field Operations*, 450 So. 2d 1305, 1307 (1984); for an example of a civil law jurisdiction, *Code de procédure civile*, art. 642 (Fr.)). The terms “working day” and “calendar day” are not synonymous. The Tribunal notes, in this regard, arts. 13 and 14 of its Rules of Procedure, which set out that applications for interim relief shall be considered “within five working days of the service of the application on the

respondent”. Accordingly, the General Assembly, when adopting the Tribunal’s Statute on 24 December 2008 and approving the Tribunal’s Rules of Procedure on 16 December 2009, was presumably aware of the meaning of the terms “calendar day” and “working day”.Effect of the last day of the time limit for filing of an application falling on a non-working day: should the last day of the 90 calendar day period for the filing of an application fall on a non-working day, the last day for filing purposes is the next working day, with the applicant having a full calendar day to file his application.De minimis delay: If a filing is delayed for a brief period of time, and the filing party was not lax in the handling of the case and the delay caused no prejudice to the other party to the proceedings, such a delay could be considered de minimis depending on the circumstances of the case.Statutory interpretation: It is well-settled that where the legislative body “borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed (Morissette v. United States, 342 U.S. 246, 263 (1952)).

## Outcome

Judgment entered for Applicant in full or in part

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Awad

## Entity

DSS

## Case Number(s)

UNDT/NY/2012/036

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

24 Apr 2013

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

## Applicable Law

UNDT RoP

- Article 34
- Article 7

UNDT Statute

- Article 8