Case No.:	UNDT/NY/2010/046/ UNAT/1718
Judgment No.:	UNDT/2010/184
Date:	15 October 2010

On 10 October 2006, following an investigation carried out by a two-member investigation panel appointed by the Assistant-Secretary-General for Human Resources Management, the applicant was formally charged with the sexual harassment of six women. The matter was subsequently referred to the JDC. In its report adopted on 7 October 2008 the JDC recommended that the charges against the applicant be dropped.

4. The Deputy Secretary-General transmitted a copy of the JDC report to the applicant by letter dated 11 November 2008, informing him that the Secretary-General had decided not to accept the recommendation of the JDC, choosing instead to admonish the applicant with a written censure. The Deputy Secretary-General's letter stated:

> The JDC considered that the present case was brought not because the evidence itself was sufficient to establish that the allegations more likely than not occurred, but because there were several complainants making allegations of the same type of misconduct. The JDC noted that the conduct described in a number of the allegations in this case were comments made by you in referring to a colleague or to a colleague's appearance. The JDC also noted that you generally admitted that you made such compliments or *piropos* in Spanish.
>
> The JDC considered ST/AI/379 and noted that to classify conduct as sexual harassment, the conduct in question: (i) must be of a sexual nature; (ii) must be unwelcome; and (iii) must either interfere with work, or be made a condition of employment, or create an intimidating, hostile or offensive environment. The JDC considered that some of your remarks were of a sexual nature or could be perceived as such and that some individuals may have genuinely felt offended by such language. The JDC, however, did not believe that the third necessary element—that the conduct must be unwelcome—was present. The JDC considered that the notion of "unwelcome conduct" implies that the alleged offender knew or should have reasonably known that his/her conduct could be perceived as offensive by others.
>
> The JDC noted, however, that you repeatedly failed to adequately perceive the reaction of your colleagues, in particular women, to your words and behaviour. In this respect, the JDC noted that many witnesses repeatedly stated that you "[were] not very aware

5. It would be grossly

additional obligation to send a copy of the letter dated 11 November 2008 to the applicant's counsel.

Consideration and findings

10. Even if the Tribunal were to accept the applicant's submission that he only received the Deputy Secretary-General's letter of 11 November 2008 on 1 December 2008, he should have filed his application by 2 March 2009 since he had 90 days from the date of notification to appeal the decision (see art. 7.4 of the Statute of the former Administrative Tribunal). His application was dated 30 June 2009, or 120 days past the deadline, and it was received by the former Administrative Tribunal on 6 July 2009.

11. As the Dispute Tribunal stated in *Morsy* UNDT/2009/036, *Avina* UNDT/2010/054, and *Rosca* UNDT/2009/052, for the Tribunal to waive or suspend the deadlines stipulated in art. 8 of the Statute, the reasons outlined in a request for a waiver or suspension of time limits must show circumstances that are out of the ordinary, quite unusual, special, or uncommon; they need not be unique, unprecedented, or beyond the applicant's control. (For another line of authority on the meaning of "exceptional case" and "exceptional circumstances", which follows the test used by the former United Nations Administrative Tribuna

notification of the censure. Although it was the applicant's responsibility to diligently pursue his case, there is no evidence that he took any steps at all to pursue a timeous appeal or that he had difficulty in contacting his counsel of record following the notification of the contested decision. If he had any such difficulty, he could have sought to engage alternate counsel or requested the Panel of Counsel for reassignment of the case to another counsel. Nor has the applicant contended that he was precluded from filing the appeal by any reasons whatsoever other than those set out in his counsel's letter.

13. Further, there is nothing before the Tribunal to suggest that the Administration misled the applicant with respect to his rights to appeal the decision (see *Johnson* UNDT/2009/037); in fact, the contested letter dated 11 November 2008 specifically explained that "[i]n accordance with staff rule 110.4(d), any appeal you might wish to file in respect of the above decision should be submitted directly to the Administrative Tribunal".

14. As the Tribunal stated in *Morsy*, the applicant must show that he has not been negligent or forfeited the right to be heard by his inaction or lack of vigilance. In the final analysis, it was the responsibility of the applicant, who was informed of the status of his case, to give instructions to his counsel. It cannot be accepted that staff members hand over unreservedly the responsibility for ensuring the lodgment of an application upon the appointment of counsel (*Avina* UNDT/2010/054). There is no evidence before the Tribunal that the applicant took any steps to initiate his appeal within the applicable time limits or to seek an extension. The applicant was negligent and forfeited his right to be heard.

Conclusion

15. The application is time-barred because of the applicant's failure to file it within the statutory time limits. I find that the applicant did not act diligently with

respect to his case and there are no exceptional reasons that justify a waiver of the time limits. The application is dismissed.

(*Signed*)

Judge Ebrahim-Carstens

Dated this 15th day of October 2010

Entered in the Register on this 15th day of October 2010

(*Signed*)

Morten Albert Michelsen, Officer-in-Charge, UNDT, New York Registry