

2012-UNAT-275, Cooke

UNAT Held or UNDT Pronouncements

UNAT considered an appeal by the Secretary-General. UNAT held that UNDT, under Article 8.3 of its Statute, was authorised to waive the time limits for filing applications in certain situations but that the staff member had failed to submit a written request for a waiver and to justify exceptional circumstances. UNAT held that UNDT could not consider whether exceptional circumstances existed unless the staff had submitted a prior written request for waiver. UNAT held that UNDT had interpreted Articles 19 and 35 of the UNDT RoP in a manner that conflicted with Articles 8.1 and 8.3 of the UNDT Statute. UNAT held that UNDT had exceeded its competence and erred in waiving, on its own motion, the deadline for the staff member to file his application. UNAT held that the application was untimely and not receivable. UNAT upheld the appeal and vacated the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to summarily dismiss him. The Secretary-General filed a motion for summary judgment on the issue of timeliness. UNDT issued a judgment on receivability No. UNAT/2011/216, denying the Secretary-General's motion for summary judgment and concluding that the application was receivable. UNDT determined that it was empowered under Articles 19 and 35 of the UNDT RoP to waive on its own motion the statutory 90-day deadline for the Applicant to file his application and found "exceptional circumstances" existed to waive the deadline. The "exceptional circumstances" were UNICEF's failure to respond to the Applicant's repeated attempts to amicably resolve his situation and its failure to advise the Applicant, at the time he received the summary dismissal letter, of his review rights and the mechanisms for challenging his summary dismissal.

Legal Principle(s)

Unless the applicant has made a written request for waiver, UNDT cannot waive the filing deadline based on “exceptional circumstances”; it is not competent to do so.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Cooke

Entity

UNICEF

Case Number(s)

2012-302

Tribunal

UNAT

Registry

New York

Date of Judgement

1 Nov 2012

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Manifest excess of jurisdiction

Temporal (ratione temporis)

Applicable Law

UNDT RoP

- Article 10.1
- Article 19
- Article 35
- Article 7.5

UNDT Statute

- Article 8.1
- Article 8.3

Related Judgments and Orders

UNDT/2011/216

2011-UNAT-118

2010-UNAT-067

2010-UNAT-074

2011-UNAT-108

2010-UNAT-043

2011-UNAT-158

2010-UNAT-069