

2017-UNAT-731, Nikwigize

UNAT Held or UNDT Pronouncements

UNAT noted that there was no dispute as to the applicable statutory provision governing the timeliness of the Appellant's application to UNDT or that management evaluation was not required as the Appellant was challenging a disciplinary measure. UNAT held that the Appellant's application was not receivable *ratione temporis*, noting that the Appellant himself acknowledged that his application was untimely. On the Appellant's claim that UNDT erred in not waiving the time limit for him to file the application due to exceptional circumstances, UNAT held that UNDT correctly applied judgment No. 2011-UNAT-144 (Thiam) to Article 8(3) of the UNDT Statute, but that UNDT erred when it appeared to suggest that a waiver of time limits for filing a late application or appeal could be requested as part of an untimely application. UNAT held that as the Appellant's request for waiver was not filed before the statutory time limit for filing the application had lapsed, UNDT had no jurisdiction or was not competent to consider whether there were exceptional circumstances to waive the deadline. UNAT held that UNDT erred when it reviewed the reasons provided by the Applicant to determine whether they represented exceptional circumstances to justify the delay in filing the application, however, UNAT held that this error did not adversely affect the UNDT's ultimate conclusion that the application was not receivable *ratione temporis*. UNAT denied the appeal and affirmed the UNDT judgment.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to separate him from service for disciplinary reasons on the basis that the penalty was disproportionate. UNDT found that the application was not receivable *ratione temporis* and denied the Applicant's request to waive the statutory time for filing an appeal.

Legal Principle(s)

Where a request for waiver is not filed before the statutory time limit for filing an application to UNDT has lapsed, UNDT has no jurisdiction to consider whether exceptional circumstances exist to warrant waiving the deadline.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nikwigize

Entity

OHRLLS

Case Number(s)

2016-971

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)

Temporal (ratione temporis)

Applicable Law

UNAT Statute

- Article 7

UNDT Statute

- Article 8.1(d)(ii)
- Article 8.3

Related Judgments and Orders

UNDT/2016/110