

# **UNDT/2013/174, Smith**

## **UNAT Held or UNDT Pronouncements**

The Respondent, in addition to addressing the merits of the case, submitted that the request for management evaluation was not filed on time and the application was time-barred. The Applicant's legal representative attempted to file the request for management evaluation at 4:54 p.m. on the final day of the time limit. Due to the large size of the request, the email bounced back at 5:21:16 p.m. that same day, Friday, 7 September 2012. In the circumstances, the Applicant still had 6 hours and 48 to submit a request for management evaluation within the period of 60 days as required. The Tribunal found that the claim is not receivable. Counsel for the Applicant left the filing of the request for management evaluation to the eleventh hour and, having done so, failed to monitor its effective delivery by electronic means. As a consequence thereof she did not leave herself in a position to institute the necessary remedial measures for which there was sufficient time to do so before time expired at midnight on the final day. Counsel for the Applicant adopted the measure of filing the voluminous documents in batches on Monday, 10 September 2012. It is clear that had she monitored whether the filing had been properly effected, she would have discovered the problem shortly after submitting the request for management evaluation and could have file the application, as was done on the following Monday afternoon, within the time limits. The Tribunal finds that the activating cause of the request for management evaluation being filed out of time was failure on the part of the Applicant's legal representative and not due to any failure by the MEU.

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

The Applicant contested the Organization's failure to properly follow the applicable procedures with respect to investigating allegations of discrimination, harassment and abuse of authority against staff members of the Publishing Section, DGACM.

## Legal Principle(s)

Costs: The Tribunal's Statute and Rules of Procedure do not make provision for the imposition of a sanction against either party for conduct that does not amount to manifest abuse albeit it may be frivolous, vexatious, negligent, unreasonable or otherwise misconceived. Until such time as the General Assembly considers it appropriate to amend the Statute and the Rules of Procedure of the Tribunals to deal with such conduct, the loss of a right to a judicial determination of the merits of one's case is the only salutary lesson to parties to observe the requirements under the Staff Rules, the Statute and the Rules of Procedure of the Tribunals, and, regrettably, unnecessary costs will continue to be incurred.

## Outcome

Dismissed as not receivable

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Smith

## Entity

DGACM

## Case Number(s)

UNDT/NY/2013/2

## Tribunal

UNDT

## Registry

New York

## Date of Judgement

16 Dec 2013

## Duty Judge

Judge Meeran

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Abuse of process before UNDT/UNAT

Costs

Manifest abuse

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

## Applicable Law

Secretary-General's bulletins

- ST/SGB/2013/3

Staff Rules

- Rule 11.2(c)

UNDT Statute

- Article 10.6
- Article 8.1

## Related Judgments and Orders

UNDT/2013/028

UNDT/2013/029

2013-UNAT-308