



Case No.: UNDT/NBI/2010/73

Order No.: 004 (NBI/2011)

Date: 13 January 2011

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*that said reply did not reach your Tribunal within the required timeframe. Counsel for the Respondent apologizes for the oversight.*

14. Do these reasons bring the matter within the realm of exceptional cases? In *Morsy* UNDT/2009/036, Judge Ebrahim-Carstens observed:

*What is required is a conspectus of all relevant factors before the Tribunal to ascertain in each case whether it is exceptional or whether there are exceptional reasons in the ordinary sense, to justify a waiver or suspension of time; exceptional simply meaning something out of the ordinary, quite unusual, special, or uncommon. To be exceptional, a circumstance or reason need not be unique or unprecedented or very rare, but it cannot be one which is regular or routinely or normally encountered.*

15. The duty of the Tribunal when faced with an application on waiver of time limits is twofold. On the one hand the Tribunal should strictly adhere to the time limits provided for by the law. On the other hand it is also equally vital to consider whether a too strict adherence to the time limits would be conducive to the interest of justice to all parties concerned. In the latter case the Tribunal should make a judicious exercise of the power and discretion given to it to waive time limits.

16. The Tribunal does not consider that the Respondent has satisfied the requirement of exceptional cases as provided in Article 35 of the Rules read subject to Article 8.3. All that the Respondent is alleging is that it would appear that the reply did not reach the Registry in a timely manner and at the same time apologising for the oversight. Either the reply was sent and never reached the Registry or it was not sent through oversight. The Respondent cannot have it both ways. The Tribunal does not find that the Respondent has put forward any convincing reason that brings his situation within the exceptional cases requirement. The application cannot therefore be granted on this ground.

17. However, the Tribunal notes that Article 19 of the Rules provides: *The Dispute Tribunal may at any time, either on an application of a party or on its own*

