

2024-UNAT-1501, Kamran Ali Khan

UNAT Held or UNDT Pronouncements

The UNAT rejected the new evidence submitted for the first time on appeal, which sought to justify the late filing of the case by attributing it to the appellant's attorney's personal circumstances.

The UNAT was of the opinion that staff members must generally adhere to the specified time limits. However, in this case, the UNAT found that the UNDT had erred in fact and law in dismissing Mr. Khan's application as not receivable *ratione temporis*. It concluded that Mr. Khan's exceptional circumstances—including severe flooding disrupting internet service and affecting his ability to access e-mails, lack of notice on when to expect the contested decision by a phone call, being on ALWOP, and receiving the decision outside business hours—warranted a one-day extension.

Based on the exceptional circumstances outlined above, the UNAT held that it was in the interests of justice to grant an extension of time to at least the following day when his application was filed.

Decision Contested or Judgment/OrderAppealed

A former staff member contested the decision dismissing him from service with UNICEF.

In Judgment No. UNDT/2023/081, the UNDT found that Mr. Khan's application was not receivable *ratione temporis*, as the application had not been submitted timeously.

Mr. Khan appealed.

Legal Principle(s)

While the default practice is that appeals are heard on papers and written submissions filed, if the UNAT is satisfied that an oral hearing will enable it to determine the case more expeditiously and fairly, then an oral hearing may be directed.

New evidence is not allowed to be introduced on appeal for the first time without seeking leave with the UNAT.

Objective assessment of receipt of an administrative decision is unaffected by the staff member's knowledge and applies even if the decision is sent during a staff member's annual leave or outside working hours.

"Exceptional" means other than, or out of, the ordinary, or unusual. The circumstances are "the exception rather than the rule" as it is sometimes expressed. Multiple relevant circumstances should be assessed collectively.

The statutory framework for UNDT proceedings allows for extensions or waivers in exceptional cases, balancing the need for adherence to deadlines with the reality that strict compliance may occasionally be impractical or unjust. When exceptional circumstances are established, factors to consider include the reasons and length of the delay, potential prejudice to the Organization or others, responsibility for the delay, and the impact of granting relief.

Outcome

Appeal granted

Outcome Extra Text

Mr. Khan's appeal is granted, and Judgment No. UNDT/2023/081 is reversed. The proceeding is remanded to the UNDT for decision by another Judge on its merits.

Full judgment

[Full judgment](#)

Applicants/Appellants

Kamran Ali Khan

Entity

UNICEF

Case Number(s)

2023-1860

Tribunal

UNAT

Registry

New York

Date of Judgement

13 Dec 2024

President Judge

Judge Colgan

Judge Ziadé

Judge Sheha

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Admissibility

Temporal (ratione temporis)

Admissibility of evidence

Oral hearings

Evidence

Jurisdiction / receivability (UNDT or first instance)

Procedure (first instance and UNAT)

Applicable Law

UNAT RoP

- Article 18

UNAT Statute

- Article 2.5

UNDT Statute

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

Related Judgments and Orders

UNDT/2023/081

2024-UNAT-1466

2021-UNAT-1174

2023-UNAT-1346