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TIP OF THE MONTH

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SETTLEMENT DISCUSSIONS STOP THE CLOCK FOR FILING APPEALS

A staff association recently inquired whether it would be a good idea to seek an amendment of the rules on lodging appeals to extend the deadline from 2 months to 4 months. The reason behind the proposal was to allow more time for the possibility of settlement before having to lodge an appeal, since after the appeal is lodged the positions become hardened. The short timeframes for lodging an appeal (from 10 days in some organizations to 2 months in others) is generally by careful design: the administration knows that a significant number of appeals will be time barred since staff will fail to meet short deadlines. Accordingly, most administrations will not agree to amend the rules allowing staff members more time to lodge the appeal. In addition, an extension of the deadlines may only serve to further delay the internal appeal process, which in most organizations will run 1 to 2 years. But that does not mean settlement discussions cannot be pursued.

If the staff member believes there is a chance for a settlement, he or she can ask the administration to enter into settlement discussions before the time an appeal must be lodged or anytime thereafter. If the administration accepts the offer to enter into discussions, this will have the effect of stopping the clock for when the appeal must be filed or the appeal proceedings in general. For example, in ILOAT Judgment No. 2584, a staff member filed a protest to a decision involving the denial of his application for another post. Under the appeal rules, in the absence of a reply from the Director-General, the appeal to the internal Appeals Board was due within one month. After the filing of the protest, but before the one month had expired, the staff member received a memo inviting him to meet with an administration official to discuss possible settlement. The staff member did not file the appeal on the required date, but did meet with the administration official. No settlement was reached. The staff member then lodged his appeal. The administration objected to the timeliness of the appeal on the grounds that the time limits in the rules had not been met and had not been waived by the administration.

The Tribunal noted that it is well established that if an internal appeal is time-barred and the internal appeals body was wrong to hear it a subsequent complaint to the Tribunal is irreceivable. The administration's invitation did not specify that the time limits would continue to operate while settlement discussions were held, and therefore it was reasonable for the staff member to infer that the clock had stopped. The Tribunal stated that "[i]f an organisation invites settlement discussions or, even, participates in discussions of that kind, its duty of good faith requires that, unless it expressly states otherwise, it is bound to treat those

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discussions as extending the time for the taking of any further step . . . because settlement discussions must proceed on the basis that no further step will be necessary.” Once the discussions terminate, the time limit for filing the appeal begins to run.

The rule followed by the Tribunal is in keeping with its encouragement of settlements. However, staff members should be vigilant in ensuring that deadlines are not missed even when settlement discussions are invited. There is room for error and sometimes correspondence is not always clear. The administration may be equivocal in its reply to the invitation for settlement discussions or it may state merely that it will consider the invitation and get back to the staff member. In these circumstances, the clock will for filing an appeal will not stop ticking.