

2017-UNAT-727, Khan

UNAT Held or UNDT Pronouncements

UNAT upheld the UNDT ruling that the 2010 decisions were time-barred and not receivable *ratione temporis*. UNAT held that UNDT acted *ultra vires* or in excess of its competence and jurisdiction by considering whether the Appellant had shown exceptional circumstances justifying a waiver of the filing deadline, and thus held that the relevant paragraphs of the UNDT judgment were *obiter dicta* and should be stricken. UNAT held that UNDT erred in holding the Appellant's motion or request for waiver of the deadline as not receivable *ratione temporis* on the basis that while it was not timely, that did not make it not receivable, noting that there was nothing in the UNDT Statute which prevented UNDT from receiving such motions or requests. On the 2015 decision, UNAT held that UNDT correctly determined that the application was not receivable *ratione personae* as the contested decision could not have adversely affected the individual's terms of appointment as a former staff member. UNAT held that UNDT correctly concluded that since the Appellant had not maintained any of the terms of his former appointment, including the right to be re-employed, there was insufficient nexus between his former employment that ended in 2010 and the impugned decision in 2015 not to re-employ him and that therefore the application was not receivable *ratione personae*. UNAT held that UNDT erred in law by addressing the merits of an application that was not receivable and thus held that the relevant paragraphs of the UNDT judgment were *obiter dicta* and should be stricken from the record. UNAT dismissed the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

UNDT judgment: The Applicant contested the decisions not to grant him special leave without pay and to separate him (2010 decisions) and not to reemploy him (2015 decision). UNDT found that the 2010 decisions were not receivable *ratione temporis* and that the 2015 decision was not receivable *ratione personae*.

Legal Principle(s)

UNDT cannot waive the time limit to file an appeal more than three years after the applicant's receipt of the contested administrative decision, and UNDT acts ultra vires or beyond its competence and jurisdiction when it considers whether an applicant had established exceptional circumstances for waiving such a time limit. Although UNDT has no discretion to grant a motion to waive the deadline for filing an application challenging a decision that is more than three years old, there is nothing in the UNDT Statute that prevents the UNDT from receiving such motions and therefore UNDT cannot refuse to receive an untimely or late motion for a waiver by finding it not receivable.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Khan

Entity

DSS

Case Number(s)

2016-965

Tribunal

UNAT

Registry

New York

Date of Judgement

31 Mar 2017

President Judge

Judge Chapman

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Manifest excess of jurisdiction

Personal (ratione personae)

Temporal (ratione temporis)

Applicable Law

UNDT Statute

- Article 8.3
- Article 8.4

Related Judgments and Orders

UNDT/2016/097