
UNDT/GVA/2010/033
(UNAT 1635)

Case No.: UNDT/GVA/2010/034
(UNAT 1636)

UNDT/GVA/2010/036
(UNAT 1639)

Order No.: 50 (GVA/2010)

Date: 22 April 2010

Introduction

1. The four applicants are former employees of the United Nations Interim Administration Mission in Kosovo (UNMIK). They were separated from their employment with the UN on 30 June 2005 when their contracts were not renewed. One year later, in May 2006, applicants 1 and 2 sought administrative review of the decision not to renew their contracts, while applicants 3 and 4 did so in August 2006. The Administrative Law Unit (ALU) at the UN Secretariat found that the requests for review were not receivable because of the time delay. This decision was supported on appeal by a majority of the Joint Appeals Board (JAB) Panel which considered their appeals. One member of the JAB Panel dissented. The applicants then appealed to the United Nations Administrative Tribunal (UNAT) but the appeals were not decided before the dissolution of that body and the cases were transferred to the United Nations Dispute Tribunal (UNDT).

2. At a directions hearing held on 25 March 2010, the applicants agreed to have their cases heard together. The Tribunal ordered them to file particulars of their evidence in support of their claim of exceptional circumstances which would justify an extension of time for administrative review. The applicants complied with this order and the respondent filed further evidence in reply.

3. There is now sufficient evidence before the Tribunal for it to rule on the question of receivability without the need for an oral hearing.

The Issue

4. The sole issue is whether there are exceptional circumstances to justify a waiver of the two-month time limit set by former staff rule 111.2 (a) for a staff

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The Law

5. As this began as a UNAT appeal, the applicable law is that as applied by UNAT. The test for exceptional circumstances was described in Judgement No. 372, *Kayigamba* (1986) as:

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were unfamiliar with them. Examples of this unfamiliarity included not taking

UNMIK Administrative Headquarters in Pristina but they had to sign the above-mentioned completion of UNMIK appointment letter first. Only after signing it could they make an appeal against the decision. He asked them to come back the next day. In his statement, Mr. Locke says he does not recall the applicants but I find that his description of the procedure he normally followed during the downsizing was consistent with the evidence of the applicants.

17. The applicants returned to see Mr. Locke the next day as arranged but he had gone on leave. Instead they approached Mr. Sebastien Beaufils, Supervisor of Local Staff, Police and Justice Pillar, and explained their concerns to him. He took copies of their documents and said that he would send them to the UN security investigation team to see if they were forged. The applicants have not seen the documents since and there has been no response to their complaint nor a result from any investigation.

18. They also say that when they showed Mr. Beaufils a copy of the downsizing list they had been provided with, he told them there had been a mistake on the list and that there was a new list. He refused to give them a copy of the new list and had no answers concerning this list. The applicants say that they told him everything about the alleged injustices done to them but he defended the staff of the command structure of the border. They formed the view that

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that time but no answer probably they throw to bin.” It is unclear what this appeal was about or who made it.

21. The next step taken by the applicants was to approach the UN Ombudsman in December 2005. On advice they then wrote to the Officer-in-Charge of the Division of Administration, UNMIK, in Pristina in January 2006. This letter set out fully the allegations that they had previously

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them sent an e-mail to the Secretary of the JAB

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member appeals an administrative decision. It is the case for the respondent that the failure of the applicants to apprise themselves of those procedures does not constitute exceptional circumstances.

28.

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gave them the decision. From then on the Administration failed them. Because of their unfamiliarity with the procedure to be followed, they were reliant on advice and this was not forthcoming. The respondent did not produce any evidence to

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36. I conclude that the applicants have made out their claim that their appeals were delayed by exceptional circumstances and find that their appeals are receivable.

37. The applicant's cases will now be decided on the merits. Their cases will be heard by another judge of the UNDT as my tour of duty in Geneva is at an end.

(Signed)

Judge Coral Shaw

Dated this 22nd day of April 2010

Entered in the Register on this 22nd day of April 2010

(Signed)

Víctor Rodríguez, Registrar, UNDT, Geneva