

# 2019-UNAT-941, Dieng

## UNAT Held or UNDT Pronouncements

UNAT recalled its jurisprudence that where a response to a management evaluation request is not received, a staff member has 90 days from when the response is due to file an application to UNDT. If a response is received after the expiration of that 90-day time limit, the receipt of the response does not reset the clock for filing an application with UNDT. UNAT held that, since the MEU's response was received after the expiration of the 90-day period, it did not reset the clock for the staff member to file an application. UNAT held that UNDT therefore initially made no error of law in concluding that the staff member's application was not receivable *ratione temporis* because it was filed outside the regulatory time limit. However, by applying the principles of good faith and of the regularity of administrative proceedings to the facts of the case, UNAT held that UNDT erred in dismissing the staff member's application as time-barred. UNAT held that the MEU is competent only to make recommendations to suspend or extend the relevant deadlines concerning the management evaluation process, whereas the authority to extend a management evaluation deadline is reserved for the Secretary-General, who has not exercised it in the present case. UNAT noted that, though not bound to do so, the MEU advised the staff member that the 90-calendar day deadline for his filing of an application with UNDT started to run from 23 July 2018. UNAT held that, based on that misrepresentation, the staff member filed his application with UNDT untimely. UNAT concluded that, in the circumstances and by applying the principles of good faith and of the regularity of administrative proceedings to the specific facts of the case, UNDT erred in dismissing the staff member's application as time-barred. Moreover, in the circumstances, the Secretary-General was estopped from raising the defence that the application for judicial review was time-barred. UNAT upheld the appeal and remanded the case to UNDT for consideration on the merits.

## Decision Contested or Judgment/Order Appealed

The staff member filed a request for management evaluation contesting his reassignment to a different office. The MEU confirmed receipt of his request and advised, in writing, that pursuant to Staff Rule 11. 2 (d), the management evaluation in his case was to be completed within 45 calendar days of receipt of his request, or no later than 23 July 2018. The MEU further advised that if there was any delay in completing the management evaluation, pursuant to Staff Rule 11. 4 (a), the 90-day deadline for filing an application to UNDT would start to run from 23 July 2018, or the date on which the management evaluation was completed, if earlier unless the deadline had been extended by the Secretary-General to facilitate efforts for informal resolution. Subsequently, the MEU informed the staff member, again in writing, that the contested decision had been upheld and that since its decision had been issued prior to the expiration of UNDT's 90-day deadline, his receipt of the management evaluation resulted in setting a new deadline for submitting his application. The staff member then contested the decision before UNDT. UNDT dismissed the application as time-barred.

## Legal Principle(s)

Where a response to a management evaluation request is not received, a staff member has 90 days from when the response is due to file an application to UNDT. When a response is received after the deadline for a response to a request for management evaluation has lapsed but before the expiration of the 90-day time limit for filing an application with UNDT, then the receipt of the response resets the clock for filing an application with UNDT. Whereas, if a response is received after the expiration of that 90-day time limit, the receipt of the response does not reset the clock for filing an application with UNDT. The Management Evaluation Unit (MEU) is competent only to make recommendations to suspend or extend the relevant deadlines concerning the management evaluation process, whereas the authority to extend a management evaluation deadline is reserved for the

Secretary-General. In cases where a staff member has filed an untimely application to UNDT based on his or her reliance on a misrepresentation on time limits by the MEU, the principles of good faith and of the regularity of administrative proceedings mandate that such reliance may not be held against that staff member. Concomitantly, the Secretary-General is estopped from raising the defence that the application for judicial review is time-barred.

Outcome

Appeal granted

Full judgment

[Full judgment](#)

Applicants/Appellants

Dieng

Entity

UNAMID

Case Number(s)

2019-1237

Tribunal

UNAT

Registry

New York

Date of Judgement

28 Jun 2019

President Judge

Judge Raikos

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Management Evaluation

Temporal (ratione temporis)

Applicable Law

Secretary-General's bulletins

- ST/SGB/2010/9

Staff Rules

- Rule 11.2
- Rule 12.3

UNDT RoP

- Article 7.1

UNDT Statute

- Article 8

Related Judgments and Orders

UNDT/2019/014