

UNDT/2021/117, Khan

UNAT Held or UNDT Pronouncements

The circumstances of the Applicant's severe illness, travel difficulties and the security issues in Sudan were all worthy considerations duly taken into account by the Organization during efforts made to accommodate the Applicant and achieve partial resolution as aforementioned. On receipt of the Applicant's management evaluation request, it was also within the discretion of the Respondent based on staff rule 11.2(c) to extend the 60- day deadline. That discretion, however, does not extend to the Tribunal. The Tribunal has no jurisdiction to waive the management evaluation request deadlines missed by the Applicant.

Decision Contested or Judgment/Order Appealed

The Applicant challenged (i) non-authorization by the UNHCR Medical Section of his medical evacuation when he was acutely ill; (ii) non-authorization by the Medical Section for an escort to accompany him during his medical travel; (iii) the UNHCR Personnel Administration Section's ("PAS") denial of security evacuation allowance for his family; and (iv) PAS' failure to convert his administrative status to security evacuation following his medical travel.

Legal Principle(s)

Article 8.3 of the UNDT Statute unequivocally states that the Tribunal "shall not suspend or waive the deadlines for management evaluation." It is established by Appeals Tribunal jurisprudence that the Dispute Tribunal may only review decisions that have been the subject of a proper and timely request for management evaluation.

Outcome

Dismissed as not receivable

Outcome Extra Text

The Staff Rules, the Statute and the Rules of Procedure of the Tribunal as currently drafted required this self-represented staff member to know of and adhere to strict time limits while he was being treated for a recent severe diagnosed illness. There is no exception to these provisions, and no room for a staff member to demonstrate that the delay was the result of incapacity. This position would be onerous for any staff member who is incapacitated and is that much worse for the staff member who is self-represented. In such situations, the good faith responsibility rests with the Respondent in exercising any applicable discretion within the relevant rules so that the decisions taken are in the best interest of the Organization and the staff member. It is notable that there is provision at staff rule 11.2(c) for the Respondent to extend the 60-day deadline for a staff member to submit a management evaluation request pending efforts for informal resolution conducted by the Office of the Ombudsman. Additionally, the Tribunal notes that elsewhere in the Staff Rules, there is express provision for the accommodation of extended time to be given to staff members in cases of illness. In this case, the staff member had a potentially viable case on the merits. However, during his time of illness he failed to adhere to filing deadlines for management evaluation and his application failed on the technicality of receivability. He deserved much better.

Full judgment

[Full judgment](#)

Applicants/Appellants

Khan

Entity

UNHCR

Case Number(s)

UNDT/NBI/2020/73

Tribunal

UNDT

Registry

Nairobi

Date of Judgement

11 Oct 2021

Duty Judge

Judge Honeywell

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

TEST -Rename- Benefits and entitlements-45
Jurisdiction / receivability (UNDT or first instance)
Temporal (ratione temporis)
Management Evaluation

Applicable Law

Staff Rules

- Rule 11.2(c)

UNDT Statute

- Article 8