

2023-UNAT-1406, Kamal Karki

UNAT Held or UNDT Pronouncements

The UNAT denied the Appellant's request for anonymity as the issue presented in his appeal was purely procedural and jurisdictional and did not involve any personal data which had to be protected.

The UNAT also denied the Appellant's request for an oral hearing, finding that that it would not assist the Appeals Tribunal in the expeditious and fair disposal of the case.

The UNAT held that because the Appellant filed his application 93 days after the receipt of the contested administrative decision, it was not receivable, absent waiver of the deadline of the UNDT. The UNAT observed that given the centrality of deadlines to the orderly administration of justice, and to give proper respect to the integrity of the Dispute Tribunal Statute, any exception to such deadlines must be reserved for the rarest and most compelling circumstances. Here, Appellant's belated request to waive the expired deadline did not meet this high bar. Appellant did not seek a waiver along with his late application, but instead waited until after the Secretary-General had moved for summary judgment.

The UNAT found that the UNDT was well within its discretion to reject the Appellant's arguments that the delay to seek a waiver was caused by the negligence of his retained counsel, and that his own medical condition prevented him from ensuring a timely filing, especially as he did not establish that timely filing was an "absolute impossibility".

The UNAT dismissed the appeals and affirmed Judgment No. UNDT/2022/104, with Judge Colgan dissenting.

Decision Contested or Judgment/Order Appealed

The Appellant, a former staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR) contested the decision of the Administration to impose on him the disciplinary measure of dismissal. In its Judgment No. UNDT/2022/104, the UNDT dismissed his application as not receivable *ratione temporis* because it was filed more than 90 days after his receipt of the administrative decision.

Legal Principle(s)

In cases where a management evaluation is not required, an application to the UNDT is not receivable unless it is filed within 90 calendar days of the applicant's receipt of the administrative decision.

The UNDT has discretion, upon written request by the applicant, to waive the deadlines for a limited period of time, but such relief is permitted only in exceptional cases. There will be exceptional circumstances when there is an absolute impossibility for the filing party to file within the statutory time limits. The UNAT's role in this regard is confined to determining whether, based on the record, the UNDT acted within, or otherwise abused, that discretion.

When a request for waiver is not filed before the statutory time limit for filing an application had lapsed, the UNDT has no jurisdiction to consider whether there were exceptional circumstances to waive the deadline. Strict adherence to filing deadlines assures one of the goals of our new system of administration of justice: the timely hearing of cases and rendering of judgments.

Oversight by counsel does not justify a waiver of statutory time limits.

The principles of transparency and accountability, which are enshrined in the system of administration of justice at the United Nations, require that names should be redacted in judgments in only the most sensitive of cases. Personal embarrassment and discomfort are not sufficient grounds to grant confidentiality.

Outcome

Appeal dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Kamal Karki

Entity

UNHCR

Case Number(s)

2022-1750

Tribunal

UNAT

Registry

New York

Date of Judgement

19 Dec 2023

President Judge

Judge Colgan

Judge Ziadé

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Jurisdiction / receivability (UNDT or first instance)

Temporal (ratione temporis)

Procedure (first instance and UNAT)

Oral hearings

Applicable Law

UNAT RoP

- Article 18.1

UNAT Statute

- Article 10.9

UNDT RoP

- Article 7.5

UNDT Statute

- Article 8.1(d)(ii)

- Article 8.3

Related Judgments and Orders

UNDT/2022/104

2012-UNAT-211

2013-UNAT-384

2018-UNAT-872

2017-UNAT-731

2018-UNAT-883

2012-UNAT-275

2020-UNAT-1035

2016-UNAT-639

2017-UNAT-741