

UNDT/2018/047, Khisa

UNAT Held or UNDT Pronouncements

While the Applicant was not required to request management evaluation before filing this application, she was, however, required to file her application with UNDT within; 90 calendar days of receiving the contested decision. The Applicant's 25 March 2018 motion for waiver failed to comply with the stringent requirement pronounced by the Appeal's Tribunal in Thiam because it was not filed prior to the filing of her substantive application but more than five months after the fact. Additionally, the Applicant's passing mention of receivability in her 17 October 2017 application cannot be construed as a motion for waiver because it contravened the ruling in Nikwigize. She received the letter of 15 December 2016 imposing disciplinary sanction on her on 20 December 2016. She brought this application only on 17 October 2017 – nearly five months after her discharge from hospital.

Decision Contested or Judgment/Order Appealed

The Applicant challenged the decision to impose on her the disciplinary measure of separation from service with compensation, and the recovery of 2,822.37 South Sudanese Pounds from her final entitlements.

Legal Principle(s)

A staff member contesting an administrative decision taken pursuant to advice obtained from technical bodies or to impose a disciplinary or non-disciplinary measure pursuant to staff rule 10.2 is not required to request management evaluation.; The Appeals Tribunal has consistently held that the Dispute Tribunal must “recognize, respect and abide by” the jurisprudence of the Appeals Tribunal because the principle of stare decisis creates foreseeable and predictable results within the internal justice system. This Tribunal is bound to apply the Appeals Tribunal's pronouncements in Thiam and Nikwigize strictly. The Appeals Tribunal has

consistently and strictly enforced the time limits for filing applications and appeals simply because strict adherence to filing deadlines assures the timely hearing of cases and rendering of judgments. An applicant is required to file a motion or application for suspension, waiver, or extension of time limit before he/she files a substantive application with the Dispute Tribunal. He/she cannot file the motion for suspension, waiver, or extension of time limit as part of his/her substantive application or afterwards.

Outcome

Dismissed as not receivable

Full judgment

[Full judgment](#)

Applicants/Appellants

Khisa

Entity

UNMISS

Case Number(s)

UNDT/NBI/2017/94

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

4 Apr 2018

Duty Judge

Judge Izuako

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Disciplinary matters / misconduct

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Management Evaluation

Applicable Law

Staff Rules

- Rule 11.2(b)

UNDT RoP

- Article 7.5

UNDT Statute

- Article 8.1(d)(ii)

Related Judgments and Orders

2018-UNAT-883