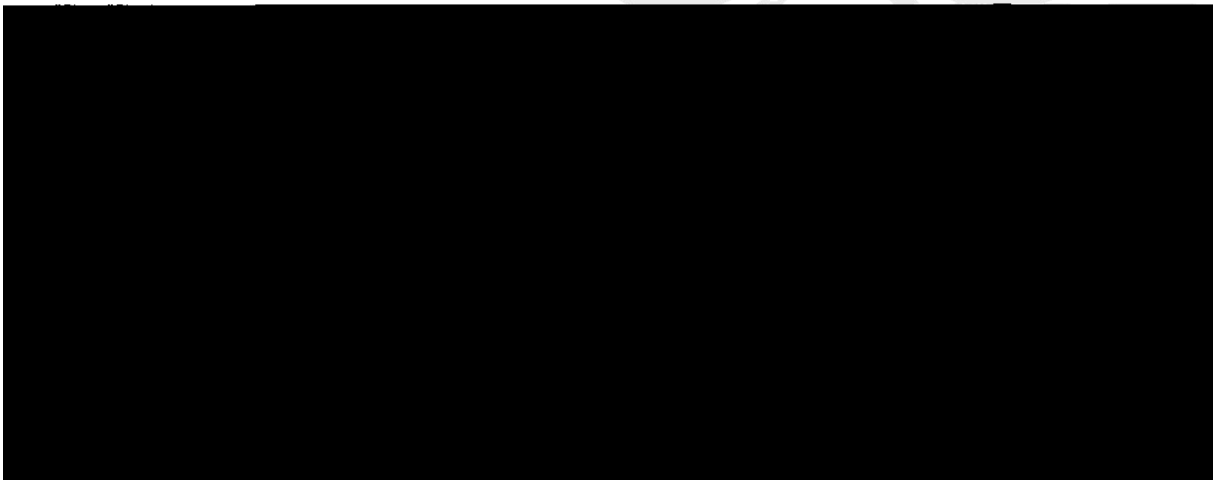


Judgment No. 2015-UNAT-552



THE UNITED NATIONS APPEALS TRIBUNAL

Appellant filed his UNDT application within 90 days of 21 February 2014, therefore making his application timely. The UNDT's interpretation is both illogical and inequitable as it determines whether an application is receivable by the UNDT according to whether a belated MEU response is issued before or after the 90-day period in which a UNDT application is to be filed.

6. The UNDT also erred in referring to Article 7(5) of the UNDT Rules of Procedure, as this article only applies when an applicant has already received a decision from the MEU and wishes to seek an extension to 90 days because of exceptional circumstances. It was not applicable to the Appellant's matter, where the MEU was simply late in its response.

7. This case is of material importance to the Appellant who has been left with an official poor performance rating, which he considers unwarranted and retaliatory. As a consequence of his poor performance appraisal, the Appellant has been ineligible for promotion and has had to search for jobs in the private sector. Further, the case is of importance to the Organization and all potential future applicants since the import of the UNDT's Judgment means that the MEU would be able to defeat any evaluation request by resorting to delay tactics. Staff members would also be compelled to apply to the UNDT for an extension of time to file an application with the UNDT immediately after the expected MEU response date passes, because they would be unable to rely on any assurance from the MEU that an evaluation will ever be issued. This would represent an unnecessary burden on both applicants', and the UNDT's, resources, and would be contrary to the desire of the General Assembly as expressed in resolution 68/254, that the administration of justice at the United Nations be conducted in an efficient and cost-effective manner.⁵

8. The Appellant requests that this Tribunal vacate the UNDT Judgment and remand the matter to the UNDT for consideration.

The Secretary-General's Answer

9. The Dispute Tribunal correctly concluded that the Appellant's application was not receivable as it had been filed late. The UNDT was also correct in noting that the Appellant's failure to submit a prior request to waive the deadline for filing an application rendered the UNDT unable to consider his application, in accordance with *Cooke*,⁶ and correct in distinguishing *Neault* on its facts. The Appellant's interpretation of *Neault* is incorrect and

⁵ General Assembly Resolution 68/254, "Administration of justice at the United Nations", 27 December 2013.

⁶ *Cooke v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-275.

contrary to the guidance of the Appeals Tribunal in that judgment. Further, the Appellant's reliance on *Faraj* is misplaced since in the present matter there was no continued engagement between the Administration and the Appellant on the issue of the contested decision.

10. The Secretary-General requests that this Tribunal dismiss the Appellant's appeal in its entirety and affirm the UNDT Judgment.

Considerations

11. Article 8(1) of the UNDT Statute reads, in part, as follows:

An application shall be receivable if:

[...]

(d) The application is filed within the following deadlines:

(i) In cases where lines:

14. The Appeals Tribunal has consistently emphas

Original and Authoritative Version: English

Dated this 2nd day of July 2015 in Geneva, Switzerland.

(Signed)

Judge Weinberg de Roca,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Adinyira

Entered in the Register on this 20th day of August 2015 in New York, United States.

(Signed)

Weicheng Lin, Registrar