

Translated from French



Original: French

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Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Víctor Rodríguez

BIDNY

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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JUDGMENT

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Counsel for Applicant:  
Antonio Bautista

Counsel for Respondent:  
Adèle Grant, ALU/OHRM, UN Secretariat



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Case No. UNDT/GVA/2010/013  
(UNAT 1580)

staff regulation 9.5, the mandatory retirement age is sixty-two years and staff members have no enforceable right to claim an exception.

15. On 19 January 2005, the applicant contacted the Panel of Counsel to request a copy of the aforementioned letter, claiming that she had not received the original sent to the address of her son in New York.

16. On 14 February 2005, the applicant filed an appeal with the New York Joint Appeals Board.

17. In late April or early May 2006, the Joint Appeals Board submitted its

24. As the case could not be decided by the United Nations Administrative Tribunal before it was abolished on 31 December 2009, it was transferred to the United Nations Dispute Tribunal.

#### Parties' contentions

25. With regard to receivability, the applicant's main contentions are as follows:

- a. There were exceptional circumstances justifying a waiver of the time limits by the Joint Appeals Board. In August 2004, the applicant wrote several times to the Under-Secretary-General for



31. This Tribunal does not see any reason to depart from the definition of “exceptional circumstances” adopted by the former United Nations Administration Tribunal and upheld by this Tribunal in various judgments (for example UNDT/2010/019, Samardzic et al.). According to that definition, exceptional circumstances “consist of events beyond the applicant’s control that prevent the applicant from timely pursuing his or her appeal” (see UNAT Judgment No. 378 Kayigamba (1986) as cited for example in Judgments No. 718 Biquilloud (1995) and No. 868 Bekele (1998)).

32. If the applicant maintains that she was late in submitting her request for review to the Secretary-General because of her attempts to find an informal solution with her senior management in August 2004, those attempts did not prevent her from respecting the time limit, but by that time she had already exceeded the time limit since May 2004.

33. Furthermore, the applicant’s contention that she had one month from the date when she received the Secretary-General’s response through the Panel of Counsel to file her appeal also has no legal basis.

34. In the present case, the Tribunal finds that there was no exceptional circumstance that prevented the applicant from submitting her request for review or from filing her appeal within the time limit.

35. In view of the foregoing, the application is irreceivable because it is time-barred.

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Case No. UNDT/GVA/2010/013

(UNAT 1580)

Judgment No. UNDT/2010/031/Corr.1

Entered in the Register on this <sup>no</sup>22~~21~~ day of February 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva